

USB

7

<TARGET><BILL>SB 7</BILL><SUBJECT>SB
7</SUBJECT><COMM>SSTA27</COMM></TARGET>

Alaska State Legislature

Interim: (May - Dec.)
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Session: (Jan. - May)
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[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
<http://www.akdemocrats.org>

Office of Senator Bettye Davis

January 27, 2011

Senator Bill Wielechowski, Chair
Senate State Affairs Committee

RE: Request for Hearing SB 7, 27-LS00083\A -"An Act relating to the Civil Rights of Felons."

Dear Senator Wielchowski:

Senator Davis respectfully requests a hearing on SB 7 before the Senate State Affairs Committee. SB 7 allows felons to register to vote immediately upon release from incarceration and assume responsibility for their reintegration in their communities.

Included in this hearing package are the following:

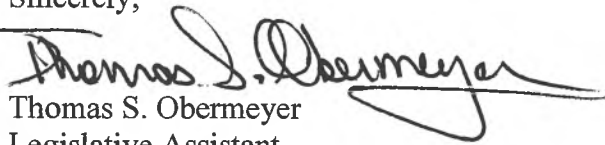
1. Sponsor Statement
2. Current version of SB 7, 27-LS0083\A.
3. Sectional Summary (to be provided under separate cover)
4. Fiscal Notes (Committee responsibility, but note that the similar bill in the 26th Legislature, SB 68, listed zero fiscal notes for the Department of Corrections and Division of Elections).
5. Supportive Documents:
 - ACLU Model Testimony, February, 2007 on similar bill, SB 7 in 25th Legislature
 - NCSL Legisbrief, "Felon Voting Rights," April-May 2009
 - The Sentencing Project News: "Senate Committee Passes National Criminal Justice Commission Act of 2009," January 21, 2010
 - Alaska Justice Forum, "Felon Disenfranchisement and the Voting Rights Act – *Farrakhan V. Gregoire*: 'A Crowd of One.'" Winter, 2010
 - The Sentencing Project News: "Washington State: 9th Circuit Court Reverses Disenfranchising Law; Landmark Decision Could Go to Supreme Court." January 8, 2010
 - The Seattle Times: Gregoire signs bill to restore voting rights for some felons." May 5, 2009
 - Alaska Department of Corrections 2009 Offender Profile - excerpted sections

Please anticipate substantial in-person and teleconference testimony.

Also, please do not schedule a hearing February 21-24, 2011 due to office scheduling conflicts.

Please contact me if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Thomas S. Obermeyer". The signature is written in a cursive style with a long, sweeping underline.

Thomas S. Obermeyer

Legislative Assistant

907-465-3762

Thomas_Obermeyer@legis.state.ak.us

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Senator Bettye Davis

SB 7 - "An Act relating to the civil rights of felons."

SPONSOR STATEMENT

The Alaska State Constitution Article V, Sec. 2 bars a person to vote "who has been convicted of a felony of moral turpitude unless his civil rights have been restored." The right to vote remains suspended from the date of conviction through the date of release from all conviction-related disabilities, including probation and parole (AS15.05.030; AS 15.60.010(39)). According to the Alaska Department of Corrections Offender Profile, in 2009 more than 10,000 Alaskans were ineligible to vote pursuant to this provision. This bill allows felons to register to vote immediately upon release from incarceration and start assuming responsibility for their reintegration in their communities.

Harsher sentencing laws over the past 30 years have allowed the prison population to balloon while reducing the rehabilitative model to almost non-existence. Article I, Section 12 of the Alaska Constitution requires: "Criminal administration shall be based upon . . . the principle of reformation." In Alaska the prison population increased from 800 prisoners in 1984 to over 5,000 in 2008, an increase of over 600%. Of those incarcerated in Alaska 48% were Caucasian, 52% were minorities. Although Alaska Natives represent only 16% of the population, they comprised 35% of total offenders in institutions in 2009. Likewise, African American represent 4% of the population but comprised 10% of the incarcerated. Nationally, minority felons are disproportionately disenfranchised under current law and the harm of this continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society.

An estimated 5.3 million American citizens cannot vote because of a criminal conviction. Of these, 4 million are out of prison and living and working in communities. Restoring a person's right to vote is a critical element to successful reentry into society after incarceration and is consistent with our democracy's modern ideal of universal suffrage. The Democracy Restoration Act of 2009 was introduced in both houses of Congress to restore the right to vote to citizens once released from prison. It would affect more than 41,000 people on parole.

Felons across the country often cannot sit on juries, serve as teachers, firefighters or even barbers or plumbers; receive food stamps or live in public housing. These ex-offenders have a vested interest in what happens in society and if they are to participate they should have a right to vote.

The National Conference of State Legislatures (NCSL) in 2009 found that disenfranchisement still varies tremendously from state to state:

- In Maine and Vermont, felons do not lose their right to vote; even felons who are serving a prison sentence can vote.
- In 13 states and the District of Columbia, felons are ineligible to vote only while serving a prison sentence. Ex-offenders and those on probation and parole can vote.
- In 25 states, prisoners and people under community supervision, probation and/or parole are ineligible to vote, but ex-offenders are eligible.
- In eight states, all felons in prison and those in community supervision, as well as certain ex-offenders, are ineligible to vote.
- In Kentucky and Virginia, all felons and ex-offenders are permanently ineligible to vote, absent a pardon.

NCSL reported that between 1996 and 2008 28 states passed new laws on felon voting rights which included:

- Seven states repealed lifetime disenfranchisement laws, at least for some ex-offenders.
- Two states gave probationers the right to vote.
- Seven states improved data-sharing procedures among state agencies.
- Nine states passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.
- Twelve states simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

While this bill falls short of a Constitutional amendment to eliminate the voting prohibition entirely, it does limit disenfranchisement to those incarcerated and restores voting rights upon release. A hallmark of participatory democracy, voting affirms our membership in the social compact. Exclusion of criminal offenders from this process and from one of the most fundamental rituals of community involvement does nothing to promote public safety and reduce recidivism. It can only serve to impede social reintegration of these citizens. Felon disenfranchisement statutes rest on outdated retributory practices antithetical to contemporary standards of equal representation in the political process, standards explicitly stated in the Voting Rights Act.

Former US Supreme Court Justice Thurgood Marshall said:

"It is doubtful whether a state can demonstrate either a compelling or rational policy interest in denying former felons the right to vote. Ex-offenders have already paid their debt to society. They are as much affected by the actions of government as any other citizen and have as much of a right to participate in governmental decision-making. Furthermore, the denial of a right to vote to such persons is hindrance to the efforts of society to rehabilitate former felons and convert them into law abiding and productive citizens."

SENATE BILL NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY SENATOR DAVIS

Introduced: 1/19/11

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the civil rights of felons."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 09.20.020 is amended to read:

4 Sec. 09.20.020. Disqualification of jurors. A person is disqualified from
5 serving as a juror if the person

6 (1) has served as a juror in the state within one year of the time of
7 examination for service; or

8 (2) has been convicted of a felony for which the person is
9 incarcerated, until the person is released from incarceration [HAS NOT BEEN
10 UNCONDITIONALLY DISCHARGED; UNCONDITIONAL DISCHARGE HAS
11 THE MEANING GIVEN IN AS 12.55.185].

12 * Sec. 2. AS 15.05.030 is amended to read:

13 Sec. 15.05.030. Loss and restoration of voting rights. (a) A person convicted
14 of a crime that constitutes a felony involving moral turpitude under state or federal law
15 may not vote in a state, federal, or municipal election while incarcerated for that

1 crime [FROM THE DATE OF THE CONVICTION THROUGH THE DATE OF
 2 THE UNCONDITIONAL DISCHARGE OF THE PERSON]. Upon release from
 3 incarceration [THE UNCONDITIONAL DISCHARGE], the person may register
 4 under AS 15.07.

5 (b) The commissioner of corrections shall establish procedures by which a
 6 person released from incarceration [UNCONDITIONALLY DISCHARGED] is
 7 advised of the voter registration requirements and procedures. The procedures
 8 established under this subsection must provide that, at the time of the person's
 9 release from incarceration.

10 (1) the Department of Corrections shall provide the person a
 11 written notification of the person's restored right to vote; and

12 (2) the commissioner of corrections shall notify the director that
 13 the person is entitled to be registered as a voter. *has been released from cust.*

14 * Sec. 3. AS 15.07.135 is amended to read:

15 Sec. 15.07.135. Cancellation of registration of incarcerated
 16 [CONVICTED] persons. (a) The director shall make reasonable efforts to obtain the
 17 names of persons convicted of a felony involving moral turpitude and incarcerated
 18 for that crime. Promptly after receipt of evidence satisfactory to the director that a
 19 person has been convicted of a felony involving moral turpitude and incarcerated for
 20 that crime, the director shall cancel the registration of the person.

21 (b) Upon presenting proof that a person whose registration was canceled under
 22 (a) of this section has been released from incarceration [UNCONDITIONALLY
 23 DISCHARGED FROM CUSTODY], the person may register. The director shall make
 24 reasonable efforts to verify the release from incarceration [UNCONDITIONAL
 25 DISCHARGE] of persons applying for registration under this subsection.

26 * Sec. 4. AS 33.30.241(a) is amended to read:

27 (a) A person who is convicted of a felony involving moral turpitude as defined
 28 in AS 15.60.010 is disqualified from voting in a state, federal, or municipal election
 29 while the person is incarcerated for that crime [UNTIL THE PERSON'S
 30 UNCONDITIONAL DISCHARGE].

31 * Sec. 5. AS 33.30.241(b) is amended to read:

1 (b) A person who is convicted of a felony is disqualified from serving as a
2 juror while the person is incarcerated for that crime [UNTIL THE PERSON'S
3 UNCONDITIONAL DISCHARGE].

4 * Sec. 6. AS 15.60.010(39) and AS 33.30.241(c) are repealed.

↓
*def. of
uncond. discharge*

↓
*confirming
ref. to uncond.*

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 17, 2011

SUBJECT: "Civil rights" under art. V, sec. 2 of the state constitution
SB 7 (Work Order No. 27-LS0083\A)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Alpheus Bullard *AB*
Legislative Counsel

You have asked several questions relating to SB 7 ("[a]n Act relating to the civil rights of felons"). You asked whether crimes of moral turpitude are defined, how a court is likely to interpret "civil rights" under art. V, sec. 2¹ of the state constitution, and whether any provisions of SB 7 pose constitutional issues.

Moral turpitude

In general, a crime involving moral turpitude is one based on an action that is immoral or wrong in itself because it gravely violates moral sentiment or accepted moral standards of a community, not just because the legislature has prohibited the action. In legal terms, the difference is between an offense that is *malum in se* (a wrong in itself), and an offense that is *malum prohibitum* (wrong because it is prohibited). A statutory definition of felonies involving moral turpitude is provided at AS 15.80.010(9):

(9) "felony involving moral turpitude" includes those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering,

¹ **Disqualifications.** No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography[.]²

Article V, section 2

Article V, sec. 2 provides that "[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored." It is not clear how an Alaska court would interpret this provision. The Alaska Supreme Court has not yet addressed what constitutes "civil rights" for the purposes of this clause. The section's reference to "civil rights" must include rights other than the right to vote, otherwise the provision would be unnecessary.

Origins of the provision

The minutes of the constitutional convention provide some insight, but no definitive answer, as to how "civil rights" in art. V, sec. 2 should be interpreted. The only discussion and debate of the provision (that would become art. V, sec. 2) occurred on December 15, 1955.³ On that day, delegate John S. Helleenthal, chairman of the convention's committee on suffrage, elections and apportionment, described a debate the committee had when drafting "Committee Proposal No. 1. Article on Suffrage and Elections":

HELLEENTHAL: The reason that the [term "moral turpitude"] was used was that not all felonies involve moral turpitude, not all. There are some felonies that do not and the term "moral turpitude" is a generally accepted word. Now we adopted this language on the advice of the adviser who agreed with that contention and who felt that we should not require all persons convicted of any felony to have to go before the pardon board. Now that was the reason for the language. Other language that was rejected was "a felony of serious nature". Another suggestion was

² Note that under AS 15.05.030, a person may not vote if convicted of a crime that is a felony involving moral turpitude under state *or federal* law. No single definition of a crime or felony involving moral turpitude is provided under federal law. A good summary of the interpretation of the term, and the manner in which a court determines that a crime involves "moral turpitude" can be found in Nicanor-Romero v. Mukasey, 523 F.3d 992, 997 - 1000 (9th Cir. 2008) (summarizing Ninth Circuit law on moral turpitude and recognizing that the court has not relied on a consistent or easily applied set of criteria to identify crimes of moral turpitude) overruled on other grounds by Marmolejo-Campos v. Holder, 558 F.3d 903 (9th Cir. 2009).

³ Minutes of the Constitutional Convention, Day 38 at 866 - 910.

"convicted of an infamous crime". *There was one group in the Committee who felt that any person who served his time should automatically be restored to his civil rights. The majority definitely felt, and later the unanimous opinion of the Committee was that construction would not be sound.* But they felt that not all convicted felons should have to go before the pardon board but only those of the more serious felonies. Now, Alaska has a fairly good criminal code, but throughout the United States there are many many offenses which in Alaska are misdemeanors, are considered felonies, and vice versa, and that is why the moral connotation was added and only that.

Minutes of the Constitutional Convention, at 890 - 891 (emphasis added) .

There is no record of any delegate taking issue with the judgment of the committee (as described by Hellenthal) on this point.

Note also, in the committee's original proposal, the "Disqualification" section read:

No person judicially determined to be of unsound mind and no person convicted of a felony involving moral turpitude, *unless pardoned and restored to his civil rights*, shall be qualified to vote in any State or local election.

Minutes of the Constitutional Convention, "Appendix V. Committee Proposals" (emphasis added).⁴

Interpreting "civil rights"⁵

Federal law prohibits a convicted felon from possessing a firearm unless the felon's civil rights have been restored under state law. 18 U.S.C. 921(a)(20). The federal statute does not define "civil rights." For purposes of this statute, federal circuit courts have interpreted "civil rights" to include the right to vote, the right to seek and hold public office, and the right to serve on a jury. United States v. Dahms, 938 F.2d 131, 133 (9th Cir. 1991); United States v. Leuschen, 395 F.3d 155 (3d Cir. 2005) (appellant did not qualify for the restoration of civil rights defense because his right to sit on a jury had not been restored under Pennsylvania law).

⁴ Though the record isn't clear, it seems that the committee on style and drafting removed the "*pardoned and*" language from the provision.

⁵ The term "civil rights" has not had a fixed life in the law. Rights that were once considered as "political" (the right to vote) or "social" (right of unimpeded access to public accommodations) are now recognized as civil rights. See e.g. Voting Rights Act of 1965, 42 U.S.C. §§ 1973 - 1973aa-6 (2006) and Americans with Disabilities Act of 1990, 42 U.S.C. §§ 1201-12213 (Supp. 2008).

The Alaska Court of Appeals has addressed this statute as well, concluding that under Alaska law "defendants on probation or parole can not serve as jurors" and "[t]his disqualification means that, for purposes of federal firearms laws, [the defendant's] civil rights have not been restored." Barry v. State, 925 P.2d 255, 257 (Alaska App. 1996). The prohibition on felons serving as jurors is found in AS 33.30.241(b).⁶ Another case dealing with juror qualifications makes a passing reference to "civil rights -- such as the right to vote or to carry a firearm." Singleton v. Alaska, 921 P.2d 636, 638 (Alaska App. 1996).

These cases do not specifically address art. V, sec. 2 of the Constitution of the State of Alaska, and they would not be binding on the Alaska Supreme Court as it interprets that provision. But, they are an indicator of how a court would interpret art. V, sec. 2 if required to do so. It is my legal opinion that an Alaska court is likely to interpret "civil rights" under art. V, sec. 2 to include the right to vote, the right to seek and hold public office, and the right to serve on a jury.

Parolees and probationers

Less clear is whether persons on parole or probation, would be considered by a court to have had their civil rights restored for the purposes of art. V, sec. 2. Under current law, "unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole." AS 12.55.185(18). This definition applies to the term as it is used in AS 09.20.020 (relating to qualifications of jurors), AS 15.05.030 (loss and restoration of voting rights), and AS 33.30.241 (effect of judgment of conviction on civil rights).⁷

Perhaps telling of how an Alaska court might approach the issue is Roman v. State, 570 P.2d 1235 (Alaska 1977). In Roman, the Alaska Supreme Court held that the Alaska

⁶ **Sec. 33.30.241. Effect of judgment of conviction on civil rights.** (a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.80.010 is disqualified from voting in a state or municipal election until the person's unconditional discharge.

(b) A person who is convicted of a felony is disqualified from serving as a juror until the person's unconditional discharge.

(c) In this section "unconditional discharge" has the meaning given in AS 12.55.185.

