

## **Restoration of Voting Rights After Felony Conviction**

Election Clearinghouse Notice

Issue #22-01

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This Clearinghouse is reissued to reflect recent legislative changes and WAC amendments. This replaces Clearinghouse notice #20-01 issued on June 4, 2020.

The requirements for felony screening procedures and restoring the right to vote following a felony conviction are found in RCW 29A.08.520 and WAC 434-324-106 - 107.

Pursuant to recent changes in the law governing restoration of voting rights following a felony conviction, the right to vote is automatically restored as soon as an individual is no longer (1) serving a sentence of total confinement under the jurisdiction of the Washington State Department of Corrections (DOC) for a felony conviction in Washington State, or (2) currently incarcerated for a felony conviction in another state or in federal court. When the right to vote is restored, an individual may re-register to vote.

### **Felony Screening Procedures**

1. The Washington State Department of Corrections, the administrative office of the courts, and other state and federal authorities provide the Office of the Secretary of State (OSOS) with lists of persons who are ineligible to vote due to their total confinement or incarceration status.
2. Upon receiving lists of ineligible voters, or at least on a monthly basis, the OSOS conducts a comparison of the official statewide voter registration database to the list(s) provided to check for potential matches. Registration records for voters identified as a potential match are changed to a “pending” status in VoteWA.
3. The OSOS sends a notice of the proposed cancellation to each identified voter with a “pending” registration status with instructions for how to contest the pending cancellation by contacting the relevant county elections department, as detailed below.
4. If the voter fails to contact the county elections department to contest the cancellation within 30 days of the date of the letter, the OSOS cancels the voter registration record.

Only the OSOS cancels voter registrations of persons identified as serving a sentence of total confinement under the jurisdiction of the Washington State Department of Corrections or currently incarcerated for a felony conviction in another state or in federal court.

County election departments do not cancel voter registration records based on felony conviction information received from the courts, nor any other source. Records in VoteWA with a “pending” status are still registered voters until canceled by the OSOS.

### **Restoring the Right to Vote**

Following a felony conviction in a **Washington State** court, the right to vote is automatically restored when the person is no longer serving a sentence of total confinement under the jurisdiction of the Department of Corrections for that felony conviction.

Following a felony conviction in a **federal** or **out-of-state** court, the right to vote is restored automatically when the person is no longer incarcerated (in prison) for a felony.

Once the right to vote has been restored, the person may re-register to vote by submitting registration application information online, by mail, or in person at a county elections department. Voter registration applications must be accepted from persons who are no longer serving a sentence of total confinement for a felony conviction in WA or incarcerated for a felony conviction in another state or federal court.

### **Assistance for Voters in Pending Status – Contesting the Pending Cancellation**

To contest a pending cancellation, a voter has 30 days from the date of the notification letter to respond to their county elections department.

The question of the person’s eligibility to vote may be resolved and the pending status reversed if:

- The voter provides verifiable information that they are not serving a sentence of total confinement; or
- The voter’s voting rights have been restored; or
- The conviction is not a felony; or
- The person convicted is not the registered voter; or
- The voter is no longer incarcerated due to a felony conviction in another state or federal court; or
- The voter is otherwise eligible to vote.

Verifiable information includes a voter presenting themselves in person with their photo ID. When a voter is misidentified as a potential match and *inadvertently* pended for cancellation for a felony conviction, the voter should not be required to provide documentation. Either the OSOS or the county elections department will use governmental resources such as Department of Licensing or LexisNexis to confirm the match is valid/invalid.

The county auditor notifies the OSOS of the pending status removal when the record is resolved in VoteWA. The county auditor must also notify the voter of this status change.

### **Processing Ballots Received from Pended Voters**

Voter records pended with a “potential felon” status reason must not be issued a ballot. However, if an election in which the person would otherwise be eligible to vote is scheduled to occur during the 30-day pending cancellation period, the county auditor must allow the person to request and vote a provisional ballot.

If a ballot is received from a voter whose status was changed to "pending" in accordance with WAC 434-324-106 after ballots were issued, the ballot must be held until the question of the person's eligibility can be resolved.

The disposition of the ballots can be decided in the following ways:

- If the question of the voter's eligibility is resolved and their pending status is reversed, **the ballot should be counted if otherwise valid.**
- If the voter is verified as serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a felony conviction or is currently incarcerated due to a felony conviction in a state other than Washington State or federal court, then **the ballot should not be counted.**
- If the voter's eligibility has not been resolved, then the canvassing board, prosecuting attorney, or their designees should attempt to acquire documentation and/or contact the Department of Corrections or other institution to verify whether the individual is serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a felony conviction or is incarcerated due to a felony conviction in a state other than Washington State or federal court.
  - If the voter's status cannot be verified, then **the ballot should be counted if otherwise valid.**

The auditor must notify the voter and the Secretary of State when their pending status is removed. The Secretary must flag the voter registration record to prevent future cancellation on the same basis.

The disposition of all ballots held for voters still pended with a “potential felon” status must be decided by the day before certification of the election or primary.