**Governor's race could decide whether 100K+ Kentuckians regain the right to vote**

**AN ESTIMATED 312,000 KENTUCKIANS CAN'T VOTE BECAUSE OF A FELONY CONVICTION. THAT COULD CHANGE AFTER THE STATE'S GUBERNATORIAL ELECTION ON NOV. 5.**

Jonathan Bullington and Chris Kenning, Louisville Courier Journal

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Every fall, when campaign signs would crop up on green lawns in her small Kentucky town, a young Chandra Justice would listen to her Republican father and Democratic mother discuss which candidates would get their vote.

Voting, Justice quickly learned, mattered. It's why Justice makes a point to talk to her own 12-year-old son about the importance of voting.

She hasn’t told him yet that she can’t do it herself.

Felony drug convictions dating to 2011 stripped Justice of her voting rights in Kentucky, which has one of the nation’s strictest felon disenfranchisement laws.

“It was really devastating to me in the last election,” said Justice, 39. "It was Trump and Clinton, and I had some strong opinions. I wanted to do my part, and I couldn’t.”

Whether she will get that chance in the future could rest on the outcome of this year's race for governor.

An estimated 312,000 Kentuckians — 9% of the population — can't vote because of a felony conviction. That's the third-highest rate in the country, according to a 2016 report from the Sentencing Project, a research and advocacy group that studies incarceration and racial disparities in the criminal justice system.

More than 240,000 of those disenfranchised Kentuckians — 78% — have completed their sentences, the report notes.

Even more stark: One in four black people in Kentucky can’t vote because of a felony conviction — the highest rate in the nation, according to the Sentencing Project report.

Voter guide: Who's running in the 2019 Kentucky general election?

Kentucky is one of only two states — Iowa the other — that bar felons from voting unless they successfully petition the governor to restore their rights.

Virginia also imposes a lifetime voting ban on people with felony convictions, but the state’s recent governors have automatically restored those rights.

Kentucky could follow suit — depending on who gets elected governor Nov. 5.

Republican Gov. Matt Bevin repeatedly has said any changes to the state’s felony disenfranchisement laws should be done through a constitutional amendment.

His opponent, Andy Beshear, Kentucky’s Democratic attorney general, favors automatically restoring voting rights to what could be nearly 140,000 convicted felons.

"Too many Kentuckians feel left out and left behind. But Matt Bevin’s unnecessary voting restrictions make it harder for Kentuckians to be involved in our democratic process,” Beshear said. “Unlike this governor, I want to lift up all of our families and believe we have a moral responsibility to protect and expand the right to vote."

Beshear’s promised action mirrors the executive order issued by his father, former Gov. Steve Beshear, in his waning days in office, which restored voting rights for certain felons who had completed their sentences.

Bevin reversed that order less than a month later.

The issue, Bevin wrote in his Dec. 22, 2015, reversal, "should be determined based on what we, the people of this state, think is appropriate and fair, and not on the opinions of certain individuals or particular groups of individuals."

Andy Beshear’s spokesman, Sam Newton, said Beshear’s focus as attorney general on victims and survivors of violent crimes such as rape, human trafficking and murder means his executive order to expand voting rights “will not include people who have committed those violent crimes, based on the trauma they have inflicted.”

Newton did not respond to a request for additional detail on what crimes would be excluded, or whether the campaign had estimated how many people it would affect. He provided a link to news stories about the 140,000 people that stood to be reinstated under former Gov. Steve Beshear’s order.

The question of what constitutes a violent crime is one that advocates say could limit the numbers significantly on who gets their voting rights restored.

A Marshall Project report found that in some states people can be convicted as a violent criminal for offenses not typically thought of as a “violent crime,” such as burglary. In Kentucky, the report said, that applied to a second offense of possessing “anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine.”

“Gov. Bevin has restored the right to vote to more than 1,000 felons since taking office, and his record proves that he is a strong advocate for restoration and criminal justice reform at both the state and federal level,” his spokeswoman, Elizabeth Kuhn, said in an email. “The executive order used by Gov. Beshear for restorations was unconstitutional, and any changes to allow automatic restorations should be done by constitutional amendment.”

Kuhn did not respond to a Courier Journal question on whether Bevin, if reelected, would push Kentucky lawmakers to pass legislation to put such a constitutional amendment to the state’s voters.