⁷ The statutes have not always been so clear regarding the status of a person on parole or probation. See 1985 Op. Atty Gen. No. 103, File No. 366-333-85 (January 29), 1985 Alas. AG LEXIS 312 (under AS 33.30.310, repealed in 1986, which referred to "imprisonment" suspending a person's civil rights, some opinions of the attorney general said that "parolees and those under suspended sentences may vote, while others [said] they may not.")

constitution entitles a released offender, whether a probationer or parolee,⁸ to the same protections against search and seizure as an ordinary person.

Any justification for treating parolees differently from any other person must stem from their special status. They are entitled to all rights accorded other persons except where valid purposes of parole require restrictions. Clearly, parole authorities have a special interest in the otherwise private affairs of the parolee. Most courts and commentators and some legislatures, however, have recognized that parole conditions must be reasonably related to the rehabilitation of the offender and the protection of the public and must not be unduly restrictive of liberty.

Id. at 1240 (internal citations omitted).

It remains to be seen whether an Alaska court would hold that there is a state justification for preventing persons who are no longer incarcerated, but not yet free of a condition of probation or parole, from voting due to a valid purpose of parole or probation.

Constitutional issues posed by SB 7

If SB 7 raises a constitutional issue, it relates to the substance of the bill. Is it constitutional to permit a person, who has been convicted of a felony involving moral turpitude, to vote and to serve on a jury once released from incarceration? This returns us to how art. V, sec. 2 of the state constitution might be interpreted by a court. If a court interprets "civil rights" broadly, equating it with a felon's "unconditional discharge," then SB 7 would be found to be unconstitutional.

"The interpretation of a statute or constitutional provision is a question of law to which we apply our independent judgment. 'We interpret the constitution and Alaska law according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.'"

West v. State, 2010 Alas. LEXIS 80, 12 - 13 (Alaska Aug. 6, 2010) citing Parsons v. State, 189 P.3d 1032, 1036 (Alaska 2008), quoting Native Vill. of Elim v. State, 990 P.2d 1, 5 (Alaska 1999).

Again, the Alaska Supreme Court has not addressed "civil rights," or what the "restoration" of these rights might mean for the purposes of the clause. if the court is to look to the intent of the drafters, the words of delegate Hellenthal - "*There was one group in the committee who felt that any person who served his time should automatically be restored to his civil rights. The majority definitely felt, and later the unanimous opinion of the committee [on suffrage, elections, and apportionment] was that construction would*

⁸ Roman, 570 P.2d at 1237, n.3.

not be sound[,]" and the "*unless pardoned*" language included in the committee's original proposal, could be interpreted as expressive of an intent that runs contrary to SB 7's restoration of the right to vote upon release from incarceration (for persons convicted of a felony involving moral turpitude).

What weight might the court assign these fragments of information from Alaska's constitutional convention? It's not clear. The "unless pardoned" language was not in the convention's final product, and it was not the language the voters of the territory ratified on April 24, 1956. What should the opinion of the seven committee members say about "the intent of the drafters" or the voters who ratified the constitution? A court will apply its own independent judgment as to the persuasive value of these points of information and it's not clear how this information might be assessed.

Note too, that a court's interpretation of art. V, sec. 2 will not occur in a vacuum. The subject of what "civil rights" are is complex. The question of whether a person who has been convicted of a felony involving moral turpitude may vote, or serve on a jury, involves both contemporary and half-century old understandings of what "civil rights" are; what a "fair cross section of a community" is for the purpose of constituting a jury;⁹ and an evaluation of the justifications for preventing a person, who has been convicted of a felony involving moral turpitude and subsequently released (from incarceration), from casting a vote or serving on a jury.

Senate Bill 7 is not clearly unconstitutional. However, if challenged, those portions of the bill that would restore the right to vote to felons on probation or parole might be found to violate art. V, sec. 2 of the state constitution.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:plm:med
11-088.plm

⁹ See Lestenkof v. State, 229 P.3d 182, 184 (Alaska 2010) citing Alvarado v. State, 486 P.2d 891, 902-03 (Alaska 1971) ("The jury venire must include a "fair cross section" of the community in which the alleged offense occurred.")

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version SB 7
() Publish Date 1/21/2011

Identifier (file name) SB7-DOC-OC-02-01-11
Title "An Act relating to the civil rights of felons"

Dept. Affected DOC
Appropriation Administration & Support
Allocation Statewide Probation & Parole

Sponsor Senator Davis
Requester State Affairs Committee

OMB Component Number 684

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	**	**	**	**	**	**	**	**

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	**	**	**	**	**	**	**	**

Estimate of any current year (FY2011) cost **

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the first version of the bill.

Prepared by Leslie Houston, Director
Division Dept. of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Dept. of Corrections

Phone 465-3339
Date/Time 2/1/2011 12:30 p.m.
Date 2/1/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 7

Analysis

Passage of this legislation will have potential impact on the Department of Corrections, specifically in the Division of Probation & Parole, as they would be responsible for providing written notification to the person receiving restored rights to vote as well as notification to the Division of Elections. This would create a significant increase in workload to DOC. In 2008 the Department of Corrections released 1,732 individuals on parole and 6,708 individuals on probation. In 2009 the Department of Corrections released 1,939 individuals on parole and 6,747 on probation. The number of individuals released from incarceration annually is significant.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version SB7
() Publish Date _____

Identifier (file name) SB007-OOG-DOE-1-31-11 Dept. Affected OOG
Title "An Act relating to the civil rights of felons." Appropriation Elections
Allocation Elections
Sponsor Senator Davis
Requester Senate State Affairs Committee OMB Component Number 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Gail Fenumiai, Director
Division Division of Elections
Approved by Linda Perez, Administrative Director
Office of the Governor

Phone 465-2644
Date/Time 1/31/2011, 3:03pm
Date 1/31/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB7

Analysis

This legislation has no fiscal impact for the Division of Elections.

PROCESSING FELONS

A person convicted of a felony involving moral turpitude cannot vote in a state or municipal election from the date of conviction through date of unconditionally discharged. The Division is notified in different ways by the Department of Corrections when a person has been convicted of a felony or has been discharged from a felony. Region III receives a statewide list of felons each month by the Department of Corrections and processes the names on the list. Each Regional Office receives notification from Department of Corrections and probation offices also of those who have been convicted or have been discharged.

FELONY CONVICTION

Prior to placing a felony conviction on a voter's record, staff must verify the conviction was for a felony involving moral turpitude. AS 15.60.010(9) provides a sample list. If the felony is not included in this list, the Division asks the AG's Office for advice on whether or not the felony involves moral turpitude.

When processing the Department of Corrections list of convicted felons, all information on the list must match the information on the voter's record before inactivating the record. Update the condition code of the voter's record to FC (felon convicted) and use the date of conviction as the suspend date. The list is the supporting document for microfilming and should be coded as SC (status change).

If the Regional Offices are notified by Corrections of a felony conviction, inactivate the voter's record in VREMS 1.10 using the FC code and suspend date of the conviction. All information on the letter must match the information on the voter's record before you change the status. Any type of condition code can be changed to a FC status including inactive voters and purged voters. The only code in VREMS that cannot be changed with an FC would be XX (deceased).

FELONY DISCHARGE

Department of Corrections sends the Regional Office a "Notification of Restoration of Rights" letter when a felon has been discharged. Update the voter's status from FC to FD in VREMS 1.10, using the date of discharge as the restored date. The information on the letter must match the information on the voter's record before you change the status. The letter is the supporting document for microfilming and should be coded as FD (felon discharge) and included with the SD documents. The voter must re-register to vote to activate the record.

If a Notification of Restoration of Rights letter is received for a voter record who has a condition code other than FC, the condition code must be updated first to FC, using the day prior to the felon's discharge date as the suspend date, and then to FD using the discharge date as the restored date. This applies even if the voter is listed as an active registered voter. This situation occurs when the Department of Corrections does not send the original notification when a felony occurs. The Notification of Restoration of

Rights letter is the supporting document for microfilming and should be coded as both FC and FD. If you change an active registered voter to FD that has a current registration date, the voter should be sent a letter indicating he or she can now re-register to vote.

If the Notification of Restoration of Rights letter does not have enough information to determine either the correct voter or the felony, contact Corrections to verify the information needed before updating the voter record. Also use the Court Records website to determine the felony or discharge dates (www.courtrecords.alaska.gov/)

Felony charges NOT Involving moral turpitude. per AG's Office responses

- DUI
- Furnish alcohol to minor
- Misconduct involving weapons
- Probation violation (would apply if the violation was for a conviction of a felony involving moral turpitude)
- Stalking
- License or permit required for Alcoholic Beverages
- Failure to register as a sex offender

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

SEAN PARNELL, GOVERNOR
Division of Probation & Parole
Region 2, Fairbanks Office
455 3rd Avenue, Suite 130
Fairbanks, Alaska 99701
(907) 458-6830

January 28, 2011

[REDACTED]

RECEIVED

FEB 02 2011

REGION III
OFFICIAL

Re: Probation Supervision in case [REDACTED]

Dear [REDACTED]

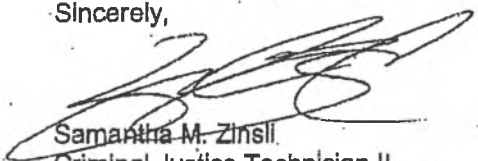
This letter is to serve as official notification that your probation supervision expired on January 25, 2011 and contact with the Fairbanks Probation Office is no longer required.

Pursuant to AS 15.05.030, please be advised that you should re-register with the Division of Elections (P.O. Box 110017, Juneau, AK 99811-0017), now that you have been discharged from probation supervision. Also, please be advised that your right to vote (after contacting Division of Elections), your right to be a member of a jury, and your right to hold elected office are automatically restored.

Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to possess firearms (all shotguns, rifles, as well as handguns) and ammunition remains restricted. Possession of any rifle, shotgun, rifle and/or ammunition could subject you to prosecution for a felony criminal offense under state or federal law. Even if you received a suspended imposition of sentence and an order has been issued setting aside the conviction, your right to possess firearms and ammunition has not been restored. You should contact your attorney if you have questions.

Thank you for your cooperation during your probation/parole supervision and best of luck to you in the future. If you have any questions concerning this subject or any other matter, please contact me.

Sincerely,


Samantha M. Zinsli
Criminal Justice Technician II

CC: Director, Division of Elections
File
Clerk of Court.

Sec. 15.80.007. Sale of voter registration and election management software. (9) "The director may sell voter registration and election management system data processing software. (§ 18 ch 36 SLA 1990)

Revisor's notes. — Formerly AS 15.60.007. Renumbered in 2010.

Sec. 15.80.008. Recognized political party status. (a) A political group that the director has not recognized as a political party may obtain recognized political party status if, on or before May 31 of the election year for which the political group seeks recognition, the political group

- (1) files an application with the director;
- (2) submits bylaws to the director and the United States Department of Justice as required of political parties in AS 15.25.014; and
- (3) meets the definition of a political party in AS 15.80.010.

(b) The director shall verify that each political group seeking recognized political party status under (a) of this section and each recognized political party meets the definition of a political party in AS 15.80.010.

(c) The director shall perform a verification described in (b) of this section at least once a month after the date of certification of the preceding general election, except that the director may suspend the monthly verifications on and after June 1 and before November 30 of a general election year. For purposes of (b) of this section, the director shall verify that the voters who have submitted registration forms to the division of elections are qualified under AS 15.05.010 and have declared affiliation with the political group or recognized political party for which the verification is performed.

(d) Within 10 days after a verification under (c) of this section, the director shall provide to a political group seeking recognized political party status under (a) of this section written notification when the political group has obtained recognized political party status.

(e) The director may not withdraw recognized political party status from a political group that no longer qualifies as a political party until after the first verification after a general election at which a governor was elected. The director shall notify the political group in writing of the withdrawal of recognition. (§ 56 ch 2 FSSLA 2005)

Revisor's notes. — Formerly AS 15.60.008. Renumbered in 2010, at which time "AS 15.80.010" was substituted for "AS 15.60.010" in (a)(3) and (b) of this section to reflect the 2010 renumbering of AS 15.60.010.

Sec. 15.80.010. Definitions. In this title, unless the context otherwise requires,

- (1) "absentee voting official" means a person appointed to serve as an absentee voting official in accordance with AS 15.20.045;
- (2) "ballot" means any document provided by the director on which votes may be cast for candidates, propositions, or questions;
- (3) "director" means the director of elections who is the chief elections officer of the state appointed in accordance with AS 15.10.105(a);
- (4) "division" means the division of elections created under AS 15.10.105;
- (5) "election board" means the board appointed in accordance with AS 15.10.120;
- (6) "election official" means election board members, members of counting or review boards, employees of the division of elections, and absentee voting officials;
- (7) "electronically generated ballot" means any ballot other than a paper ballot that is physically marked by the voter using a writing instrument or a mechanical device;
- (8) "federal election" means a general, special, or primary election held solely or in part for the purpose of selecting, nominating or electing a candidate for the office of President, Vice-President, presidential elector, United States senator, or United States representative;

e. (9) "felony involving moral turpitude" includes those crimes that are immoral or wrong
ng in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a
minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest,
arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false
instrument for recording, scheme to defraud, falsifying business records, commercial
bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by
ie inconsistent statements, endangering the welfare of a minor, escape, promoting contra-
y band, interference with official proceedings, receiving a bribe by a witness or a juror, jury
s tampering, misconduct by a juror, tampering with physical evidence, hindering prosecu-
tion, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing
of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled
substance or an imitation controlled substance, permitting an escape, promoting
gambling, possession of gambling records, distribution of child pornography, and posses-
sion of child pornography;

y (10) "general election" means the election held on the Tuesday after the first Monday
f in November of even-numbered years;

(11) "hand-counted ballot" means a ballot designated to be counted by hand in
precincts where precinct tabulators are not available;

(12) "house district" means one of the districts described in art. VI, sec. 1, Constitution
of the State of Alaska;

(13) "judicial district" means one of the districts defined in AS 22.10.010;

(14) "lieutenant governor" includes an appointed lieutenant governor, governor, or
acting governor if a vacancy has occurred in the office of lieutenant governor or governor;

(15) "limited political party" means a political group which organizes for the purpose
of selecting candidates for electors for President and Vice-President;

(16) "local election" means a regular or special election held by a borough, city, school
district, or regional educational attendance area;

(17) "master register" means the list of all registered voters in the state which is
maintained by the director of elections;

(18) "member of a political party" means a person who supports the political program
of a party;

(19) "numerical identifier" means a voter's date of birth, the last four digits of a voter's
social security number, a voter's Alaska driver's license number, or a voter's Alaska
identification card number or voter identification number;

(20) "oath" includes affirmation;

(21) "official registration list" means the list of all voters qualified to vote at a
particular election compiled in accordance with AS 15.07.125;

(22) "optically scanned ballot" means a paper ballot designed to be read by an optical
scanning machine;

(23) "party district committee" means the political party committee that performs the
executive function for a region representing an area larger than a precinct and smaller
than the state;

(24) "political group" means a group of organized voters which represents a political
program and which does not qualify as a political party;

(25) "political party" means an organized group of voters that represents a political
program and

(A) that nominated a candidate for governor who received at least three percent of the
total votes cast for governor at the preceding general election or has registered voters in
the state equal in number to at least three percent of the total votes cast for governor at
the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but
the office of United States senator was on that ballot, that nominated a candidate for
United States senator who received at least three percent of the total votes cast for

Michelle Sydeman

From: Walt Monegan [wmonegan@anjc.net]
Sent: Thursday, February 03, 2011 9:11 AM
To: Michell_Sydeman@legis.state.ak.us
Cc: Celeste Hodge

Michell - I intend to "sit-in" via teleconference, and though I wholeheartedly would support returning the vote to felons, I have some questions about jury duty. In my 35 year career in law enforcement, though subpoenaed many times, I have never been selected for jury duty, neither for criminal nor civil cases. Judges have explained that though they would believe me to be impartial, it was the appearance that my position would naturally favor on the side of the prosecution that must be avoided. This bill would similarly then place those currently in the "system" to also have the appearance of leaning toward a "side" of the case; so I would suspect that any felon, though perhaps selected, would not serve anyway.

I also must ask if the eventual intent is to return weapons to felons, which when considering a Rural / subsistence life style, I would be interested in weighing in such a discussion.

-Walt Monegan

Alaska Native Justice Center

MODEL TESTIMONY: ALASKA, FEBRUARY 2007

Testimony of

DANIEL LEVITAS

On behalf of

THE AMERICAN CIVIL LIBERTIES UNION

On

SB 7

AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

Before the

STATE AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE - FIRST SESSION
STATE OF ALASKA

February 22, 2007

Good afternoon Madam Chairman and members of the Committee. Thank you very much for the opportunity to testify today on SB 7, a measure addressing the voting rights of persons with felony convictions in Alaska. I urge your support for this important legislation.

