

Felony Re-Enfranchisement in the Era of Decarceration and Reform: An Empirical Analysis of the Changing Nature of Criminal Justice Control and Felony Re-Enfranchisement in Florida

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Introduction

In recent years, there has been a growing push across the nation to reform the criminal justice system, voting regulations, and felony disenfranchisement laws. The goal of most criminal justice reform efforts has been to move away from incarceration-based sentences towards community-based supervision (Beckett et al., 2018; Miller & Alexander, 2016; Phelps & Ruhland, 2020). Although to a lesser extent, reform efforts have also minimized restrictions on voting rights among those who have been convicted of certain felonies (importantly, some states have done the opposite and recently passed legislation expanding voter restrictions; Brennan Center for Justice, 2021; 2022; Uggen et al., 2022; McLeod, 2018). However, the intended and unintended consequences of these parallel policies have remained unclear. Namely, the conditioning of re-enfranchisement on the payment of legal financial obligations (LFOs; McLeod, 2018), the increased number and amount of LFOs (Martin et al., 2018), and shifts from incarceration to other alternative, “innovative” mechanisms of control (Arnett, 2019) appear to have had the effect of creating a new class of “carceral citizens” (Harris, 2020). Consequently, these policies may hinder change and effectively block decarceration and felony disenfranchisement reform efforts.

Although many states have reformed their felony disenfranchisement provisions over the last 25 years, approximately 4.6 million Americans remain disenfranchised, which equates to about 2.0% of the voting age population (Uggen et al., 2022). Notably, three-quarters of the disenfranchised population have either completed their sentences or are currently being supervised on probation or parole. Despite these legal developments, individuals with prior felony convictions face an increasingly difficult path to regaining their right to vote. Namely, conditioning re-enfranchisement on the payment of all LFOs can serve as a significant factor prohibiting the reinstatement of rights by delaying the termination of supervision or the completion of the sentence.

The purpose of the present study is to assess the consequences of this unique blend of movements, focusing on recent changes to Florida’s felony disenfranchisement laws and their impact on the restoration of voting rights.

Florida’s Amendment 4 and SB 7066

In 2018, Florida voters passed a ballot referendum to automatically restore the voting rights of people convicted of a felony—except murder or sexual offenses—after the completion of their sentences. In 2019, legislation was passed (SB 7066) that made restoration of voting rights conditional on the payment of all legal financial obligations—restitution, fines, and fees. Notably, an estimated 80% of Floridians with a felony conviction owe court fees or fines and approximately 934,500 Floridians who have *completed* their sentences remain disenfranchised, often because of outstanding financial obligations. Thus, Florida remains the nation’s leader in felony disenfranchisement, with over 1.1 million people barred from voting either because of a felony conviction or outstanding LFOs (Uggen et al., 2022).

Project Overview

This project seeks to contribute to our current understanding of felony re-enfranchisement efforts in Florida in the era of decarceration by addressing two research questions. First, what is the potential relationship between decarceration and re-enfranchisement? Second, what are the mechanisms for re-enfranchisement in Florida and are there any potential barriers in this process?

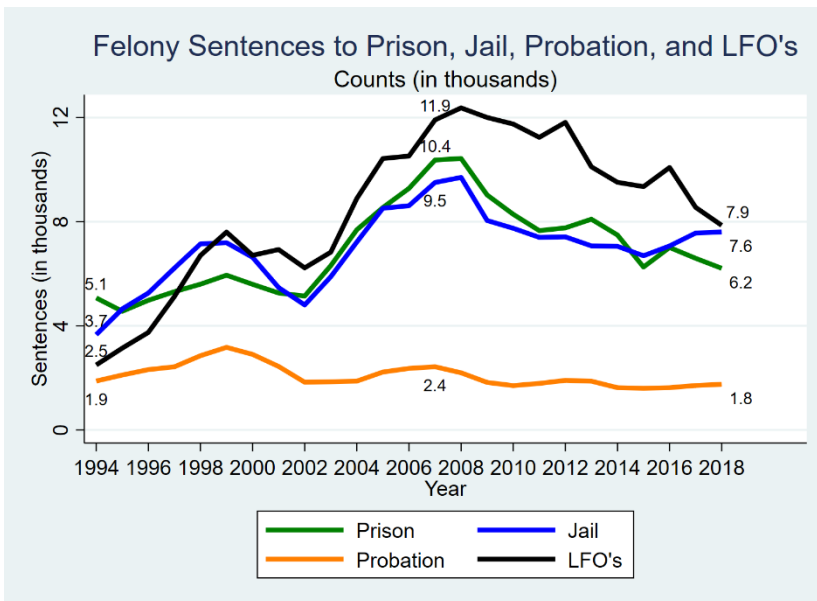
To address our first research question, we examined trends in felony sentences and the assessment of LFOs from 1994 to 2018 using data from Florida’s Office of the State Court Administrator’s (OSCA) Offender Based Transaction System (OBTS). This dataset contains comprehensive information on sentencing outcomes and fines, court costs, and restitution assessed by the court at the sentencing phase. The focus of our analysis is on the Tampa metro area to ensure we are using the most complete and

reliable data, though, importantly, the Tampa metro area trends reflect statewide trends. To address our second research question, we conducted interviews with the Leon County Clerk of Courts and Comptroller’s Office (Clerk), State Attorney, Public Defender, Supervisor of Elections (SOE), and non-profit reentry services providers to obtain detailed information on the re-enfranchisement process.