Most states have bans on felon voting

Some form of felon disenfranchisement exists in most states. But laws vary.

Some states limit their voting ban to the time a convicted felon spends behind bars. Others automatically lift voting restrictions once a felon finishes parole or probation.

Two states, Maine and Vermont, have no prohibitions on voting access for convicted felons.

Most of those laws come from Jim Crow-era practices to remove the right to vote to newly freed slaves, said Joshua Douglas, a University of Kentucky law professor who studies voting rights.

"People recognize that felon disenfranchisement has a racist origin, has lingering racial effects and is fundamentally unfair,” he said. “Reenfranchising those who have served their time is good for our democracy, and I think people of all political sides are beginning to recognize this fact, here in Kentucky and all over the country.”

Kentucky’s law, adopted during the 1890 constitutional convention, was focused not on keeping newly freed slaves from voting but on preventing bribery and fraud from tainting the electoral process, according to a 2009 report from the Kentucky Advisory Committee to the U.S. Commission on Civil Rights.

Whatever the motives, felony disenfranchisement laws have swept up a growing number of Americans. In 1996, an estimated 3.3 million people were unable to vote because of felony convictions, according to the 2016 Sentencing Project report.

By 2016, the report states, that number grew to an estimated 6.1 million people, an 85% increase.

The disproportionate effect on African Americans has also grown, reflecting broader disparities in the criminal justice system.

In 1980, nine states banned voting rights to at least 5% of their African American residents, the Sentencing Project report notes. In 2016, the number of states rose to 23.

Stalled legislation in Kentucky

Many states have eased voting restrictions in recent years.

In Florida, voters approved a ballot measure last year to automatically restore convicted felons’ ability to vote once they completed their sentences, excluding those convicted of murder or sex offenses.

The results restored voting rights to more than 1 million people, prompting Florida’s Republican-controlled legislature to pass a law requiring felons to pay court-ordered fines and fees before they could vote.

Last week, a federal judge overturned part of the law, ruling the state cannot stop felons from voting if they’re too poor to pay fines and fees, the Miami Herald reported.

Changing Kentucky’s constitution requires approval from 60% of lawmakers and ratification by voters.

State Rep. Charles Booker, a Democrat from Louisville, has prefiled a bill for the 2020 legislative session that would have Kentucky vote on a constitutional amendment to allow most convicted felons to have their voting rights automatically restored after their sentence, parole and probation.

Booker’s bill likely will face challenges, including competing priorities in a budget year and lawmakers reluctant to look soft on crime.

Katherine Duckett Nichols, head of Kentuckians' Voice for Crime Victims, opposes changing laws that strip felons of their right to vote.

“If you turn around and give voting rights immediately, you’re rewarding them,” she said. "What are the consequences?"

Damon Thayer, R-Georgetown, the state Senate’s majority floor leader, said he would oppose any legislation that did not include a waiting period before a convicted felon’s voting rights are restored.

"I’d like people to prove they can be a law-abiding member of society before they can vote," he said.

Nationally: Iowa's flawed felon list has been disqualifying legitimate voters for years

A challenge in federal court

As efforts to change Kentucky’s law flounder in Frankfort, those opposed to the state’s voting restrictions are asking a federal court to intervene.

A lawsuit filed by the Fair Elections Center and the Kentucky Equal Justice Center argues the state’s procedures for restoring voting rights are arbitrary and unconstitutional. Recently, a judge denied the Bevin administration’s motion to dismiss the case.

The suit echoes the Fair Election Center’s arguments in similar litigation in Florida, which led a federal judge to declare that state’s practices unconstitutional.

That order was under appeal when Florida voters approved a ballot measure to automatically restore most felons’ ability to vote once their sentences are complete.

In Kentucky, the governor’s ability to grant or deny voting restorations comes with “the absence of objective, transparent legal rules or criteria for restoration,” the lawsuit’s authors argue.

That absence, they claim, “opens the door to political, viewpoint, racial, religious, wealth and any other type of discrimination.”

The lawsuit claims Kentucky’s felony voting law is a violation of the First Amendment, and it asks the court to order the state to establish a nonarbitrary system for restoring voting rights.

