

Effect of Felony Conviction on Voter Registration

TO: Voter Registrars
FROM: Ann McGeehan, Director of Elections
DATE: August 3, 2004
RE: Effect of Felony Conviction on Voter Registration

Due to recent questions posed to this office concerning the effect of a felony conviction on voter registration, we are issuing this memorandum to set out basic rules and guidelines governing this issue.

GENERAL ELIGIBILITY RULES

As you are well aware, a person who is finally convicted of a felony is not eligible to register to vote (what is legally considered a final felony conviction is set forth in more detail under “Final Felony Convictions” below). Pursuant to Section 11.002 of the Texas Election Code (the “Code”), once a felon has successfully completed his or her punishment, including any term of incarceration, parole, supervision, period of probation, or has been pardoned, then that person is immediately eligible to register to vote.

PROCESS FOR CHALLENGING REGISTRATION AND SUGGESTIONS

On a weekly basis, this office receives information from the Department of Public Safety (“DPS”) regarding all persons in the state who have been finally convicted of a felony. We match the DPS data against our statewide file of registered voters, and when we find a possible match, we forward that information to the appropriate county for action. This information is forwarded to the counties on a weekly basis via the WEB browser, or for TVRS counties, it is posted in the pending action window. It is our official advice not to immediately cancel a voter whom we have identified as a possible convicted felon. DPS has cautioned us that felons are frequently convicted under false names. When you receive information from this office regarding a possible convicted felon on your voter registration roll, you should investigate the voter registration of that individual pursuant to Section 16.033 of the Code. To investigate a registration, you must send the voter written notice of the investigation and warn the voter that his or her registration may be cancelled if he or she does not respond within 30 days.

NEW APPLICATIONS

We have recently learned that some counties may be retaining the weekly data from the state regarding possible felon information and later challenging voter registration applications of new applicants based on this information. We advise against this. First, this type of challenge is not expressly authorized by the Code. Second, due to the many variables involved in sentencing, it is possible that a finally convicted felon may complete his punishment and be released from all disabilities in a very short amount of time (in some cases, days or months from date of conviction). Accordingly, we advise that you NOT challenge a new application based solely on information from dated weekly reports that you have retained.

FINAL FELONY CONVICTIONS

Please also consider the following information before you challenge an application on the grounds of felony conviction:

- A conviction on appeal is not considered a final felony conviction.
- “Deferred adjudication” is not considered a final felony conviction. Article 42.12, Section 5, Texas Code of Criminal Procedure.
- Mere prosecution, indictment or other criminal procedures leading up to, but not yet resulting in the final conviction, are not final felony convictions.

OTHER ISSUES

The requirements for voting and candidacy are often confused. Under Texas law, the rules are different for voting and candidacy. Section 141.001 of the Texas Election Code generally provides that to be eligible to be a candidate for, or elected or appointed to, a public elective office, a person must have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities. This means there is no automatic restoration of the right to be a candidate, as there is for voting purposes, after a full discharge. Absent a pardon, the candidate must have obtained a judicial release from his or her disabilities in order to run for any office to which this section applies.

Similarly, the requirements for voting and for serving on a jury are different. Section 62.102 of the Government Code provides that a person who has been finally convicted of a felony is not eligible to serve on a jury, and that right may not be automatically restored as it is for voters.

If you have any questions about these issues, please do not hesitate to contact the Elections Division at 1-800-252-2216.