My name is Daniel Levitas and I am a consultant to the American Civil Liberties Union on the issue of felon enfranchisement and am based in Atlanta, Georgia. Founded in 1920, the ACLU is a non-profit, nonpartisan organization with more than 500,000 members nationwide dedicated to preserving and protecting civil liberties and civil rights.

Currently there are an estimated 5.3 million Americans who are disfranchised as a result of a prior criminal conviction, including approximately 11,132 persons in Alaska, which represents 2.42% of the state's voting age population.¹ It is especially important to note that the majority of Alaska's disfranchised population is *not* in prison or jail, but actually living in the community. In fact, slightly more than half the 11,132 disfranchised persons in Alaska, or 6,010 people, are on felony probation (5,083 and 46%) or parole (927 and 8%).

Currently Alaska is one of 19 states where the right to vote is automatically restored upon completion of sentence, including the term of incarceration, probation and parole.

However, there are a growing number of states—20 to be exact—whose disfranchisement policies are less harsh than Alaska's and whose policies are likely to promote more effective reintegration of people with felony convictions. I hope that you and your colleagues in the Alaska legislature will give strong consideration to embracing this trend with the adoption of SB 7.

For example, in 13 states and the District of Columbia (including Oregon, Montana, Utah and Indiana), individuals with felony convictions can vote automatically upon release from prison.² In five

other states voting rights are restored automatically after release from prison and discharge from parole, but probationers may vote.³ And in two states—Maine and Vermont—there are no felon disfranchising provisions.

In taking up SB 7, Alaska policymakers are hardly alone in considering less restrictive disfranchising provisions. Over the past ten years there has been a broad national trend of adopting less restrictive measures with 16 states implementing positive reforms to their felon disfranchisement policies. And legislators in Colorado and Washington State are currently debating measures nearly identical to SB 7, which would fully enfranchise all persons upon release from incarceration. And just last fall, Rhode Island voters approved a statewide ballot initiative that restored voting rights to approximately 15,000 individuals on parole and probation in that state.

This trend is also one that enjoys support across the political spectrum. While testifying last summer in favor of renewing the expiring provisions of the Voting Rights Act, former Cabinet Secretary Jack Kemp declared his support for felon enfranchisement. And Florida's new Governor, Charlie Crist, who said during his campaign that he favored instituting automatic restoration of voting rights, was recently scheduled to meet personally with Kemp to discuss how to move forward on this issue. In Virginia, one of only three states that still permanently disfranchise felony offenders, the Republican controlled state senate voted overwhelmingly early this month in favor of a constitutional amendment that would allow the General Assembly to restore voting rights to formerly incarcerated individuals who committed nonviolent crimes.

In Alaska, as is the case elsewhere in the United States, the vast majority of inmates are going to return to their communities. It is therefore in our collective interest for people with felony convictions to function as responsible taxpayers and citizens, recognizing the full range of their responsibilities to society. Passage of SB 7 would help facilitate this goal by enabling more people with prior felony convictions to vote and thereby giving them a higher stake in their Alaska communities. After all, people on probation and parole are law-abiding citizens who are living in the community, working or seeking work, raising their families and paying taxes.

Restricting voting rights does not prevent crime or provide compensation to victims. Instead, disfranchising people following their release from incarceration accomplishes exactly the opposite of what we should be doing to promote re-entry. In this way, prolonged disfranchisement of citizens with criminal convictions after their release from incarceration is actually harmful to the prospects for sustainable reintegration of people with felony convictions into society. In fact, extending the right to vote to individuals who are released from incarceration is also likely to reduce the chances that they will re-offend as recent research finds a link between voting participation and re-offense: people who voted after release from supervision were half as likely to be re-arrested as those who did not vote.⁴ Similar effects were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted.⁵

In contrast, maintaining Alaska's current policy of disfranchising offenders who are deemed safe enough to be living and working in local communities on probation or parole can only discourage these offenders from becoming productive members of society, enhance their likelihood of re-arrest, and weaken democratic institutions by decreasing participation in the voting process.

Overall, criminal disfranchisement also has a disproportionate impact on minority communities. While disfranchisement policies prevent 2.5% of the total population from voting nationwide, they prevent 13% of the total population of African American men from casting a ballot.⁶ In Alaska, while the majority of individuals with felony convictions are Caucasian, felony disfranchisement still has a very significant racially disproportionate effect. For example, 1,469 of the 11,132 Alaskans who are disfranchised as a result of a felony conviction are African American, which represents 7.6% of the overall black voting age population in the state. This compares with the aforementioned disfranchisement rate of just 2.4% for all

voters (including minorities). Put another way, African Americans are disfranchised at a rate nearly four times that of whites in Alaska as a result of current disfranchisement policy.

Alaska Natives are similarly impacted. According to state Department of Corrections statistics, in 2000, Alaska Natives constituted 31%⁷ of the total disfranchised population, though they comprised only 15.6% of the total population.⁸ And of the 5,046 persons on probation and parole as of December 2003, approximately 55% (or 2,774 persons) were white, while 28% were Alaska Natives, and approximately 9% were African American, which is more than double the state's 3.7% black population.⁹ The remaining 6% of parolees and probationers were divided roughly equally between Latinos and Asian Americans/Pacific Islanders.

Voting is a fundamental right and a civic duty. As the U.S. Supreme Court stated in its landmark 1964 decision, *Reynolds v. Sims*, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."¹⁰

Thank you very much.

¹ Alaska's voting age population was 459,529 people as of December 31, 2004 – the date for which we have the most recent comprehensive data on disfranchised persons.

² The 13 states are: HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT.

³ The five states are: CA, CO, CT, NY, and SD.

⁴ Jeff Manza & Christopher Uggen, "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," *Columbia Human Rights Law Review* 36, No. 1 (2004) 193-215.

⁵ *Ibid.*

⁶ Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, (USA: Oxford University Press, 2006), Table A3-3, p. 248 and Table A3-4, p. 251.

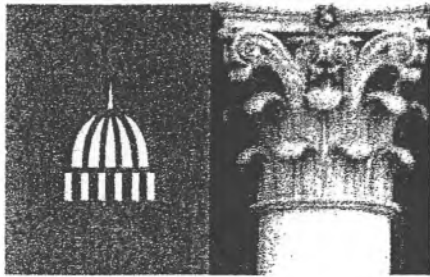
See, also: The Sentencing Project and Human Rights Watch, "Losing the Vote. The Impact of Felony Disenfranchisement Laws in the United States," (October 1998).

⁷ Alaska Department of Corrections. "2003 Offender Profile" (2003). p. 11, 66. Accessed: January 22, 2007 <<http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf>>

⁸ US Census Bureau, "Profile of General Demographic Characteristics: Alaska." (April 1, 2000). Accessed: January 22, 2007 http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US02&-qr_name=DEC_2000_SF1_U_DPI&-ds_name=DEC_2000_SF1_U&-_lang=en&-_sse=on

⁹ <http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf>

¹⁰ *Reynolds v. Sims*, 377 U.S. 533 (1964).



National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

APRIL-MAY 2009

VOL. 17, No. 23

Felon Voting Rights

By Jennie Drage Bowser

Some felons never lose their right to vote.

State approaches to felon disenfranchisement vary tremendously. In Maine and Vermont, felons never lose their right to vote. In Kentucky and Virginia, felons and ex-felons permanently lose their right to vote absent a pardon from the governor. The remaining 46 states have 46 different approaches to the issue.

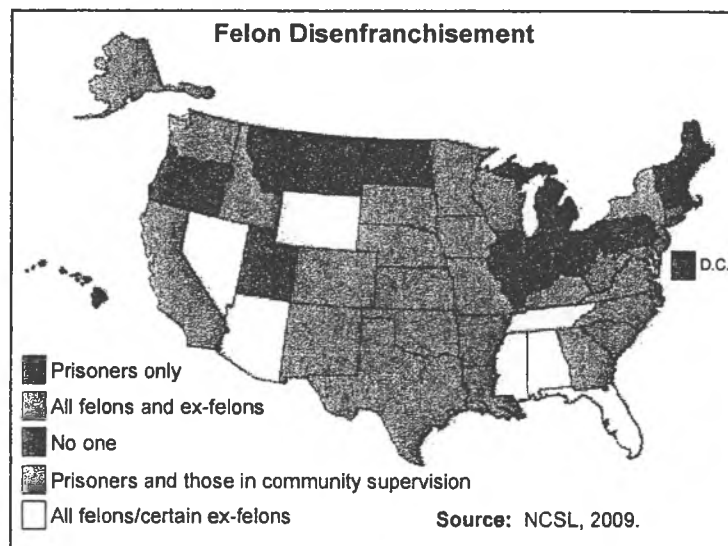
According to the Washington, D.C.-based advocacy group, The Sentencing Project, 5.3 million Americans who were otherwise eligible to vote in 2008 were prevented from doing so due to a felony conviction. Of these, 2.1 million were ex-offenders who had served their sentences, 1.4 million were African-American men, and more than 676,000 were women.

Some states allow those serving a prison sentence to vote.

Categories of Disenfranchisement.

- In Maine and Vermont, felons do not lose their right to vote; even felons who are serving a prison sentence can vote.
- In 13 states and the District of Columbia, felons are ineligible to vote only while serving a prison sentence. Ex-offenders and people on probation and parole can vote.
- In 25 states, prisoners and people under community supervision (probation and/or parole) are ineligible to vote, but ex-offenders are eligible.
- In eight states, all felons in prison and those in community supervision, as well as certain ex-offenders, are ineligible to vote.
- In Kentucky and Virginia, all felons and ex-offenders are permanently ineligible to vote, absent a pardon.

All ex-offenders are eligible to vote in 40 states.



How Rights Are Restored. In 38 states, felons' voting rights are automatically restored upon completion of their sentence, which in some states includes probation and parole. In five states, certain ex-offenders are barred for life from voting, while the rights of others—generally first-time,

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non-violent offenders—are restored automatically upon completion of their sentence. In the three remaining states where felons lose and can regain their voting rights, certain ex-offenders are barred from voting for life, while others can apply to have their rights restored.

Barriers to Restoration of Voting Rights. Even in states where ex-offenders automatically regain the right to vote upon completion of their sentence, the process of re-registering to vote often is difficult. One reason is the complexity of the laws and processes surrounding disenfranchisement. In some cases, it is difficult to determine whose rights can be restored. This can vary according to the date of the crime, the conviction or the release from prison, or to the nature of the crime. The complex restoration process also can be daunting. It often involves lengthy paperwork, burdensome documentation, and involvement of several state agencies.

Re-registering to vote often is a daunting process.

A second barrier to restoration of voting rights for ex-offenders is the often inconsistent communication among agencies. The methods of communicating the loss and restoration of voting rights among courts, corrections and elections officials are not always reliable, timely or consistent. This inconsistency can result in uneven application of the law, even when the laws are clear.

Another barrier is lack of information. Ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence. They go through life believing they cannot vote when, in fact, they can. In other cases, they are not informed of the process for regaining their rights or offered assistance in doing so. As long as they remain ignorant of the necessary steps, ex-offenders cannot begin the process of regaining voting rights.

A final obstacle is under-funding of parole boards in some states where offenders must apply to have their rights restored. A massive backlog of applications can exist because the agencies do not have adequate staff or resources to process them in a timely manner.

State Action Most recent state legislation seeks to expand felon voting rights and ease the process of restoration. Between 1996 and 2008, 28 states passed new laws on felon voting rights.

- Seven repealed lifetime disenfranchisement laws, at least for some ex-offenders.
- Two gave probationers the right to vote.
- Seven improved data-sharing procedures among state agencies.
- Nine passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.
- Twelve simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

Most recent legislation seeks to expand felon voting rights.

To date in 2009, 79 bills addressing the voting rights of felons and ex-offenders have been introduced in 25 state legislatures. In the 2007-2008 biennium, 129 bills were introduced in 27 states.

Contacts for More Information

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NCSL—Denver
(303) 364-7700, ext. 1356
jennie.bowser@ncsl.org

NCSL's Election Legislation Database
www.ncsl.org/programs/legismgt/elect/elections.cfm

The Sentencing Project
www.sentencingproject.org



Legislatures & Elections » Elections & Campaigns » Felon Voting Rights

Go 16719

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[Recent Trends in State Action](#)

For More Information

For more information on felon voting rights, contact [Jennie Drace Bowser](#) at 303-364-7700.

Felon Voting Rights



In 48 of the 50 states, at least some felons -- and in some states, all felons and ex-offenders -- lose their right to vote.

Background and History

The idea of taking away a criminal's right to vote has been around since ancient Greece and Rome. A condition called "civil death" in Europe involved the forfeiture of property, the loss of the right to appear in court, and a prohibition on entering into contracts, as well as the loss of voting rights. Civil death was brought to America by English

colonists, but most aspects of it were eventually abolished, leaving only felon disenfranchisement intact in some parts of modern America.

The Face of Disenfranchisement

According to [The Sentencing Project](#), 5.3 million Americans (1 in 40 adults) were unable to vote due to a felony conviction in the 2008 elections. This included 1.4 million African-American men, more than 676,000 women, and 2.1 million ex-offenders who have completed their sentences.

Categories of Disenfranchisement

State approaches to felon disenfranchisement vary tremendously. In Maine and Vermont, felons never lose their right to vote. In Kentucky and Virginia, felons and ex-felons permanently lose their right to vote absent a pardon from the governor. The remaining 46 states have 46 different approaches to the issue.

MAP HERE

In Maine and Vermont, felons do not lose their right to vote; even felons serving a prison sentence can vote.

In 13 states and the District of Columbia, felons are ineligible to vote only while serving a prison sentence. Ex-offenders and people on probation and parole can vote.

In 25 states, prisoners and people under community supervision (probation and/or parole) are ineligible to vote, but ex-offenders are eligible.

In eight states, all felons in prison and under community supervision, as well as certain ex-offenders, are ineligible to vote.

In Kentucky and Virginia, all felons and ex-offenders are permanently ineligible to vote, absent a pardon.

How Rights Are Restored

In 38 states, felons' voting rights are automatically restored upon completion of their sentence, which in some states includes probation and parole. In five states, certain ex-offenders are barred for life from voting, while the rights of others--generally first-time, non-violent offenders--are restored automatically upon completion of their sentence. In the three remaining states where felons lose and can regain their voting rights, certain ex-offenders are barred from voting for life, while others can apply to have their rights restored.

MAP HERE

Barriers to the Restoration of Rights

Even in states where ex-offenders automatically regain the right to vote upon completion of their sentence, the process of re-registering to vote often is difficult. One reason is the complexity of the laws and processes surrounding disenfranchisement. In some cases, it is difficult to determine whose rights can be restored. This can vary in some states according to the date of the crime, the conviction, or the release from prison, or the nature of the crime. The complex restoration process also can be daunting. It often involves lengthy paperwork, burdensome documentation, and the involvement and coordination of several state agencies.

A second barrier to restoration of voting rights for ex-offenders is the often inconsistent communication among agencies. The methods of communicating the loss and restoration of voting rights among courts, corrections and elections officials are not always reliable, timely or consistent. This inconsistency can result in uneven application of the law, even when the laws are clear.

Another barrier is lack of information. Ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence. They go through life believing they cannot vote when, in fact, they can. In other cases, they are not informed of the process for regaining their rights or offered assistance in doing so. As long as they remain ignorant of the necessary steps, ex-offenders cannot begin the process of regaining voting rights.

A final obstacle is under-funding of parole boards in some states where offenders must apply to have their rights restored. A massive backlog of applications can exist because the agencies do not have adequate staff or resources to process them in a timely manner.

Recent Trends in State Action

Most recent state legislation seeks to expand felon voting rights and ease the process of restoration. Between 1996 and 2008, 28 states passed new laws on felon voting rights.

- Seven repealed lifetime disenfranchisement laws, at least for some ex-offenders.

- Two gave probationers the right to vote.

- Seven improved data-sharing procedures among state agencies.

- Nine passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.

- Twelve simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

To date in 2009, 82 bills addressing the voting rights of felons and ex-offenders have been introduced in 25 state legislatures. In the 2007-2008 biennium, 129 bills were introduced in 27 states.

For more detailed information on 2001-2009 state legislation dealing with the voting rights of convicted felons, visit NCSL's Election Legislation Database and select the subtopic "Voters-Convicted Felons."

For More Information

For more information on felon voting rights, contact [Jennie Drage Bowser](#) at 303-364-7700.