Findings

Trends in felony sentences and LFOs from 1994 to 2018 are presented in the figure below. The results of these analyses revealed sharp increases in the number of felony prison and jail sentences and felony sentences containing any LFOs from 1994 to 2008, followed by a steady decline through 2018. Notably, however, the decline in LFOs was not as steep as that for prison and jail sentences. Conversely, the number of felony probation sentences remained relatively stable over the study period, with periods of fluctuation and a slight increase beginning in 2014.

Our interviews with Leon County government agencies and non-profit organizations revealed a complex, multi-step process for those wishing to restore their voting rights. In the sections that follow, we outline the steps involved in regaining the right to vote.



Step 1. Determining LFOs.

LFOs are assessed at the plea hearing or sentencing hearing. At these hearings, the defendant is provided a bright yellow “Notice of Court Ordered Payments” form (Form) from the Clerk’s office that describes the amount of 1) fines, 2) court costs, and 3) additional fees that are assessed for the case they are being convicted on. This form serves as the official record of a person’s LFOs tied to their conviction. Following release, the person is expected to still have this form that outlines their LFOs. However, it may be the case that this form got lost or the person has additional prior felony convictions with LFOs tied to them as well. In that case, the person is directed to the Clerk’s office where they were convicted, and they can request assistance from the Clerk’s office to compile a list of all felony LFOs assessed, paid, and still owed.

Notably, however, the Clerk’s offices are often limited to convictions that occurred within their county. Thus, they are unable to pull records for convictions that occurred in another county. Additionally, the Clerk’s office is only responsible for fines, court costs, and additional fees; individuals who were assessed restitution must contact the State Attorney’s office where they were convicted. Therefore, it is up to the person wishing to restore their rights to remember which county they were convicted in and contact the Clerk and State Attorney within each county to determine their LFO amounts.

Step 2. Paying LFOs. The Form provides information about setting up a payment plan with the Clerk’s office, where and how to make payments, and the consequences of failing to pay. Typically, the payment plan is established following the plea or sentencing hearing. Payments are required to begin 90 days after a person’s release from custody or 30 days after they have been assessed LFOs, if being released to

community supervision. Payments can only be made in person or via mail; there is no online option. For those unable to pay, a request can be made to convert LFOs to a civil judgment or community service.

A person's right to vote is automatically restored once the principal LFO balance has been paid. However, one does not receive their "Satisfaction of Judgment" until they have paid any and all interest that has accrued in addition to their LFOs, thus potentially delaying notification of their eligibility.

Step 3. Registering to Vote. Once a person's right to vote has been restored, they may go to their county SOE office and register to vote. Notably, no documentation is required to prove eligibility and the SOE does not conduct any front-end checks to see if someone is eligible to vote. It is up to the individual to know whether they are eligible to register. However, the voter registration form does not provide information on what it means to have had the right to vote restored, an issue currently under litigation (ACLU, 2023).

Importantly, passage of SB 7050 during the 2023 legislative session added a statement to the voter registration card which says, in part, that it is for informational purposes only and while it is proof of registration, it is not legal verification of eligibility to vote. If someone is unsure of their eligibility, the SOE will direct that person to the Clerk's office for assistance or the voter can confirm their eligibility with the Department of State (DOS).

Step 4. Voting. There is substantial ambiguity in the legal penalties for those who believe they are eligible, register, and vote, but are later found ineligible. Those identified by the DOS or SOE as potentially ineligible must admit or deny the accuracy of the information deeming them ineligible. Despite SB 7050 clarifying that an individual cannot be prosecuted if they cast a provisional ballot while under review for ineligibility, the legal penalty is unclear for those who affirm they have not satisfied the eligibility criteria. Further, the 11th Judicial Circuit ruled it was not a crime to register and vote if a person honestly believed they completed all terms of their sentence (*Jones v. Gov. of Florida, 2020*), yet recent arrests of individuals with prior felony convictions have raised concerns (Ellenbogen & Ocasio, 2022).

Conclusion

While on paper the restoration of voting rights process appears straightforward, conversations with the Leon County government agencies and non-profit reentry organizations revealed substantive complexities with navigating this process. Namely, there are no clear guidelines for determining eligibility, thus individuals wishing to restore their right to vote face a large burden to ensure they are eligible. Additionally, the steps involved to determine eligibility are time consuming and cumbersome. Overall, these difficulties and legal ambiguities may create fear among those wishing to restore their right to vote, resulting in them choosing not to pursue the process altogether. Importantly, this study found not much has changed in the materiality of felony disenfranchisement laws despite reform efforts to reduce the prison population and expand felony re-enfranchisement. People remain equally disenfranchised due to the complex path created by conditioning re-enfranchisement on the payment of LFOs. More broadly, the results illustrate how policy implementation can effectively block reform efforts and hinder change.

Given these challenges, we offer the following policy recommendations. First, the DOS should create a statewide restoration of voting rights system that allows a person to verify their eligibility status without having to contact each individual county Clerk's and State Attorney's offices¹. Second, once the principal LFO amount has been paid, an individual should be provided a certification form from the Clerk's office indicating their right to vote has been restored. Third, the voter registration form should be amended by the SOE to provide information on what it means to have had the right to vote restored.

¹ An amendment was proposed to SB 7050 that would establish this statewide system, but the amendment failed.

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