



Restoring Rights of Individuals Convicted of a Felony Crime: A Manual

by R. Culver Schmid

I spend much of my practice as a corporate lawyer forming companies with new members, partners or shareholders. These owners invest their capital in commercial enterprises to carry out the business purposes they direct. These owners often become actively involved with the operations of the companies and deeply engaged in their successes or failures. Owners inject their time and money as “skin in the game” to direct the future of their companies.

As voters in a democracy, we are the owners of our country and its government institutions. As owners, we engage democracy directly by exercising our right to vote. Just like owners in companies, voters cast their votes because the government institutions they empower can dramatically affect the successes and failures in their daily lives. Voters, like business owners, are deeply engaged and invested in our democracy. The right to vote qualifies as our most valuable right as citizens.

In 2020, I expanded my practice to advise individuals convicted of a felony crime to restore their voting rights. The reason for donating my time, energy and legal experience in this effort was simple. According to the Campaign Legal Center, approximately 450,000 Tennesseans, around 9% of the voting-age population, are not able to vote on account of a felony conviction.¹ It is estimated nearly 80% of those individuals completed their probation and parole obligations and are potentially eligible to restore their voting rights.

Our democracy can only survive if its citizens are engaged voters. Under Tennessee law, individuals lose their right to vote

with a felony conviction, but a process exists for them to restore their rights subject to certain conditions. For these individuals whose lives are already experiencing difficulties, attempting to restore their vote at times is much more than they can manage in an already troubled life. But restoration of their voting rights is a major and relatively easy step toward rebuilding their lives as citizens, restoring their ability to affect their lives positively and establishing themselves as equal members of our society. With ownership comes engagement, and our country will only improve with more engaged voters.

We as lawyers are gifted with the knowledge of how our system of laws and government work. We can offer and apply that knowledge for the benefit of those who are not lucky enough to have that experience. The process to restore voting rights is one of the best opportunities for lawyers to apply our special talents.

The steps to restore voting rights for persons convicted of a felony are relatively simple once you take the time to review the process. The first step requires you to examine the applicable laws (found at *Tenn. Code Ann.* §§ 40-29-201 et seq.), which are drafted in a very confusing way and a sometimes difficult-to-follow manner. Whether a convicted person loses the right to vote depends upon the date of felony conviction and the crime for which they were convicted. Misdemeanor convictions that are not classified by law as felonies do not result in the loss of voting rights.

For convictions occurring prior to May 17, 1981, there is a complicated process to follow. In my experience there are very few individuals with convictions occurring prior to that date who wish to have their voting rights restored at such a late stage in life. For convictions occurring after that date, restoration can occur only if: (1) the sentence is completed; (2) all restitution and court costs have been paid; (3) to the extent the person convicted of a felony is subject to any child support obligations, those obligations must be current; and (4) the conviction does not involve certain permanently disqualifying crimes.

Court costs and litigation taxes create the most difficult obstacle to restoring voting rights to those convicted of a felony. Notwithstanding these stiff economic barriers, two statutes allow some courts to suspend payment of court costs and litigation taxes for indigent criminal defendants based upon a judge's determination of the equities of the case.² Keep in mind,

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certain felony convictions permanently disqualify restoration of voting rights depending upon the period during which the conviction (not the incident) occurred. The chart on the next page prepared by Campaign Legal Center, which is an invaluable source of voting information, identifies those disqualifying convictions.³

Once you confirm a person can restore his or her voting rights under the applicable law, you must access both state and local government and implement the process established to restore voting rights. Individuals with convictions in Tennessee must submit a Certificate of Restoration of Voting Rights, the form of which is located on the website of the Tennessee Secretary of State.⁴ That form requires basic information such as the name of the convicted person; county of residence; date of birth; social security number; and a general description of felony convictions. Note that a separate form must be completed for each conviction. If a conviction under federal law has occurred, whether within or without Tennessee, the same certificate must be completed for the federal conviction in order to restore voting rights. If felony convictions occurred under state laws other than Tennessee, Tennesseans seeking restoration of Tennessee voting rights must also provide evidence that the state's requirements for restoration have been met for those out of state convictions.