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GO

Legislatures & Elections » Elections & Campaigns » Voting Rights Restoration Process

Go 16529

Voting Rights Restoration Process

Source

: U.S. Department of Justice, December 2000;
Updated by the National Conference of State Legislatures, January 2002

	Restoration Process
Alabama	The right to vote may be regained only through a pardon.
Alaska	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Arizona	1 st offense - rights are automatically restored; 2 nd and subsequent offenses - must apply to court for restoration; If felony convictions resulted in a prison sentence, felon must wait until two years after your unconditional release from incarceration or completion of parole before felon can apply. If felony convictions resulted in a sentence of probation, felon may apply for restoration of your voting rights immediately upon discharge from probation.
Arkansas	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote. Felons must provide evidence of their eligibility to vote after discharge of their sentence.*
California	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Colorado	Automatically restored upon completion of sentence and/or parole; felon must register to vote.
Connecticut	Felon may regain the right to vote upon submission of written or other satisfactory proof that all fines in conjunction with conviction have been paid and that felon has been discharged from confinement or parole. Felon must submit this information to the office of the Registrar of Voters. Probationers automatically regain the right to vote.*
Delaware	-A person convicted of murder, manslaughter or any felony constituting a sexual offense or an offense against public administration involving bribery, improper influence or abuse of office, may not have their voting rights restored. -Any other person who is disqualified as a voter because of a conviction of a crime shall have such disqualification removed upon being pardoned or five years after expiration of sentence, whichever may occur first. Expiration of sentence means satisfactory completion of imprisonment, probation and parole and satisfaction of all financial obligations required by the sentence, including restitution.
D.C.	Automatically restored upon release from confinement; felon must register to vote.
Florida	Civil rights, including the right to vote, are suspended when a person is convicted of a felony. A felon may have his or her civil rights restored by obtaining a full pardon, conditional pardon, or restoration of civil rights from the Governor of Florida.
Georgia	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Hawaii	Automatically restored upon release from confinement; felon must register to vote.

Idaho	Automatically restored upon completion of sentence, probation and parole; felon must register to vote.
Illinois	Automatically restored upon release from confinement; felon must register to vote.
Indiana	Automatically restored upon release from confinement; felon must register to vote.
Iowa	Must obtain a pardon or a restoration of citizenship from the Governor.
Kansas	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Kentucky	Must obtain a pardon from the Governor.
Louisiana	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Maine	Eligibility to vote not affected.
Maryland	-A first time offender for theft or infamous crime, other than buying or selling votes, the right to vote is automatically restored upon completion of your sentence, including any probation or parole. -If convicted of two or more such crimes, a person is not eligible to vote unless and until a pardon is obtained. -If convicted of buying or selling votes, a person is permanently prohibited from voting in Maryland.
Massachusetts	Automatically restored upon release from confinement; felon must register to vote.
Michigan	Automatically restored upon release from confinement; felon must register to vote.
Minnesota	If convicted of treason or of a felony, the right to vote is automatically restored upon discharge from sentence. Discharge occurs either by order of the sentencing court, following stay of sentence or stay of execution of sentence, or upon final expiration of sentence.
Mississippi	Right to vote may be restored by a pardon or an executive order issued by the Governor upon discharge from probation. The right to vote may also be restored by a two-thirds vote of the state legislature.
Missouri	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote; however, a person is forever disqualified from voting if convicted of a crime connected to the exercise of the right to vote.
Montana	Automatically restored upon release from confinement; felon must register to vote
Nebraska	Must obtain a "warrant of discharge" from the Nebraska Board of Pardons to regain the right to vote; however, if sentenced to confinement in an adult correctional facility, the felon can only regain the right to vote by applying to the Board of Pardons for a warrant of discharge
Nevada	-Felons who have completed probation may apply 6 months after the expiration of their term of probation to have their rights restored.* -Felons who have completed parole or who have served their full sentence may immediately petition the State Board of Parole Commissioners who may petition the district court for restoration of civil rights. *
New Hampshire	Automatically restored upon release from confinement; felon must register to vote.

New Jersey	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
New Mexico	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote. *
New York	-If convicted of a felony and sentenced to incarceration, felon automatically regains the right to vote upon expiration of the maximum time to which he or she was sentenced, or upon discharge from parole, whichever occurs first. -If convicted of a felony but not sentenced to incarceration, or if the sentence was suspended, felon's conviction does not affect the right to vote.
North Carolina	Automatically restored upon completion of sentence, probation and/or parole. For a North Carolina conviction, the agency having jurisdiction over a felon at the time he or she was unconditionally discharged is required to issue a certificate to the clerk of the General Court of Justice in the county where the felon was convicted, and that clerk shall then file the certificate with the original record at no fee. Once this is done, the felon can simply register and vote.
North Dakota	Automatically restored upon release from confinement; felon must register to vote.
Ohio	Automatically restored upon release from confinement; felon must register to vote.
Oklahoma	Once a conviction has become final and the maximum time set forth in the felon's sentence has expired, his or her right to vote is automatically restored.
Oregon	Automatically restored upon release from confinement or completion of parole; felon must register to vote.
Pennsylvania	Automatically restored upon release from confinement; felon must register to vote; however, if a felon was not registered to vote at the time of his or her conviction, the felon may need to wait 5 years from the date of release from incarceration in order to vote.
Rhode Island	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
South Carolina	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
South Dakota	In South Dakota, the right to vote is restored upon termination of a felon's sentence. When the sentence has been fully discharged, including parole, a felon should receive a certificate from the Secretary of Corrections stating that he or she has been restored to the full rights of a citizen. The Secretary should file a copy of the certificate with the sentencing court. After receiving this certificate the felon must register to vote.
Tennessee	-Persons convicted of murder, aggravated rape, treason, or voter fraud after July 1, 1986, or of rape after June 30, 1996, are ineligible to have their voting rights restored. -For other felony convictions after June 30, 1996, a felon may seek restoration of voting rights after the maximum sentence imposed for his or her conviction has expired, or after the felon has been pardoned, by petitioning the circuit court of the county where the felon lives or was convicted. -If a felon was convicted after July 1, 1986 but before June 30, 1996 of a felony other than murder, aggravated rape, treason, or voter fraud, a felon may request that either the board of probation and parole or the authority that supervised or incarcerated him or her during the sentence issue a Certificate of Restoration of Voting Rights. A felon is eligible to request this certificate after either being pardoned or after the maximum sentence which was imposed for the conviction has expired.
Texas	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote; if convicted persons may also regain their voting rights if they have been granted a gubernatorial pardon or release from the resulting disability to vote.

Utah	Automatically restored upon release from confinement/completion of sentence; felon must register to vote.
Vermont	Eligibility to vote not affected.
Virginia	If convicted of a felony in Virginia, then a felon must obtain a "removal of political disabilities" from the Governor in order to regain the right to vote. A felon is eligible to apply for the removal of political disabilities if he or she completed the sentence more than 5 years ago and if all court costs and restitution have been satisfied.
Washington	In order to regain the right to vote, a felon must have his or her civil rights restored. Civil rights are restored by the issuance of a certificate of discharge. When a felon has completed all of the requirements of sentence, the Department of Corrections notifies the sentencing court. The sentencing court then issues and provides the felon with a certificate of discharge, which will have the effect of restoring the right to vote. A felon must then register to vote, unless the crime was committed before 1984.
West Virginia	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Wisconsin	Automatically restored upon release from confinement/completion of sentence; felon must register to vote.
Wyoming	The right to vote may be regained either by a pardon or by restoration of civil rights. The Governor has the power both to pardon and to restore rights. The Governor may issue certificates of restoration of rights upon a person's completion of probation or expiration of the term of the sentence. A felon must submit a written application to the Governor in order to request a certificate restoring the right to vote.

*Legislation passed in 2001

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January 21, 2010

SENATE COMMITTEE PASSES NATIONAL CRIMINAL JUSTICE COMMISSION ACT OF 2009

The bi-partisan National Criminal Justice Commission Act of 2009 (S. 714) was passed out of the Senate Committee on the Judiciary today by voice vote. The legislation, sponsored by Sen. Jim Webb (D-Va.) would create a commission to conduct a thorough evaluation of the nation's justice system and offer recommendations for reform at every stage of the criminal justice system.

The establishment of such a commission could not come at a more critical time. With 2.3 million people in prisons and jails, the United States has the highest incarceration rate in the world. Federal and state governments spend more than \$50 billion each year on corrections, and the population behind bars continues to grow.

A new approach to crime prevention is necessary and the time for reform is upon us. The commission created by this legislation would establish an organized and proactive approach to studying and advancing programs and policies that promote public safety, while overhauling those practices that are found to be fundamentally flawed.

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Felon Disenfranchisement and the Voting Rights Act — *Farrakhan V. Gregoire: "A Crowd of One"*

Deborah Periman

Sidebar story: Further Background on Felon Disenfranchisement

"Felon Disenfranchisement and the Voting Rights Act — *Farrakhan V. Gregoire: 'A Crowd of One'*" by Deborah Periman. *Alaska Justice Forum* 26(4): 1, 11–12 (Winter 2010). Early this year, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Farrakhan v. Gregoire*, a challenge to Washington State's felon disenfranchisement law. The court's decision stands alone among the circuits in holding that state law denying felons the right to vote is a violation of section 2 of the Voting Rights Act, where discrimination in the state's criminal justice system results in race-based denial of the vote. Despite speculation, suggestions that the *Farrakhan* decision signals the demise of Alaska's disenfranchisement law are overstated. Nevertheless, the case is noteworthy for reopening the conversation about why we deny certain offenders the right to vote, and whether these laws reflect viable public policy or are simply relics of an era in which racial and class prejudices limited participation in the political process.

[B]ecause the holding of *Farrakhan* I places us in a crowd of one among the circuits, I believe we should be particularly mindful before reversing the district court and invalidating felon disenfranchisement in the State of Washington.

— Judge M. Margaret McKeown, dissenting, *Farrakhan v. Gregoire*, 590 F.3d 989, 1016 (9th Cir. 2010)

See also:

- Collateral consequences of criminal conviction

Early this year, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Farrakhan v. Gregoire*, a challenge to Washington State's felon disenfranchisement law. The court's decision stands alone among the circuits in holding that state law denying felons the right to vote is a violation of section 2 of the Voting Rights Act (VRA), where discrimination in the state's criminal justice system results in race-based denial of the vote. Although there has been substantial speculation in the media over the implications of the decision, suggestions that the *Farrakhan* decision signals the demise of Alaska's disenfranchisement law are overstated. Nevertheless, the case is noteworthy for reopening the conversation about why we deny certain offenders the right to

vote, and whether these laws reflect viable public policy or are simply relics of an era in which racial and class prejudices limited participation in the political process.

Background: Felon Disenfranchisement and the Voting Rights Act

State laws throughout the country have traditionally barred those with certain types of criminal convictions from participating in the political process. Currently, 48 states and the District of Columbia have offender disenfranchisement statutes. These disenfranchisement laws are one component of the “civil death” once accorded criminal offenders. The concept of civil death dates back to ancient Athens and Rome, where those convicted of certain crimes entered a state of infamy marked by civic penalties such as the inability to vote, hold public office, and speak publicly on political issues. In medieval Europe and England, similar laws caused forfeiture of property and political rights for crimes punishable by death or life imprisonment. Laws disenfranchising felons were received into the American colonies as part of the general reception of the laws of England. Following the Revolution, in the allocation of power between the states and the federal government under the Constitution of 1787, the states retained control over access to the ballot. Almost immediately, the newly formed states adopted felon disenfranchisement laws, either constitutionally or through codification.

State control over access to the ballot was limited with ratification of the 15th Amendment, which prohibits states from abridging the right to vote “on account of race” and grants enforcement powers to Congress. Pursuant to the enforcement clause, and in conjunction with the mid-twentieth century civil rights movement, Congress enacted the Voting Rights Act of 1965. Its explicit purpose is to eliminate racial discrimination in voting throughout the United States in accordance with the mandate of the 15th Amendment. Section 2 of the Act provides that no prerequisite to voting shall be imposed in a manner that results in a denial of the right to vote on account of race or color (42 U.S.C. § 1973(a) (2010)). This standard is violated where, “based on the totality of the circumstances,” it is shown that political processes in a state are not equally open to members of a class, in that such members “have less opportunity than other members of the electorate to participate in the political process...” (42 U.S.C. § 1973(b)).

Section 2 challenges to felon disenfranchisement laws are not new. Broadly speaking, these challenges assert that disproportionate numbers of minorities in the criminal justice system, and the concomitant denial of the vote to this class of citizens, result in *de facto* race-based exclusion of class members from the political process. To date the Courts of Appeals for the First, Second, Ninth, and Eleventh Circuits have analyzed the validity of such claims. Among the circuits, only the Ninth has held that challenges to felon disenfranchisement statutes raise valid Section 2 claims. The First, Second, and Eleventh Circuits are in accord (the latter two circuits sitting *en banc* as full courts rather than three judge panels) that such challenges fall outside the purview of the Voting Rights Act. These courts have concluded that Congress never intended the Act to deprive the states of their right to disenfranchise felons; such a result would impermissibly alter the balance of power between the federal government and the states, impinging on the states’ traditional right to establish voter qualifications.

The Farrakhan Opinion

In a departure from this majority view, two members of the three judge panel in *Farrakhan v. Gregoire* held that the discriminatory impact of Washington state’s disenfranchisement law stems

from racial discrimination in the state's criminal justice system; the resulting denial of the vote is, therefore, a violation of section 2. At the trial court level, the plaintiffs, minority citizens of Washington who lost their right to vote under the state felon disenfranchisement statute, presented reports of expert witnesses on racial disparities in all levels of Washington's criminal justice system. The reports highlighted studies showing that these disparities could not be explained by legitimate factors such as minorities' higher levels of criminal activity. Notably, one study found that "substantially more than one half of Washington State's racial disproportionality cannot be explained by higher levels of criminal involvement" (*Farrakhan*, 2010, n. 5).

These reports led the trial court to enter findings that racial discrimination exists in Washington's criminal justice system and that this discrimination "hinders the ability of racial minorities to participate effectively in the political process, as disenfranchisement is automatic" (*Farrakhan*, 2010, 995). Nevertheless, the lower court held that plaintiffs failed to establish a Voting Rights Act violation because it was discrimination in the justice system, and not the disenfranchisement statute itself, that caused the loss of voting rights. Following an initial appeal, remand to the trial court, and second appeal, Ninth Circuit Judge Tashima, writing for himself and Judge Reinhardt (with Judge McKeown dissenting), held that Section 2 of the Voting Rights Act "demands that...racial discrimination not spread to the ballot box." Thus, based on the "uncontroverted record" of discrimination in the justice system, Washington's disenfranchisement law violates federal civil rights law (*Farrakhan*, 2010, 1015). (See "Further Background: Scope of Analysis," page 1.)

Felon Disenfranchisement in Alaska

Disenfranchisement of felons in Alaska is rooted in the Alaska Constitution, which provides "No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored" (Alaska Const. art V, § 2). The right to vote remains suspended from the date of conviction through the date of release from all conviction-related disability, including probation and parole (AS 15.05.030; AS 15.60.010(39)). According to the Alaska Department of Corrections Offender Profile, in 2009 more than 10,000 Alaskans were ineligible to vote pursuant to this provision.

There is no question that in Alaska, as elsewhere, racial minorities are disproportionately represented in the criminal justice system. For example, Department of Corrections figures show that in 2009 Alaska Natives comprised over 35 percent of total offenders in institutions, yet Alaska Department of Labor 2008 population figures estimated that Alaska Natives comprised about 16 percent of the total population in Alaska. African-Americans, estimated to have comprised just over 4 percent of Alaska's population, represented over 10 percent of offenders in Alaska correctional institutions. (See "Alaska Offender Profile 2009" in this issue.) Despite this well-known disparity, Alaska lacks an extensive body of empirical data establishing conclusively that the overrepresentation of minority groups in Alaska's criminal justice system is attributable solely to systemic racial discrimination. This is the critical distinction between Alaska and Washington. As noted above, the *Farrakhan* opinion rests on a finding of fact by the trial judge that "there is discrimination in Washington's criminal justice system on account of race"; in reaching this finding the court relied on "extensive," unrefuted studies showing that over half of Washington's racial disproportionality could not be explained by legitimate factors (*Farrakhan*, 2010, 994-995). It is unlikely a trial judge would find the existing data in Alaska a sufficient evidentiary foundation to support a similar finding of fact here. This does not imply that racial bias is absent from Alaska's

criminal justice system, merely that widespread empirical studies have not unequivocally ruled out all other explanations for disparity in the system. (See “Further Background: Ethnic Disparity in Alaska,” page 1.)

Shifting Policy

Although Alaska’s disenfranchisement statute does not appear vulnerable to an immediate *Farrakhan* challenge, the essential holding of the case suggests that state policymakers may wish to consider limiting the reach of the current statute, or proposing a Constitutional amendment to eliminate the voting prohibition entirely. (Senate Bill 68, currently pending in the Alaska Legislature, would limit disenfranchisement to those incarcerated, and restore voting rights upon release.) Academic literature makes clear that for generations disenfranchisement laws throughout the country have excluded minority citizens from the vote in overwhelmingly greater percentages than Caucasian, and that the rates of minority exclusion are growing. Moreover, there is evidence that dilution of minority voting attributable to disenfranchisement statutes has affected the outcome of elections in a number of jurisdictions. In this state, the disproportionate number of Alaska Natives excluded from the political process under the disenfranchisement statute is particularly troubling given Alaska’s history of discrimination in voting practices. (See “Further Background: Preclearance under the Voting Rights Act,” page 1.)