Bevin’s administration has opposed the lawsuit.

From who is running to where to vote: Your guide to the Kentucky general elections

'I wanted to do my part, and I couldn't'

Stephon Harbin, whose felony convictions stem in part from selling cocaine decades ago, is one of the plaintiffs in the lawsuit.

The 48-year-old father of four lives in Louisville’s predominantly black West End, where he said a greater share of residents can’t vote.

He said he notices a growing sense of urgency.

"When (Trump) was selected after him (Obama), it woke people up even more on the consequences of not voting," he said.

Harbin spent 10 years in prison before his release in 2003. He applied to have his voting rights restored after completing his sentence in 2017 but was told he needed to pay a traffic fine and make paperwork changes.

He resubmitted his application but hasn’t heard back.

In late 2016, after finishing her sentence, Chandra Justice applied to have her voting rights restored.

She waited without word. She was rejected when she tried to register to vote, thinking that perhaps her rights had been restored without notice.

Ahead of Kentucky’s elections in November and the presidential election in 2020, with the stakes seemingly higher than ever, she recently walked to the post office and dropped another application in the mail.

She said her trouble started from ankle injuries playing basketball in high school and college. In the early 2000s, she had surgery and was referred to a pain clinic, where she was prescribed Percocet — a pain reliever made of acetaminophen and the opioid oxycodone.

“Before I knew it I was sick without them,” she said.

Addiction soon followed. But even “in the madness” of that, she said, she still voted.

Pills turned to heroin and in 2011, she was found slumped over in her car in a Louisville parking garage after an overdose. Felony charges followed, then an effort to get clean, followed by additional charges in Indiana, more time in jail, probation and treatment.

Voting wasn’t her priority once sober. She knew being a felon meant she’d have trouble getting a job and renting an apartment. But once those tasks were complete, she said, it was “disheartening” to learn she had lost the right to cast a ballot.

A criminal record “doesn’t make you less of a citizen,” she argues.

See also: Judge orders voters reinstated after they were classified as 'inactive'

Approval process opaque, critics say

Harbin’s and Justice’s experiences underscore one of the main criticisms of Kentucky’s law: The process of restoring the right to vote is solely at the whim of the governor, meaning people can wait years without knowing whether their applications have even been reviewed.

Kuhn, the spokeswoman for the Bevin administration, did not discuss what criteria the governor uses when considering applications, saying only that the governor considers "restorations on a regular, rolling basis.”

The League of Women Voters of Kentucky, which issues periodic reports on the state’s felon voting laws, said Bevin has approved 1,230 voting-rights applications from Dec. 20, 2015, through Jan. 1, 2019. They represent slightly more than half the applications his office has received, the group reported.

Former Gov. Steve Beshear, a Democrat, restored voting rights to more than 9,500 people during his eight years in office, the League reported.

'Part of the democracy again'

Those advocating to expand voting rights say they hope the issue is a priority for Kentucky's next governor.

“People should have every opportunity to participate in our communities and democracy, and one of the most important ways is by voting," said Amanda Hall, a smart justice field organizer for the American Civil Liberties Union of Kentucky.

She said she hoped Bevin would reconsider his stance on voting rights for convicted felons, while also granting more pardons.

While she called Andy Beshear’s promised executive order “a step forward,” Hall questioned how he would define “nonviolent” offenses and how he would calculate when a person’s sentence was complete.

Others say the only way to truly reverse felony disenfranchisement is to take the decision out of the governor’s hands.

“Voters pick their politicians. Politicians shouldn’t get to pick their voters,” said Debbie Graner, a member of Kentuckians for the Commonwealth, leader of the nonprofit organization’s voting rights campaign and a convicted felon who has yet to regain the right to vote.

“I’m fighting to get my right to vote back just like one in 11 Kentuckians are. We won’t stop until we’re part of the democracy again.”

Reporter Chris Kenning can be reached at ckenning@gannett.com or 502-582-4307.

Investigative reporter Jonathan Bullington can be reached at 502-582-4241; JBullington@courierjournal.com; Twitter: @jrbullington. Support strong local journalism by subscribing today: courier-journal.com/jonathanb.

Stephon Harbin is part of a lawsuit to have voting rights restored to felons.

(Photo: By Michael Clevenger/Courier Journal)