



THE VOTING RIGHTS OF PEOPLE WITH CRIMINAL CONVICTIONS IN NEW YORK

VOTING RIGHTS

A person with a criminal conviction has the right to vote when he or she:

1. was convicted of a misdemeanor, rather than a felony;
2. was convicted of a felony but was sentenced to probation or conditional discharge;
3. is discharged from prison after serving his or her maximum sentence;
4. is discharged from parole; or
5. is pardoned.¹

A person does NOT have the right to vote when he or she:

1. is in prison for a felony conviction; or
2. is on parole for a felony conviction.²

What happens when someone loses the right to vote because of a felony conviction?

If the person had previously registered to vote in New York, his or her registration is cancelled. If the person had not previously registered to vote, he or she may not register to vote until he or she becomes eligible again.³

What if someone was convicted in federal court?

If the person was convicted of a federal felony or crime that would be a felony in New York, the same rules apply: no voting if in prison or on parole.⁴

What if someone was convicted in another state?

If the person was convicted of a crime that would be a felony in New York, the same rules apply: no voting if in prison or on parole.⁵

NOTICE

How does a person with a felony conviction find out that he or she is no longer eligible to vote?

The local board must notify the voter with a form approved by the state board of elections before canceling the voter's registration.⁶

The notice must:

1. Be mailed first class, by forwardable mail;
2. Be mailed to the last recorded address of the individual's registration;
3. Inform the individual that he or she may explain to the board of elections, either in writing or in person, within fourteen days from the time the notice was mailed, why he or she is still eligible to vote; and
4. Contain information on the voter's right to reregister, including locations of registration sites and deadlines for registering.

If the person does not respond to the notice within fourteen days, election officials will cancel his or her registration.⁷

The local board has 25 days, from the time it receives notice of an individual's conviction, to identify and remove that individual's name from the list of eligible voters.⁸

RESTORATION & REGISTRATION

When can someone vote again after he or she loses that right?

A person automatically regains the right to vote when he or she:

1. is pardoned; OR
2. is restored to rights of citizenship; OR
3. his or her maximum sentence of imprisonment has expired; OR
4. is discharged from parole.⁹

How does someone vote once he or she becomes eligible again?

When a person becomes eligible, he or she must register in order to vote.¹⁰ Upon registering, the person is presumed eligible to vote.¹¹

What are the other eligibility requirements for registering?

An individual may register if, at the time of the election he or she will be:

1. at least eighteen years old;
2. a U.S. citizen; and
3. a resident of the state and of the county, city, or village for at least thirty days.¹²

What is a "residence"?

A "residence" is the place a person lived before going to jail or prison. A jail or prison is NOT a "residence" for the purpose of registering or voting.¹³ As long as the individual lived at the residence for thirty days prior to incarceration or has lived at his or her current residence for thirty days, he or she meets the residency requirement.

Can a person who is homeless meet the residence requirement in order to vote?

A person cannot be denied the right to vote simply because he or she lives in a homeless shelter, in a hotel, or on the street. As long as a person can identify a specific location within a district that he or she considers his or her "home base" to which he or she regularly returns, and intends to remain for the present, and where he or she can receive messages and be contacted, he or she has established residency and can register to vote.¹⁴

When registering, does a person need to provide documentation to prove that he or she has served the maximum sentence or has been discharged from parole?

Local boards of elections are not allowed to request documentation, such as a Certificate of Relief from Disabilities or proof that the registrant has completed a prison sentence or finished parole. A person is presumed eligible when he or she fills out a registration form and signs the affirmation on the form.¹⁵

In fact, election officials can *only* question an individual's eligibility to vote if they have reason to doubt the person's eligibility beyond the simple fact of a past felony conviction.¹⁶

In this unusual circumstance, an elections official may not ask the person for proof but should instead check the Department of Corrections website to learn dates of conviction, release, or discharge from parole.¹⁷

VOTING FROM JAIL

Can a person vote while incarcerated?

A person may not register or vote while serving a felony sentence in prison. However, a person *may* vote while in jail if he or she is:

1. Serving a misdemeanor sentence;¹⁸ OR
2. Charged with a crime but not yet convicted.¹⁹

How does a person vote from jail?