At an even more basic level, however, the right to vote is the hallmark of participatory democracy. It affirms our membership in the social compact. Exclusion of criminal offenders from this process, and from one of the most fundamental rituals of community involvement, does nothing to promote public safety and can only serve to impede social reintegration of these citizens.

In his February 2010 State of the Judiciary address, Chief Justice Carpeneti observed, “Probably no problem is of greater concern to us at this time than the alarmingly high rates of recidivism in our state.” The recently established Alaska Prisoner Re-Entry Task Force was created to examine how the state might better assist offenders to make a successful transition from incarceration back into their communities. Voting is an integral part of this process; studies suggest that civic reintegration facilitates successful reentry and reduces the risk of recidivism.

For all of these reasons, there is growing recognition that felon disenfranchisement statutes rest on outdated retributory practices antithetical to contemporary standards of equal representation in the political process, standards explicitly stated in the Voting Rights Act. *Farrakhan*, though out of step with the weight of authority in its statutory interpretation, gives effect to the spirit of inclusion that lies at the core of the Voting Rights Act.

Deb Periman, J.D., is a member of the Justice Center faculty.

Further Background on Felon Disenfranchisement

Scope of Analysis

This case summary of *Farrakhan* provides a basic, simplified overview. It does not address the distinction between vote denial and vote dilution claims under the Voting Rights Act, nor does it address the impact of changes in Washington’s disenfranchisement law over the course of the *Farrakhan* litigation, the various approaches taken by the courts in addressing Section 2’s “totality

of the circumstances” standard, or *Senate Report 97-417*, which lists typical factors a court might consider in evaluating a challenged voting practice.

Ethnic Disparity in Alaska

In 2004, the Alaska Judicial Council published a comprehensive summary of criminal justice processes in Alaska. *Alaska Felony Process: 1999* (February 2004) was commissioned, in part, to identify whether “disproportionate numbers of ethnic minorities at all points in Alaska’s criminal justice system” were the result of discrimination or of other legitimate factors. The Council reported that justice for felony defendants in Alaska after charges were filed was “in many respects substantially equal.” Presumptive sentences showed no disparities associated with ethnicity. With the exception of drug offenses, non-presumptive sentences were uniformly imposed among ethnic groups. Disparity in drug sentencing was limited to African-Americans in Anchorage and Natives outside Anchorage. The Council concluded in the Executive Summary that the “isolated nature of these disparities appeared to be inconsistent with conscious discrimination.” However, phases of the felony process other than sentencing, specifically pre-disposition incarceration, charge reduction and overall time of incarceration, did show disparities by ethnicity that could not be explained by legitimate criteria. For example, statewide African-Americans and Alaska Natives could expect to spend 7 days longer in predisposition incarceration than Caucasian defendants. Although this disparity could not be attributed to any factor measured in the study other than ethnicity, the Judicial Council noted that additional socioeconomic data might have explained some of the disparate outcomes.

Preclearance under the Voting Rights Act

Alaska is one of nine states covered in its entirety by Section 5 of the Voting Rights Act, which prohibits changes in election practices without federal review and approval. This “preclearance” status is the result of a state’s historic use of tests or devices to restrict the opportunity to vote, or of statutorily defined underrepresentation in the voting process. In territorial Alaska, Natives faced a number of barriers to voting, among them a 1924 law requiring voters to read and write English. With the advent of statehood, Alaska’s Constitution similarly limited voter participation to those who could “read or speak the English language,” a limitation not repealed until 1970. These and myriad other factors led to less than 50 percent of Alaska’s voting age population participating in the voting process in 1964, a level of under-participation that brought Alaska within Section 5’s preclearance requirements.

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January 8, 2010
DISENFRANCHISEMENT NEWS

Washington State: 9th Circuit Court Reverses Disenfranchising Law; Landmark Decision Could Go to Supreme Court
Virginia: Coalitions Have a Week to Urge Governor to Change Disenfranchisement Policy

Washington State: 9th Circuit Court Reverses Disenfranchising Law; Landmark Decision Could Go to Supreme Court

In a landmark case for individuals with felony records, a federal appeals court has thrown out Washington State's restrictions on felon voting on the basis that the current law violates the Voting Rights Act by creating discrimination in voting. The 2-1 decision in *Farrakhan v. Gregoire* would apply to all persons with convictions in the state, including 18,000 who are currently incarcerated, according to the Associated Press. Circuit Court Judge A. Wallace Tashima wrote that attorneys for six Washington state prisoners "have demonstrated that police practices, searches, arrests, detention practices, and plea bargaining practices lead to a greater burden on minorities that cannot be explained in race-neutral ways."

The 9th Circuit Court of Appeals found that discrimination does, in fact, exist in law enforcement, prosecutorial and judicial outcomes in Washington State and therefore, those with felony records should have the right to vote.

The lawsuit was filed in 1996 by Muhammad Shabazz Farrakhan while serving a three-year sentence at the Washington State Penitentiary for a series of felony-theft convictions. Five other minority inmates joined as plaintiffs in the lawsuit that contended that because nonwhites make up a large percentage of the prison population, a state law prohibiting inmates and parolees from voting is illegal because it dilutes the electoral clout of minorities, the *Seattle Post-Intelligencer* stated.

"In this case, we have proved that the criminal justice system in this state is biased against African-Americans, and the impact has been a violation of their voting rights," said Larry Weiser, a law professor at Gonzaga University School of Law who is the lead attorney in the lawsuit, and joined by several national civil rights organizations.

Take Action Now!

Tell your congressperson to co-sponsor the Democracy Restoration Act of 2009

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The Seattle Times

Tuesday, May 5, 2009 - Page updated at 01:33 AM

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Gregoire signs bill to restore voting rights for some felons

By The Associated Press

OLYMPIA — Starting this summer, felons will be able to reregister to vote once they're no longer on parole or probation.

Gov. Chris Gregoire signed a bill Monday that eases the restoration of voting rights for felons who are no longer in state custody but owe court-ordered fines and restitution. It takes effect July 26.

The old law said felons couldn't vote until they'd completed their entire sentence, including paying all restitution and other court fees.

The new law removes the requirement that felons pay off all those debts before their rights are restored. However, their voting rights could be revoked if a felon willingly fails to make regular payments on those financial obligations.

Rep. Jeannie Darneille, the Tacoma Democrat who sponsored the measure, said the new law will "help someone who's been an ex-offender to reintegrate fully into society."

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Alaska Department of Corrections

Division of Administrative Services



2009 Offender Profile

www.correct.state.ak.us/corrections/admin

Vision Statement

The Alaska Department of Corrections enhances the safety of our communities. We provide secure confinement, reformatory programs, and a process of supervised community reintegration.

Commissioner's Letter



The Mission of the Department of Corrections is to enhance the safety of our communities while providing secure confinement, reformatory programs, and a process of supervised community reintegration.

I am pleased to make this profile available on line. This report is based on our best information and serves as a snapshot of a typical day. Data comes from our Offender Tracking Information System (OTIS), and is meant to give a general summary of Alaska's offender population.

The 2009 Offender Profile – which encompasses many hours of research and calculation on the part of department staff – serves as a valuable tool for our department in the successful accomplishment of our mission.

A handwritten signature in black ink, appearing to read "Joe Schmidt". The signature is stylized and cursive.

Joe Schmidt
Commissioner

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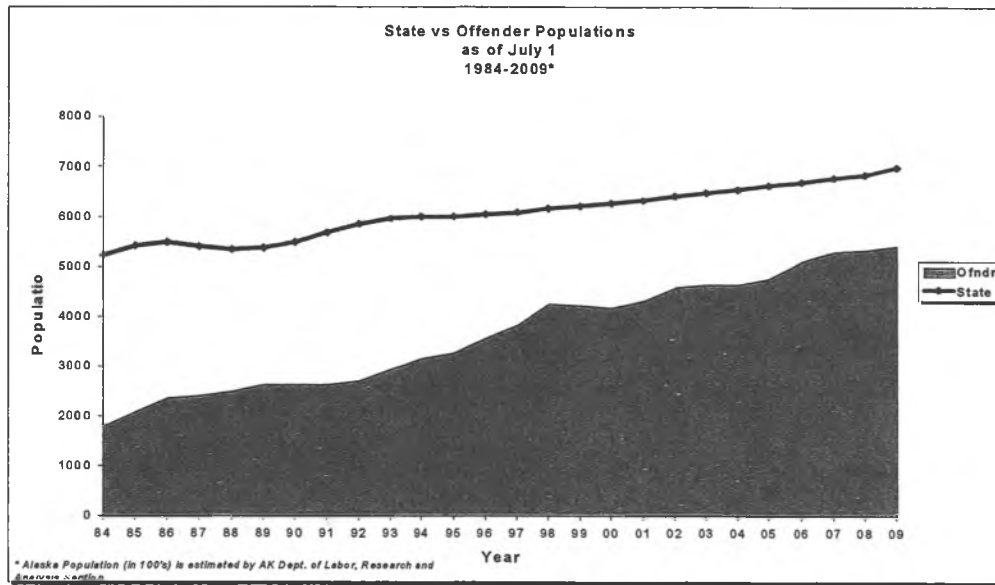
Trends

Notes:

Count and admissions data include information about all offenders under the jurisdiction of the state of Alaska who are entered into the OTIS database.

Count information consists of monthly averages of daily counts; incarcerated offenders not entered into the OTIS database when a count was tallied were not included.

Admissions data includes all criminal admits (except transfers) for all offenders.



Total Offender Population Based on Monthly Averages - January 2007 to December 2009
Includes all Offenders in all Facilities (CCs and CRCs)

YEAR Month	2007			2008			2009		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
January	526	4682	5208	619	4802	5421	544	4699	5243
February	556	4670	5226	607	4798	5405	566	4817	5383
March	550	4657	5207	610	4791	5401	608	4856	5464
April	579	4721	5300	619	4790	5409	631	4687	5318
May	610	4822	5432	622	4777	5399	621	4641	5262
June	607	4679	5286	617	4715	5332	618	4691	5309
July	603	4678	5281	585	4716	5301	617	4754	5371
August	624	4703	5327	589	4734	5323	639	4831	5470
September	646	4754	5400	588	4754	5342	654	4889	5543
October	640	4742	5382	591	4729	5320	624	4991	5615
November	639	4835	5474	564	4718	5282	645	4978	5623
December	638	4759	5397	522	4674	5196	616	4902	5518
Daily Avg	602	4725	5327	594	4750	5344	615	4811	5427

Total Admissions - January 2007 to December 2009
Includes all Offenders in all Facilities (CCs and CRCs)

YEAR Month	2007			2008			2009		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
January	681	2007	2688	704	2031	2735	697	2175	2872
February	611	1910	2521	617	1942	2559	681	2065	2746
March	672	2062	2734	731	2179	2910	770	2140	2910
April	710	2137	2847	671	2078	2749	729	2063	2792
May	729	2246	2975	738	2287	3025	793	2244	3037
June	729	2187	2916	741	2177	2918	789	2289	3078
July	735	2096	2831	673	2090	2763	772	2202	2974
August	713	2324	3037	746	2212	2958	786	2390	3176
September	651	2099	2750	671	2105	2776	748	2226	2974
October	720	2085	2805	749	2183	2932	782	2290	3072
November	717	2103	2820	628	2048	2676	633	1970	2603
December	672	2003	2675	624	2049	2673	679	1984	2663
Total	8340	25259	33599	8293	25381	33674	8859	26038	34897

Institutions

Institution Address List

Institution	Address	City	Zip	Superintendent	Phone
Anchorage Correctional Complex	1400 E 4th Avenue	Anchorage	99501	Debbie Miller	907-269-4100
Anvil Mtn Correctional Center	PO Box 730	Nome	99762	Michael Dunham	907-443-2241
Fairbanks Correctional Center	1931 Eagan Avenue	Fairbanks	99701	Charles Stevenson	907-458-6700
Hiland Mtn Correctional Center	9101 Hesterberg Road	Eagle River	99577	Dean Marshall	907-694-9511
Ketchikan Correctional Center	1201 Schoenbar Road	Ketchikan	99901	Diane Gregory	907-228-7350
Lemon Creek Correctional Center	2000 Lemon Ck. Road	Juneau	99801	Scott Wellard	907-465-6200
Matsu Pretrial Facility	339 E Dogwood Road	Palmer	99645	Steve Brunger	907-745-0943
Palmer Correctional Center	PO Box 919	Palmer	99645	Cindy Betts	907-745-5054
Pt. MacKenzie Correctional Farm	PO Box 877730	Wasilla	99687	Amy Rabeau	907-376-2976
Spring Creek Correctional Center	PO Box 2109	Seward	99664	Craig Turnbull	907-224-8200
Wildwood Correctional Complex	10 Chugach Avenue	Kenai	99611	Robert Hibpshman	907-260-7200
Yukon-Kuskowim Correctional Ctr	Box 400	Bethel	99559	Chris Liu	907-543-5245
Hudson Correctional Facility	3001 N Juniper Street	Hudson, CO	80642	Rick Veach	303-536-2600

Notes:

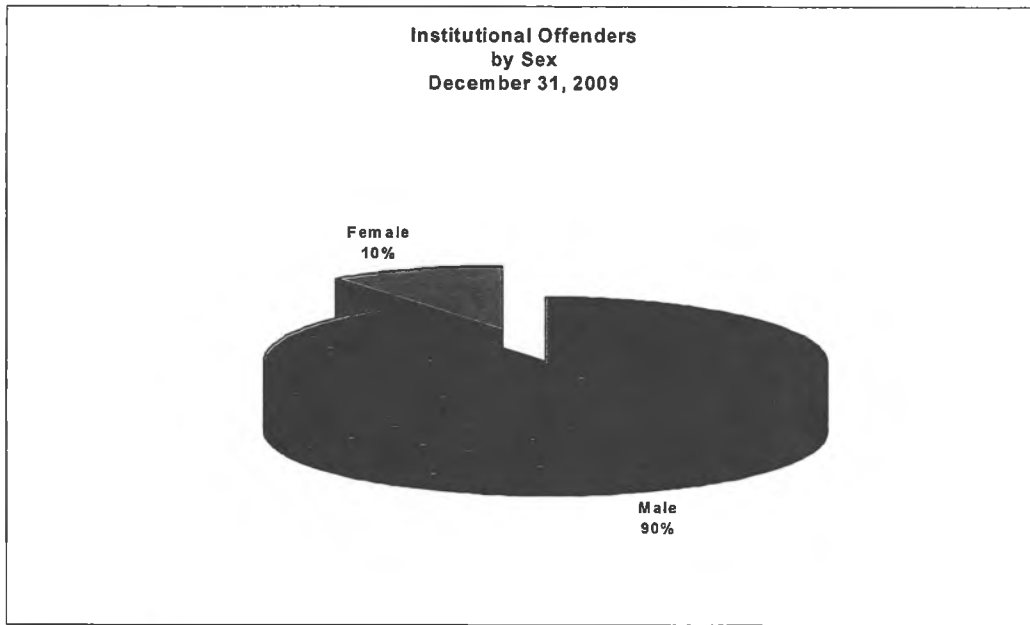
Includes information about all offenders incarcerated in in-state and out-of-state institutions who are entered into the OTIS database.

Consists of a snapshot of offenders incarcerated and entered into the OTIS database on or before December 31, 2009.

Alaska Native race category includes a small number of Native Americans not indigenous to Alaska.

Information about offenses is the most serious charge only.

Offense classes are semi-arbitrary.