Submit for signing the required information to be included in the Certificate for Tennessee felony convictions to: (1) the "pardoning authority" (the governor, not a practical alternative); (2) a circuit or criminal court clerk in the county where the conviction occurred; or (3) a probation or parole officer working for the Tennessee Department of Corrections. One of these state authorities must complete and sign the Certificate for submission to the local and state election commissions.

Although any probation or parole officer can provide the completed Certificate, I prefer to use the officer located in the county where the conviction was rendered. The officer will obtain the necessary information from the Department of Corrections to confirm the conditions to restore voting rights have been completed. Voting rights are restored only if all court costs have been paid, any restitution ordered by the court as a result of conviction has been paid and confirmation that any child support owed by the applicant is current and not in arrears. For federal convictions you must contact the office of United States Probation and Pretrial Services, preferably in the Federal District Court where the conviction occurred. Submit the completed Certificate for signing by the appropriate federal probation officer just as you must submit the Certificate for a state conviction to the state probation officer. Voting rights can be restored only if the terms of all federal and state convictions have been completed.

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DISQUALIFYING CONVICTIONS

May 17, 1981 - June 30, 1986	July 1986 - June 30, 1996	July 1, 1996 - June 30, 2006	July 1, 2006 - Present
None [All convictions are eligible for COR]	First-degree murder	Any degree of murder	Any degree of murder
	Aggravated rape	Any degree of rape, including aggravated rape	Any degree of rape, including aggravated rape
	Treason	Treason	Treason
	Voter Fraud	Voter Fraud	Voter Fraud
			Bribery (Tenn. Code Ann. § 39-16-1).
			Misconduct involving a public official or employee (Tenn. Code Ann § 39-16-5)
			Interference with government operation (Tenn. Code Ann. § 39-16-5)
			Any sexual offense violate sexual offense designated as a felony (Tenn Code Ann. § 40-39-202) where the victim was a minor

Chart information prepared by the Campaign Legal Center.

The court clerk or probation officer signs the Certificate after confirming the convicted person (i) completed the requirements relative to court costs, restitution and child support, (ii) served the required sentence for the conviction, and (iii) found none of the convictions which prevent any restoration of rights exists. The executed Certificate is then submitted to the election commission in the county where the registrant is a resident and a voter registration form is filled out by the registrant at that time. The election commission likely will require a person seeking restoration of voting rights personally appear at the election commission office to complete the voter registration form and produce photo identification for the registrant. The election commission will then deliver the completed Certificate to the State Election Commission for its approval. Usually after two or three weeks, the State Election Commission confirms with the local election commission the registrant completed

the requirements and can be registered to vote. The voter registration form previously submitted by the person to the local election commission is then accepted by the election commission, and the voting card is mailed to the newly registered voter.

This process appears daunting but is relatively simple. To the average layman without experience with the law, state and federal government, or election commissions, a potential voter can be overwhelmed by the numerous steps and obstacles to achieve the restoration of voting rights.

But the experience restoring voting rights has been inspirational for me. I work with individuals who desperately want to restore their rights and are willing, with guidance from me as a lawyer, to take actions necessary to complete the process. I had one client who is a young man unable to walk and travelled by wheelchair using public transportation to meet with the election commission to rejoin the community of voting citizens. I also will always remember the phone call I made to a young woman whose voting rights I helped restore when she told me in a proud voice she had voted in the 2020 presidential election, her first vote in more than 25 years.

We as lawyers are entrusted with special knowledge about how our democracy works. To many in our society, particularly those who are economically disadvantaged or who have been set back by a felony conviction, the laws are no more understandable than reading a foreign language. But with our help, these people can be converted into owners in our democracy who, having lost the right to vote often for many years, welcome the restoration of that right and a chance to become an equal citizen in our society. III

NOTES

1. *Manual for Civil Rights Restoration: A Manual to Help People with Convictions Vote in Tennessee*, Campaign Legal Center, Nov. 15, 2019, at 3, <https://campaignlegal.org/sites/default/files/2020-02/TN%20Manual%202-10.pdf>.
2. *Tenn. Code Ann.* §§ 40-25-123(c)(1)(A) and 40-29-202(b)(2).
3. *Manual for Civil Rights Restoration*, *supra* note 1, at 9.
4. See *Certificate of Restoration of Voting Rights*, Tenn. Sec’y of State, <https://sos.tn.gov/products/elections/restoration-voting-rights>.