**Number of Offenders in Institutions
December 31, 2005 - 2009**

Institutions	Females					Males					All Offenders				
	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005
In-State															
Anchorage CCE	1	6	1	1	34	409	390	456	473	421	410	396	457	474	455
Anchorage CCW	-	-	-	-	-	447	442	484	486	420	447	442	484	486	420
Anvil Mountain CC	9	3	12	10	8	112	80	101	97	116	121	83	113	107	124
Fairbanks CC	24	22	28	28	35	236	212	250	231	229	260	234	278	259	264
Hiland Mountain CC	379	321	362	311	240	-	-	-	-	73	379	321	362	311	313
Ketchikan CC	5	3	7	8	4	60	40	47	44	59	65	43	54	52	63
Lemon Creek CC	15	7	13	8	16	195	175	182	183	183	210	182	195	191	199
Mat-Su Pretrial	8	7	13	7	15	89	79	107	86	97	97	86	120	93	112
Palmer Medium CC	-	-	-	-	-	334	261	254	231	245	334	261	254	231	245
Palmer Minimum CC	-	-	-	-	-	176	176	176	133	175	176	176	176	133	175
Point Mackenzie CF	-	-	-	-	-	103	117	112	100	85	103	117	112	100	85
Spring Creek CC	-	-	-	-	-	554	551	537	465	495	554	551	537	465	495
Wildwood CC	-	-	-	-	-	253	258	254	227	254	253	258	254	227	254
Wildwood Pretrial	17	16	22	21	24	97	102	103	106	103	114	118	125	127	127
Yukon-Kuskokwim CC	10	2	7	5	4	110	107	105	98	112	120	109	112	103	116
Total	468	387	465	399	380	3175	2990	3168	2960	3067	3643	3377	3633	3359	3447
Out-of-State															
Arizona Detention Ctr	-	-	-	-	-	-	-	-	-	765	-	-	-	-	765
Red Rock CC, AZ	-	-	-	-	-	-	879	853	993	-	-	879	853	993	-
Hudson CC, CO	-	-	-	-	-	831	-	-	-	-	831	-	-	-	-
Colorado State Prison	1	1	1	1	1	2	2	2	2	1	3	3	3	3	2
Federal Bureau of Prisons	1	1	1	1	1	11	12	9	10	13	12	13	10	11	14
Minnesota State Prison	1	1	1	1	1	-	-	-	-	-	1	1	1	1	1
Oregon State Prison	-	-	-	-	-	-	1	-	-	-	-	1	-	-	-
Washington State Prison	-	-	-	-	-	-	-	2	2	2	-	-	2	2	2
Total	3	3	3	3	3	844	894	866	1007	779	847	897	869	1010	784
Total All	471	390	468	402	383	4019	3884	4034	3967	3846	4490	4274	4502	4369	4231

**Demographic Information for Offenders in Institutions
December 31, 2005-2009**

Ethnicity	Females					Males					All Offenders				
	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005
Asian/Pacific Island	15	11	7	9	8	134	117	113	104	91	149	128	120	113	99
Black	38	30	42	26	27	453	416	443	420	415	491	446	485	446	442
Hispanic	12	9	11	6	9	100	102	94	93	89	112	111	105	99	98
Alaska Native*	145	124	159	136	132	1459	1404	1381	1413	1378	1604	1528	1540	1549	1510
Caucasian	255	213	246	223	205	1847	1832	1989	1922	1867	2102	2045	2235	2145	2072
Unknown	6	3	3	2	2	26	13	14	15	8	32	16	17	17	10
Total	471	390	468	402	383	4019	3884	4034	3967	3848	4490	4274	4502	4369	4231

Age Group (Years)	Females					Males					All Offenders				
	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005
19 and Under	8	10	15	13	12	93	109	114	98	105	101	119	129	111	117
20-24	85	67	74	62	53	639	613	637	672	672	724	680	711	734	725
25-29	92	78	65	65	57	750	754	724	660	574	842	832	789	725	631
30-34	65	58	67	62	61	512	475	495	510	503	577	533	562	572	564
35-39	84	52	74	50	48	481	481	514	513	533	565	533	588	563	581
40-44	52	47	74	58	77	486	460	552	567	566	538	507	626	625	643
45-49	49	48	54	64	46	465	423	470	454	439	514	471	524	518	485
50-54	24	15	26	17	17	305	278	262	245	229	329	293	288	262	246
55-59	9	9	13	5	8	149	155	142	136	133	158	164	155	141	141
60-64	1	4	3	3	1	73	72	74	60	61	74	76	77	63	62
65 and over	2	2	3	3	3	66	64	50	52	33	68	66	53	55	36
Total	471	390	468	402	383	4019	3884	4034	3967	3848	4490	4274	4502	4369	4231

Mean Age 34.84

36.79

36.59

Median Age 34.11

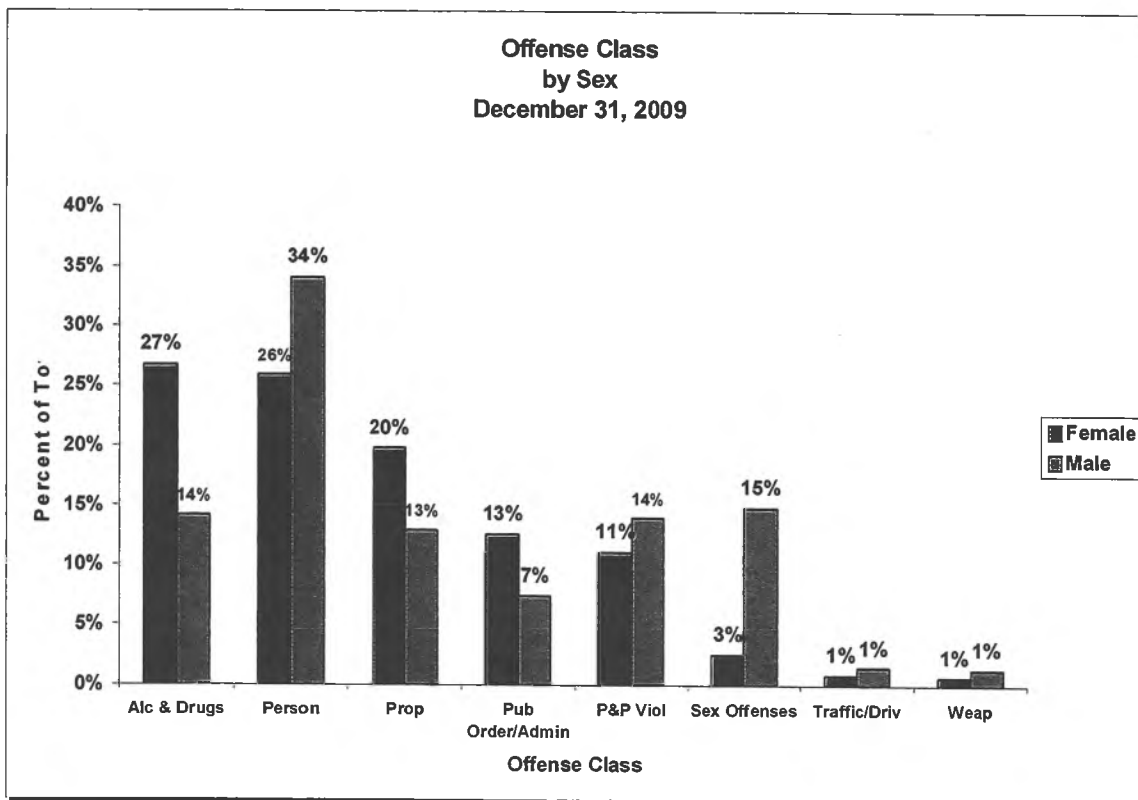
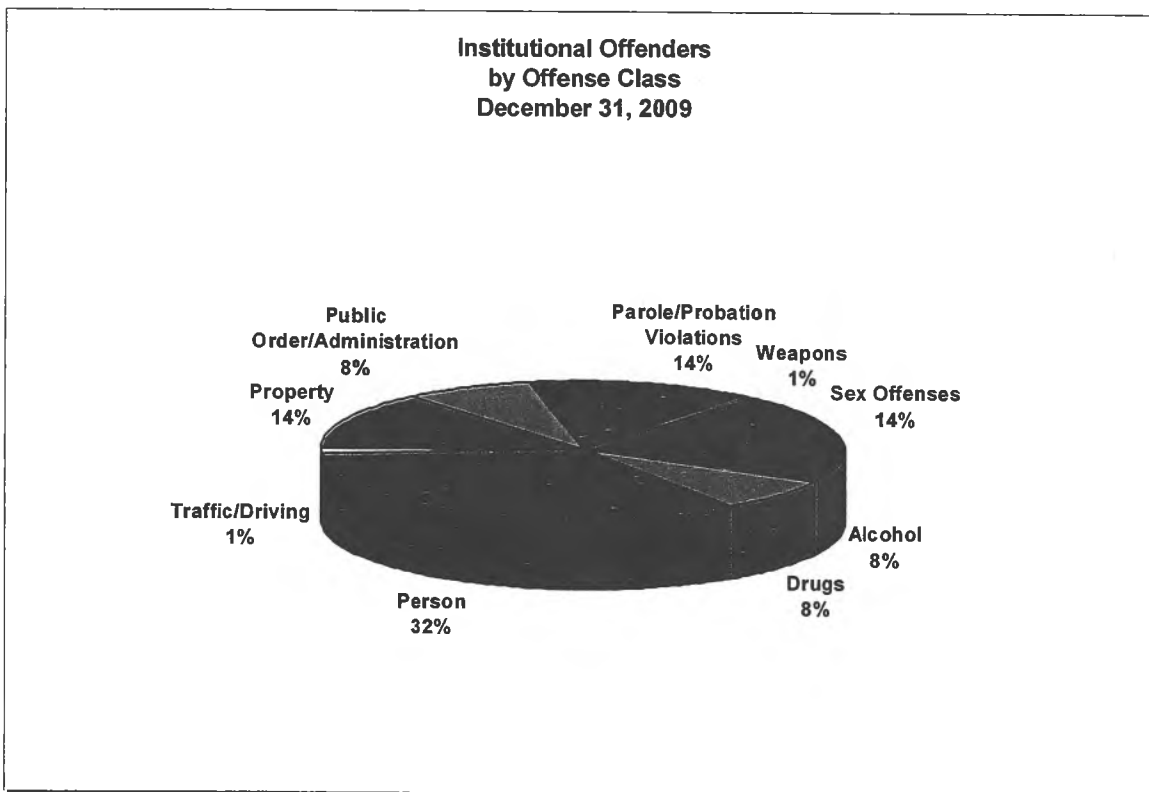
35.19

35.00

*includes a small number of Native Americans not indigenous to Alaska

**Length of Time from Admissions for Offenders in Institutions
December 31, 2009**

Months In	Females	Males	Total
6months or less	320	1896	2216
7 months - 12 months	53	513	566
13 months - 24 mon	42	510	552
25 months 36 months	21	285	306
37 months or more	35	815	850
Total	471	4019	4490
<i>Mean Length (months)</i>	12.32	26.30	24.83
<i>Median Length (months)</i>	3.00	8.00	7.00



Community Residential Centers (CRC's)

CRC Facility Address List

CRC	Address	City	Zip	Phone
Akeela House	2804 Bering St.	Anchorage	99503	561-1200
Clitheroe Center	P.O. Box 190567	Anchorage	99519	276-2898
Cordova Center	130 Cordova St.	Anchorage	99501	274-1022
Glacier Manor	5597 Aisek	Juneau	99801	780-3020
Glennwood Center	835 D St.	Anchorage	99501	277-4501
Midtown Center	2507 Eide St.	Anchorage	99503	222-6502
Northstar Center	PO Box 80670	Fairbanks	99708	474-4955
Parkview Center	831 B St.	Anchorage	99501	272-1641
Ralph Perdue Center	3100 S Cushman St.	Fairbanks	99701	456-7819
Seaside Center	PO Box 2129	Nome	99762	443-6390
Tundra Center	PO Box 485	Bethel	99559	543-3414

Notes:

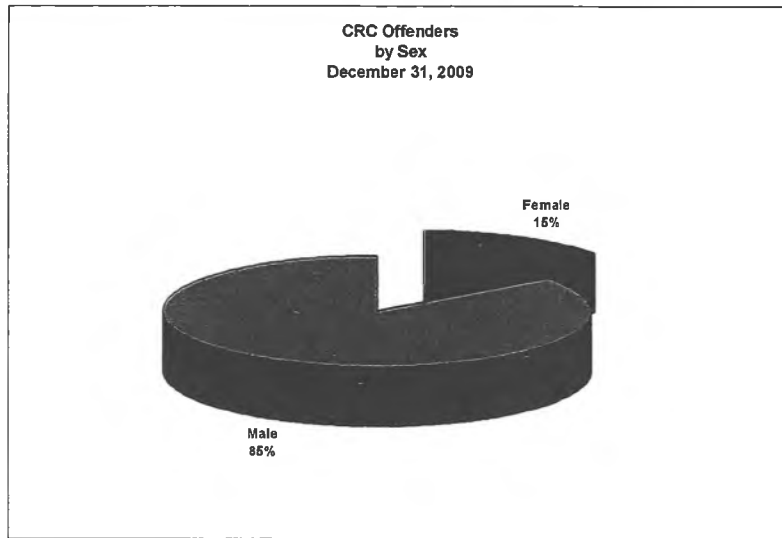
Includes information about all offenders incarcerated in CRC's and treatment centers as well as those under electronic monitoring and those who are monitored by CRC's offsite who are entered into the OTIS database.

Consists of a snapshot of offenders incarcerated and entered into the OTIS database on or before December 31, 2009.

Alaska Native race category includes a small number of Native Americans not indigenous to Alaska.

Information about offenses is the most serious charge only.

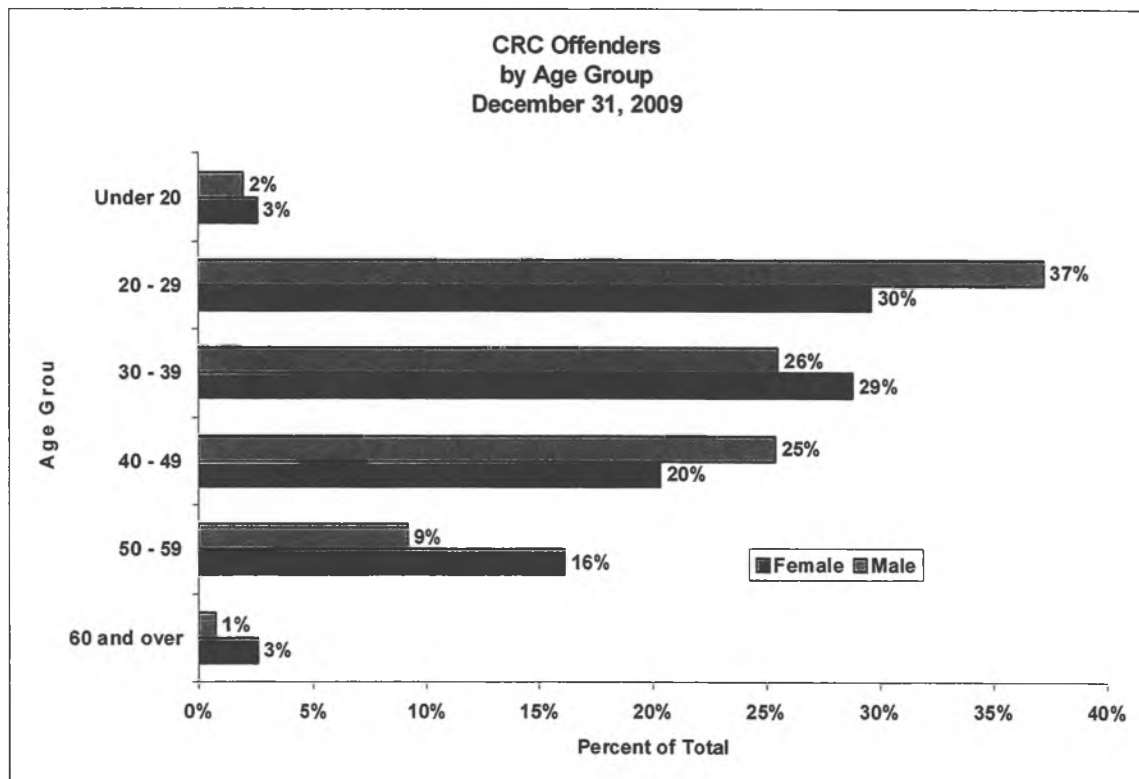
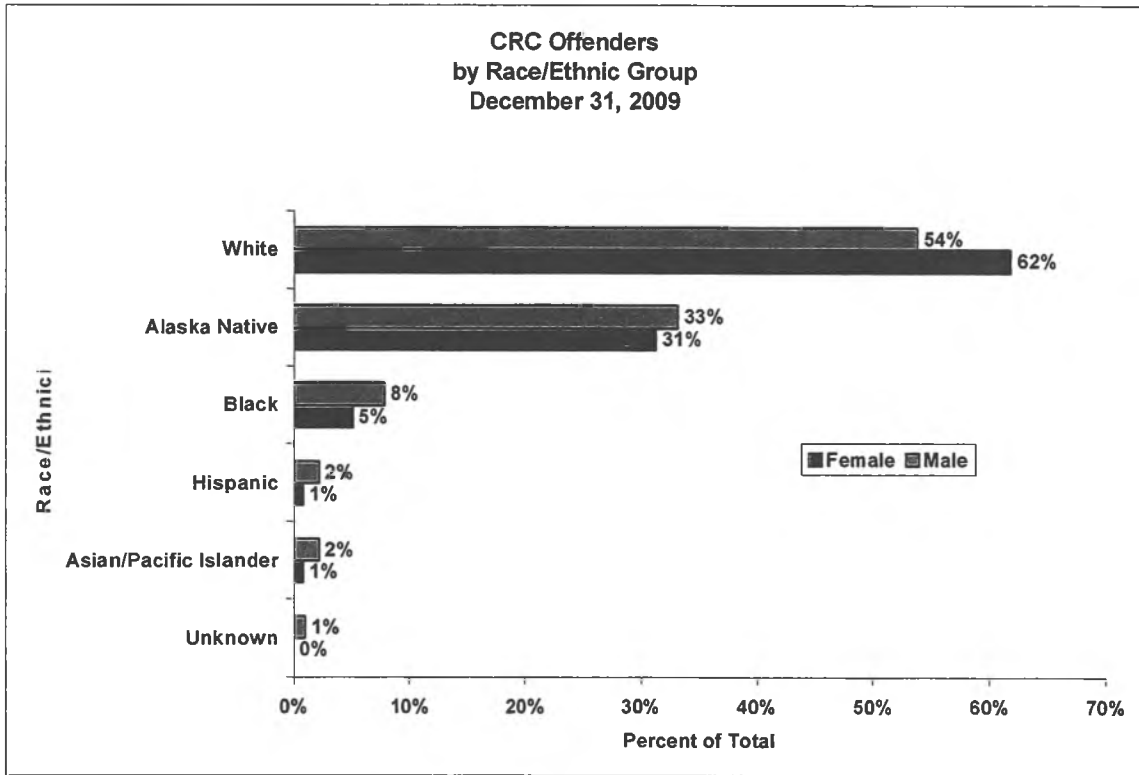
Offense classes are semi-arbitrary.



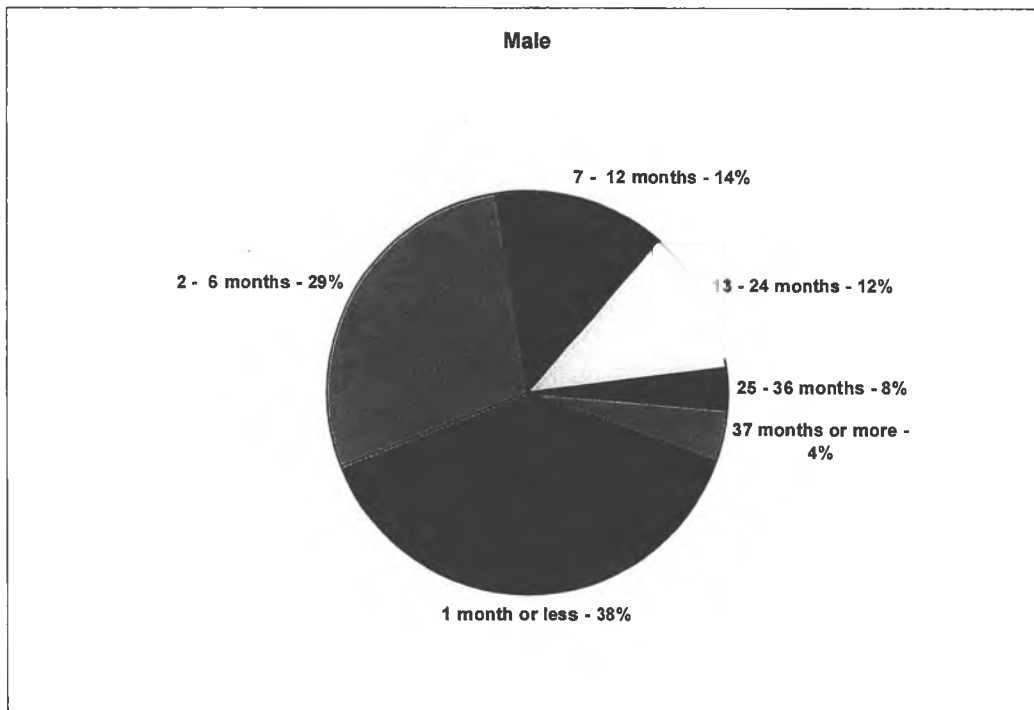
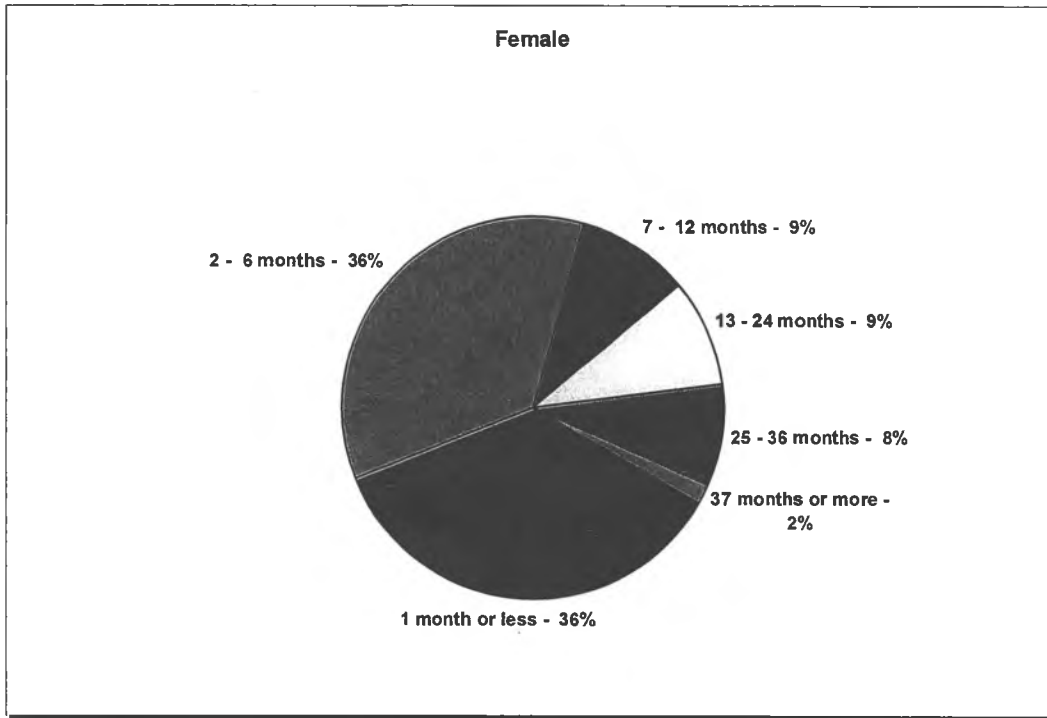
Number of Offenders in Community Residential Centers
December 31, 2005 - 2009

	Females					Males					All Offenders				
	09	08	07	06	05	09	08	07	06	05	09	08	07	06	05
CRCs															
Akeela House	1	1	-	1	1	-	1	1	-	3	1	2	1	1	4
Chanlyut	-	-	-	-	-	3	-	-	-	-	3	-	-	-	-
Clitheroe Center	3	3	1	2	-	-	6	2	2	10	3	9	3	4	10
Cordova Center	20	28	23	23	19	117	93	83	41	123	137	121	106	64	142
Glacier Manor	9	11	7	3	11	45	44	50	35	39	54	55	57	38	50
Glennwood Center	11	9	7	8	8	74	59	57	43	33	85	68	64	51	41
Safe Harbor/Hope House*	-	-	-	1	1	-	-	-	1	2	-	-	-	2	3
Maniilaq	-	-	-	-	-	-	-	-	-	1	-	-	-	-	1
Midtown Center	-	-	-	-	-	31	35	29	-	12	31	35	29	-	12
Northstar Center	9	6	9	9	13	80	74	67	41	64	89	80	76	50	77
Parkview Center	-	-	-	-	-	100	98	113	95	71	100	98	113	95	71
Philips Treatment Center	-	-	-	-	-	-	-	-	-	1	-	-	-	-	1
Ralph Perdue Center	-	-	-	-	1	-	-	-	2	3	-	-	-	2	4
Seaside Center	10	13	6	9	6	40	37	29	28	42	50	50	35	37	48
Tundra Center	3	1	3	2	5	36	52	40	36	47	39	53	43	38	52
Total	66	72	56	58	65	526	499	471	324	451	592	571	527	382	516
Special Offsite Programs															
Anchorage Elect Monitor	42	32	25	29	15	119	95	73	127	68	161	127	98	156	83
Anchorage CRC Monitor	-	-	1	-	-	-	1	1	1	2	-	1	2	1	2
Fairbanks Elect Monitor	8	8	9	6	5	25	26	25	12	2	33	34	34	18	7
Fairbanks CRC Monitor	-	-	-	-	-	-	-	1	-	1	-	-	1	-	1
Kenai Elect Monitor	1	1	2	-	-	5	6	2	-	-	6	7	4	-	-
Ketchikan Elect Monitor	1	-	2	-	-	2	-	2	1	-	3	-	4	1	-
Total	52	41	39	35	20	151	128	104	141	73	203	169	143	176	93
Total All	118	113	95	93	85	677	627	575	465	524	795	740	670	558	609

* Not currently operational



Length of Time from Admission CRC Offenders by Sex December 31,2009



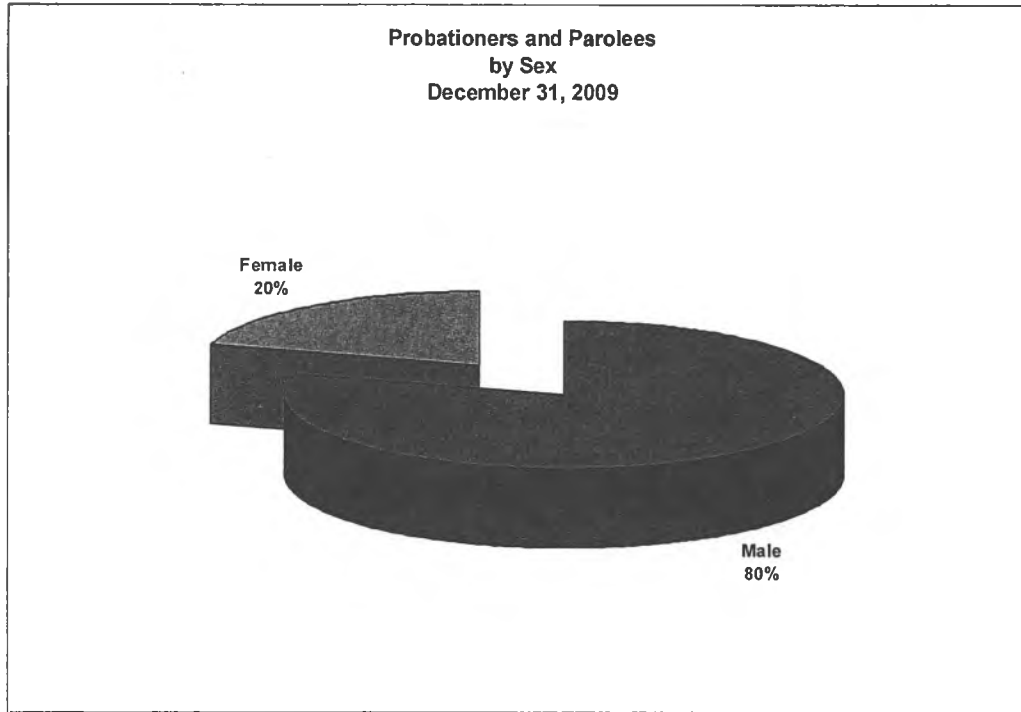
Probation and Parole

Notes:

Includes information about all probationers and parolees under the supervision of the Division of Probation and Parole who are entered into the OTIS database.

Consists of a snapshot of probationers and parolees entered into the OTIS database on or before December 31, 2009.

Alaska Native race category includes a small number of Native Americans not indigenous to Alaska.



**Supervising Authority for Probationers/Parolees
Under Supervision on December 31, 2005-2009**

Offices	Females					Males					All				
	09	08	07	06	05	09	08	07	06	05	09	08	07	06	05
Anchorage	599	557	480	473	463	2,255	2,189	2,075	1,966	1,923	2,854	2,746	2,555	2,439	2,386
Barrow	0	10	7	4	6	-	33	34	41	45	-	43	41	45	51
Bethel	22	19	15	23	27	244	213	212	232	261	266	232	227	255	288
Dillingham	18	12	8	10	5	47	82	68	71	64	65	94	76	81	69
Fairbanks	132	127	154	145	134	596	564	538	592	557	728	691	692	737	691
Juneau	50	55	47	52	55	196	203	214	235	221	246	258	261	287	276
Kenai	118	112	127	98	75	367	404	470	384	308	485	516	597	482	383
Ketchikan	35	40	32	31	24	120	106	110	118	123	155	146	142	149	147
Kodiak	13	15	15	15	20	82	85	89	86	69	95	100	104	101	89
Kotzebue	15	13	21	26	22	78	71	78	101	99	93	84	99	127	121
Nome	8	9	12	13	8	47	48	65	66	58	55	57	77	79	66
Palmer	171	173	157	132	110	581	600	564	470	408	752	773	721	602	518
Sitka	14	13	19	21	27	40	60	63	59	68	54	73	82	80	95
Total All	1,195	1,155	1,094	1,043	976	4,653	4,658	4,580	4,421	4,204	5,848	5,813	5,674	5,464	5,180

**Demographic Information for Probationers/Parolees
Under Supervision on December 31, 2005-2009**

Ethnicity	Females					Males					All				
	09	08	07	06	05	09	08	07	06	05	09	08	07	06	05
Asian/Pac I	46	44	37	35	31	204	187	185	153	142	250	231	222	188	173
Black	81	78	64	69	70	433	440	417	408	388	514	518	481	477	458
Hispanic	28	21	19	14	12	143	138	138	138	122	171	159	157	152	134
AK Native	297	282	273	273	256	1,200	1,198	1,173	1,200	1,216	1,497	1,480	1,446	1,473	1,472
White	717	698	669	623	566	2,621	2,640	2,604	2,466	2,269	3,338	3,338	3,273	3,089	2,835
Unknown	26	32	32	29	41	52	55	63	56	67	78	87	95	85	108
Total	1,195	1,155	1,094	1043	976	4,653	4,658	4,580	4,421	4,204	5,848	5,813	5,674	5,464	5,180
Age Group															
19 & Unde	9	15	14	18	15	78	73	89	98	106	87	88	103	116	121
20-24	193	194	193	176	149	763	808	775	795	783	956	1,002	968	971	932
25-29	245	205	179	175	156	889	861	859	713	679	1,134	1,066	1,038	888	835
30-34	174	169	168	161	166	594	597	590	577	547	768	766	758	738	713
35-39	170	173	146	152	141	552	563	548	575	540	722	736	694	727	681
40-44	129	129	149	130	131	528	560	545	569	543	657	689	694	699	674
45-49	130	131	123	117	115	479	455	468	494	483	609	586	591	611	598
50-54	89	91	75	65	55	365	348	342	289	252	454	439	417	354	307
55-59	38	30	26	25	29	221	211	209	163	138	259	241	235	188	167
60-64	13	10	16	16	14	106	99	81	77	79	119	109	97	93	93
65 & over	5	8	5	8	5	78	83	74	71	54	83	91	79	79	59
Total	1,195	1,155	1,094	1043	976	4,653	4,658	4,580	4,421	4,204	5,848	5,813	5,674	5,464	5,180
<i>Mean Age</i>	<i>35.90</i>					<i>37.02</i>					<i>36.79</i>				
<i>Median Ag</i>	<i>34.30</i>					<i>35.02</i>					<i>34.83</i>				

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

September 22, 2010

SUBJECT: Restoration of voting rights for certain felons
(Work Order No 27-LS0083\A)

TO: Senator Bettye Davis
Attn: Thomas Obermeyer

FROM: Alpheus Bullard *TAB*
Legislative Counsel

This memorandum accompanies the draft bill you requested that would restore voting rights to persons convicted of felonies involving moral turpitude once these persons are released from incarceration. This bill is based on a draft prepared by this office for introduction in the 26th Legislature. The draft raises several issues.

Restoration of civil rights

Article V, sec. 2 of the Alaska Constitution provides that "[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored." The Alaska Supreme Court has not yet addressed what constitutes "civil rights" for the purposes of this clause.

The constitutional reference to "civil rights" must include rights other than the right to vote, otherwise the provision would be unnecessary. However, there is no discussion in the minutes of the constitutional convention indicating what the framers understood as "civil rights" for purposes of this section.

Federal law prohibits a convicted felon from possessing a firearm unless the felon's civil rights have been restored under state law. 18 U.S.C. 921(a)(20). The federal statute does not define "civil rights." For purposes of this statute, federal circuit courts have interpreted "civil rights" to include the right to vote, the right to seek and hold public office, and the right to serve on a jury. United States v. Dahms, 938 F.2d 131, 133 (9th Cir. 1991); United States v. Leuschen, 395 F.3d 155 (3d Cir., Pa. 2005).

The Alaska Court of Appeals has addressed this statute as well, concluding that under Alaska statute "defendants on probation or parole can not serve as jurors" and "[t]his disqualification means that, for purposes of federal firearms laws, [the defendant's] civil rights have not been restored." Barry v. State, 925 P.2d 255 (Alaska App. 1996). Another case dealing with juror qualifications makes a passing reference to "civil rights -- such as the right to vote or to carry a firearm." Singleton v. Alaska, 921 P.2d 636 (Alaska App. 1996).

Senator Bettye Davis
September 22, 2010
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These cases do not specifically address article V, sec. 2 of the Constitution of the State of Alaska, and they would not be binding on the Alaska Supreme Court as it interprets that provision. But, they are an indicator of how a court would interpret art. V, sec. 2 if required to do so. Because art. V, sec. 2 would make little sense if "civil rights" did not refer to something more than the right to vote (which is a prerequisite for seeking public office in Alaska), the enclosed draft changes the qualifications for jury service as well. Accordingly, I've changed the title of the bill from "An Act relating to the voting rights of felons" to "An Act relating to the civil rights of felons."

"Incarceration"

This draft provides that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election while incarcerated for that crime. "Incarcerated" is not defined in this draft or in current statute. Should a person who is sentenced to custody in a residential facility be permitted to vote? I am not aware of all sentencing options available in application to crimes constituting "a felony involving moral turpitude under state and federal law." I would recommend seeking the Department of Corrections' expertise on this point.

Felons released from the federal penitentiary system

This draft requires the commissioner of corrections to establish procedures by which a person released from incarceration is advised of voter registration requirements and procedures. The department is tasked with (1) providing a person released from incarceration with a written notification of the person's restored right to vote and (2) notifying the director of the division of elections that the person is entitled to be registered as a voter. I don't know if the Department of Corrections can fulfill these responsibilities for persons released from a federal facility. This is more a question of fact than a legal issue. Again, I would recommend that you seek the department's advice on this point.

Applicability provision

Please consider adding to the bill an applicability provision specifying the manner in which the bill's provisions are to be given effect, giving specific attention to the applicability of the bill's provisions to felons released before the Act's effective date and whether the department should be directed to notify them of their right to vote.

If you have questions, please contact me. I will be on mandatory leave from September 24th to October 22nd. If you have questions during this time, please do not hesitate to contact our office for another attorney's assistance.

TLAB:plm
10-307.plm

Enclosure



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Restoration of Voting Rights

Right to vote not lost for felonies

Maine
Vermont

Right to vote not lost for *certain* felonies

Mississippi¹

Right to vote automatically restored upon completion of sentence

Alaska	Idaho	Nevada ³	Rhode Island
Arizona ³	Illinois	New Hampshire	South Carolina
Arkansas	Indiana	New Jersey	South Dakota
California	Kansas	New Mexico	Texas
Colorado	Louisiana	New York	Utah
Connecticut	Maryland	North Carolina	Washington ⁴
District of Columbia	Massachusetts	North Dakota	West Virginia
Florida ²	Michigan	Ohio	Wisconsin
Georgia	Minnesota	Oklahoma	
Hawaii	Missouri	Oregon	
	Montana	Pennsylvania	

Automatically restored after a waiting period

Delaware (5 years)²
Nebraska (2 years)

Must apply for restoration of voting rights upon completion of sentence

Alabama²
Tennessee²

Must apply for restoration after a waiting period

Wyoming (5 years)^{2,3}

Barred from voting for life, unless pardoned by the governor

Kentucky
Virginia

(1) In MS, the right to vote is lost permanently (absent a pardon by the governor) for the following offenses: murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, forgery, perjury, embezzlement, and bigamy. Felons convicted of any crime other than these do not lose the right to vote.

(2) For certain serious offenses, either the restoration of voting rights by a court or board, or a pardon, is necessary.

(3) Only for first-time offenders. Recidivists must petition for restoration of voting rights.

Source: National Conference of State Legislatures

February 2011

For more information, contact Jennie Drage Bowser at 303-364-7700.

(4) In Washington, certain offenders must apply with the Indeterminate Sentence Review Board for restoration of voting rights.



NATIONAL CONFERENCE of STATE LEGISLATURES

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**Felon Voting Rights
Permanent Disenfranchisement States**

State	Who is permanently disenfranchised	How right to vote may be regained	Notes
<p>Alabama §15-22-36, 15-22-36.1 §17-3-30, 17-3-31 Const. Art. 8 §182</p>	<p>All people convicted of a crime involving "moral turpitude" (includes all felonies)</p>	<p><i>Nonviolent:</i> apply for Certificate of Eligibility to Register to Vote from Board of Pardons & Paroles; board must issue certificate within 45 days if all requirements are satisfied <i>Violent:</i> apply for a pardon from Board of Pardons & Paroles</p>	
<p>Arizona §13-904 et seq. Const. Art. 7 §2</p>	<p>All people convicted of two or more felonies</p>	<p>Obtain a Certificate of Absolute Discharge from the Bureau of Prisons, or an affidavit of discharge from a judge if the most recent sentence was probation; then submit an application for restoration of civil rights to the superior court in his/her county of residence. A two-year waiting period is required before applying if the most recent sentence was a prison term.</p>	<p>Right to vote is automatically restored upon completion of sentence for people with a single felony conviction</p>
<p>Delaware §15-1701 Const. Art. V §2 and 7</p>	<p>People convicted of murder, manslaughter, sexual offenses, or any felony involving a violation of the public trust (includes bribery, improper influence and use of office, and election offenses)</p>	<p>Apply for a pardon from the governor</p>	<p>Voting rights are automatically restored for all other ex-offenders five years after completion of sentence</p>
<p>Florida Rules 6, 9, 10A and 10B, Rules of</p>	<p>Serious crimes, excluding murder and sex crimes</p>	<p>Apply to have rights restored <i>without a hearing</i> before the Board of Executive Clemency</p>	<p>Voting rights restoration is automatic for most people convicted of non-violent</p>

Executive Clemency §97.041(2)(b), 944.292 and 944.293 Const. Art. VI §4	Murder, sex crimes	Apply for rights without a hearing after waiting 15 years after completion of sentence, or petition the Board for a review and hearing	offenses.
Iowa IA Code §48A.30(d) and §914.1 et seq. Const. Art. II, §5	A person convicted of any infamous crime	Apply to the board of parole for recommendation or to the governor for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of citizenship.	Under an executive order signed January 14, 2011, voting rights will no longer be restored automatically upon completion of sentence, and will only be restored by the governor for individuals who have completed their sentence and paid all financial restitution and court costs as ordered.
Kentucky §116.025, 116.113 Const. §145 and 150	All people convicted of a felony, treason or bribery in an election	Submit Application for Restoration of Civil Rights to the Division of Probation and Parole, which forwards it to the governor.	
Mississippi Const. Art. 12 §241 §23-15-11, 23-15-19	People convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy	Three options: 1) apply for a pardon from the governor 2) apply for an executive order restoring civil rights from the governor 3) ask the state legislature to pass a bill of suffrage on their behalf (requires a 2/3 majority)	People convicted of other offenses do not lose the right to vote
Nevada §176A.850, 213.090, 213.155, 213.157 Const. Art. 2, §1	Except for first-time non-violent felons, all people convicted of a felony.	1) obtain a pardon from the Board of Pardons Commissioners, or 2) petition for the restoration of civil rights in the court in which they were convicted	Rights are automatically restored upon completion of sentence for first-time non-violent felons
Tennessee §40-29-201 et seq.; 40-20-112; 2-19-143 Const. Art. 1 §5	People convicted after July 1, 1986, of voter fraud, treason, murder in the first degree, or aggravated rape.		Those convicted of any offense other than those listed to the left may request

	<p>People convicted after July 1, 1996, but before July 1, 2006 of the above offenses or any other degree of murder or rape.</p> <p>People convicted on or after July 1, 2006 of all of the above offenses or felony bribery or misconduct by a public official.</p>		a certificate of voting rights restoration from the pardoning authority, prison officials, or a parole officer
<p>Virginia §53.1-231.2 Const. Art. II §1</p>	All people convicted of a felony	<p>1) after a five-year waiting period, petition the circuit court (not available to people convicted of violent or drug-related offenses); court's recommendation must be approved by the governor; or</p> <p>2) after a two-year (for non-violent offenders) or five-year (for violent offenders) waiting period, apply to the governor for restoration of rights</p>	

<p>Washington §29A.08-520; 9.92.066; 9.94A.637; 9.94A.8859.95.260; chapter 9.96 Const. Art. VI §3</p>	<p>Certain sex offenders convicted after September 1, 2001</p>	<p>No procedure in place to obtain a certificate of discharge</p>	<p>All others may present a Certificate of Discharge to the voter registration official; certificate is received automatically upon completion of sentence. Ex- felons who owe court costs, fines or restitution can have voter registration revoked if they fail to make at least three payments over a 12- month period.</p>
<p>Wyoming §6-10-106; 7-13-105; 22-3-102 Const. Art. 6 §6</p>	<p>Except for people convicted of first- time non-violent felonies, all felons</p>	<p>Apply to the governor for a pardon or a restoration of rights after a five- to ten-year waiting period</p>	<p>First-time non-violent felons may, after a five-year waiting period, apply to the Wyoming Board of Parole for a certificate restoring voting rights</p>

Sources: NCSL research and Mauer, Marc and Tushar Kansal. *Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States*. Published by The Sentencing Project, February 2005.

Danny Westneat

Westneat: Ex-cons need to earn equality

You know how you can't bar housing or jobs to people on the basis of sex, race, sexual orientation, disability and so on? Those are called "protected classes," because under the law these attributes get a unique shield from discrimination. The city wants to add ex-cons to the list.



Danny Westneat

Seattle Times staff columnist

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It's a cliché to say someone has seen it all. Then you meet Jimmy Tharpe.

"The sex offenders and the murderers, they're actually my easy ones," says the 62-year-old businessman matter-of-factly.

Tharpe is a landlord to criminals. He owns three houses in South Seattle that he rents, room by room, to a total of 18 ex-cons. They are rapists, drug dealers, petty thieves, con men. They're free, but not like you and me — they're on a treacherous journey back into society that Tharpe calls "re-entry."

"It's a tricky business," he says, laughing at his own understatement.

Example: Once, Tharpe had a tenant who became a Nazi in prison. The guy dressed in uniform, saluted, the works. The trouble, beyond friction with other tenants, was that he had moved into Tharpe's rental house located in Seward Park.

"So I'm renting to an all-out Nazi, and my house happens to be in a Jewish neighborhood!" Tharpe recalls.

"I've got dozens of stories like that. I love it, but I gotta say — renting to ex-offenders is definitely not for everybody."

Only it may soon be. If Seattle city government gets its way.

You know how you can't bar housing or jobs to people on the basis of sex, race, sexual orientation, disability and so on? Those are called "protected classes" because under the law these attributes get a unique shield from discrimination.

The city wants to add ex-cons to the list.

Last week, the Seattle Office for Civil Rights proposed adding people with criminal records to Seattle anti-discrimination law. That includes recent convictions. A landlord could be fined, for example, for rejecting a tenant just out of prison for theft or drug dealing.

There are exceptions for arson, murder and other convictions if it can be shown they may threaten the safety of workers or neighbors.

The Office for Civil Rights says it is doing this because, "When people have done their time and leave prison, it is often difficult to find housing and employment."

That's no doubt true. But crime is a choice. And Seattle may be about to put it on the same status as those who are black or female or gay.

Doing so would be "crazy, bizarre, ridiculous," says the landlord to the ex-cons, who thought he had seen everything.

It also won't work, contends Tharp, 62, who has been housing ex-cons since 1997. The state, with some private landlords, has extensive re-entry programs for released prisoners. Many of these people are incorrigible, Tharp says. Seventy percent fail and go back to prison within three years.

"Now we're going to dump all the ex-offenders on private landlords and employers, who have no experience dealing with them?" he said.

Setting aside whether this will work, what I think is dicey is that, until now, anti-discrimination law was confined to things that go to the core of your being: race, color, sexual identity and so on. A few things on Seattle's list do involve choices, such as marital status and "political ideology." Plus there is one profession on Seattle's list — service in the military.

Crime is in no way like these others. It's not only a choice but a horrendous one that victimized society. For this reason, many ex-cons, even upon release, don't have the full rights of citizens. Many can't vote or own guns. Some are not entirely free, as they remain in some way monitored by the state.

Yet Seattle wants to elevate them all into a protected class anyway.

The landlord to the criminals says what might work is for the city to go the other way. Encourage landlords to take a chance on just-released ex-cons by making it easier to evict them if something goes wrong.

"You can't just wave a wand to get equality for ex-offenders," Tharp says. "They need to earn it."

At a forum last fall sponsored by homeless groups and the city, some ex-felons spoke movingly about how the end of their sentence can be when the hard time really begins.

"It feels like I'll never stop being punished for what I did," one said, recounting her difficulties being a mother to her daughter because she couldn't find work or a place to live.

I looked up this woman's record. Robbery, theft, dealing meth, restraining order for domestic violence — a 20-year-long rap sheet. She pleaded guilty to multiple counts of identity theft and forgery less than two years ago, in August 2009.

Maybe she is on a new path and just needs a break. But should a landlord be guilty of a civil-rights violation for not renting to her? Or an employer for not hiring her?

I wonder what's next. I bet people with bad credit would like to be a protected class, too.

Danny Westneat's column appears Wednesday and Sunday. Reach him at 206-464-2086 or dwestneat@seattletimes.com.



February 2, 2011

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Re: **Senate Bill 7**
ACLU Statement of Support

Chair Wielechowski, Vice-Chair Paskvan:

Thank you for the opportunity to submit a written statement of support for SB 7.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions.

Felony disfranchisement is a policy that bars citizens from the ballot box upon conviction of a felony. In the United States, over 5.3 million Americans cannot vote due to a felony conviction. Felony disfranchisement laws vary from state to state, but 48 states bar incarcerated individuals from casting a ballot, with only Maine and Vermont allowing inmates to vote. Eight states permanently ban certain individuals with a felony conviction from voting and two states bar all persons with felony convictions from voting.

The vast majority of disfranchised individuals are no longer incarcerated, but are living in their communities on probation or parole; 2.1 million of the disfranchised population have fully completed their sentence. These disfranchised individuals are tax-paying citizens, involved with the issues in their community, but unable to vote to affect them.

The impact of felony disfranchisement falls disproportionately upon communities of color. Nearly one and a half million African-American men, or 13%, are disfranchised due to felony convictions, a rate that is seven times the national average of one out of forty-one adults. If incarceration rates hold steady, three in ten of the next generation of black men can expect to be disfranchised at some point in their lives.

However, over the last decade the national trend has moved toward lowering barriers for the disfranchised. Since 1997, 19 states have made progressive changes to their felony disfranchisement laws, enfranchising over 700,000 formerly incarcerated individuals. In a democracy voting is a right, not a privilege. But for over 5 million Americans, that is not the case. We hope SB 7 will change that in Alaska.

Alaska Disfranchisement Policy

Alaska bars individuals with a felony conviction from voting until full completion of sentence, including incarceration, probation and parole. Upon completion of sentence the right to vote is automatically restored but individuals must include a copy of their discharge papers when registering to vote. Individuals with misdemeanor convictions never lose the right to vote, but they must vote by absentee ballot if in jail.

Who is Disfranchised in Alaska?

An estimated 10,176 people with felony convictions are barred from voting in Alaska. Approximately 44% of disfranchised people are in prison while 56% of disfranchised people are on probation or parole. Probationers and parolees are law-abiding citizens who are living in the community, working, raising their families and paying taxes.

Racial Impact

Alaska Natives are significantly overrepresented in the disfranchised population. Alaska Natives comprise 32% of the total disfranchised population, though they only comprise 16% of the total population of Alaska. African-Americans comprise 9.5% of the disfranchised population, yet comprise only 3.5% of the total population of Alaska.

Voting & Public Safety

Felony disfranchisement runs counter to the goal of public safety. Restricting voting rights does not prevent crime, nor does it provide compensation to victims. In fact, disfranchising persons after release from prison is antithetical to the reentry process and harmful to long-term prospects for sustainable reintegration of ex-offenders into society. Recent research finds a link between voting participation and reoffense; people who voted after release from supervision were half as likely to be re-arrested as those who did not vote. Similar effects were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted.

Senate State Affairs Committee
ACLU Support of S.B. 7
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Far from making streets safer, felony disfranchisement may be detrimental to public safety. Voting demonstrates an individual's commitment to the institutions of American democracy. The irony of felony disfranchisement is that the very behavior that society strives to encourage – the commitment to the larger social and political collective – is undermined by a policy that requires people who desire to engage in that behavior to relinquish the right to vote.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Mittman", with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Albert Kookesh
Senator Kevin Meyer
Senator Catherine Giessel
Senator Bettye J. Davis