A person in jail votes by absentee ballot.²⁰ Here are the steps for voting by absentee ballot:

1. Apply for an absentee ballot with a form from the Board of Elections;²¹
 - a. Mail the completed form to the Board of Elections at least 7 days before an election OR deliver at least one day before an election;²²
2. A completed form will include:
 - a. Full name;²³
 - b. Mailing address (i.e., the address of the jail);²⁴
 - c. Residence address (this is the individual's permanent address and NOT the address of the jail);²⁵
 - d. A statement that the individual is qualified to vote.²⁶ Qualified means: 18 years old or older, a U.S. citizen, and resident of the state and county, city, or village for at least thirty days before the election. (Again, a person's "residence" is his or her permanent New York address before being jailed);
 - e. A statement that the individual will be in jail, serving a misdemeanor sentence²⁷ or charged with a crime but not convicted, on the day of the election.²⁸

COMMUNICATION BY & AMONG GOVERNMENT AGENCIES

How does the board of elections know that someone is no longer eligible to vote?

Every three months, courts or the office of court administration must give the county or state board of elections the names, residence addresses, and birthdates of people who are no longer eligible to vote.

This includes individuals with felony convictions who were sentenced to prison, whose sentences of probation were revoked, or whose conditional discharges were revoked.²⁹

What must the state board do with these names?

The state board must organize the names by county of residence³⁰ and then send the list of persons who are no longer eligible to vote to the local boards of elections.³¹

When the local board receives notice that an individual is no longer eligible to vote, what happens?

The board notifies the voter and then cancels his or her registration, in accordance with the rules above.

How does the board of elections find out about federal convictions?

The National Voter Registration Act requires United States attorneys to send written notices of federal felony convictions to the chief State election official.³² The notices must include:

1. the name of the offender;
2. the offender's age and residence address;
3. the date of entry of the judgment;
4. a description of the crime(s) the person was convicted of; AND
5. the sentence imposed by the court.

The state board must send any notices of federal felony convictions from a United States attorney to the appropriate local board of elections.³³

What happens if the board of elections receives information that someone outside the board's jurisdiction is no longer eligible to vote?

If a local board of elections receives any notice with a residence address outside of the city or county of the board's jurisdiction, it shall, at least once a month, send such notices to the appropriate board of elections, or, if the address is outside the state, to the New York State board of elections.³⁴

If there are individuals whose residence address is outside New York State, the state board shall send such notices to the chief state election official of that state at a time and in a manner it finds appropriate.³⁵

END NOTES

- ¹ N.Y. Penal Law § 60.01(2); N.Y. Elec. Law § 5-106.
- ² N.Y. Elec. Law § 5-106.
- ³ N.Y. Elec. Law §§ 5-106, 5-400(1)(b).
- ⁴ N.Y. Elec. Law § 5-106.
- ⁵ N.Y. Elec. Law § 5-106.
- ⁶ N.Y. Elec. Law § 5-402.
- ⁷ N.Y. Elec. Law § 5-402.
- ⁸ N.Y. Elec. Law § 5-614.
- ⁹ N.Y. Elec. Law § 5-106.
- ¹⁰ N.Y. Elec. Law § 5-400(1)(b).
- ¹¹ N.Y. Elec. Law §§ 5-102, 5-210; State Board of Elections Memorandum, issued October 29, 2003.
- ¹² N.Y. Elec. Law § 5-102(1).
- ¹³ N.Y. Const. art. 2, § 4; N.Y. Elec. Law § 5-104.
- ¹⁴ *Pitts v. Black*, 608 F. Supp. 696, 710 (S.D.N.Y. 1984).
- ¹⁵ N.Y. Elec. Law §§ 5-102, 5-210; State Board of Elections Memorandum, issued October 29, 2003.
- ¹⁶ N.Y. Elec. Law § 5-210.
- ¹⁷ State Board of Elections Memorandum, issued October 29, 2003.
- ¹⁸ N.Y. Penal Law §§ 70.20, 70.15; *In the Matter of Patrick T. Morphy v. Wade*, 617 N.Y.S.2d 400, 401 (N.Y. App.Div. 1994).
- ¹⁹ N.Y. Elec. Law § 8-400(1).
- ²⁰ N.Y. Elec. Law § 8-400(1).
- ²¹ N.Y. Elec. Law § 8-400(2).
- ²² N.Y. Elec. Law § 8-400(2).
- ²³ N.Y. Elec. Law § 8-400(3).
- ²⁴ N.Y. Elec. Law § 8-400(3).
- ²⁵ N.Y. Elec. Law § 8-400(3).
- ²⁶ N.Y. Elec. Law § 8-400(3).
- ²⁷ N.Y. Penal Law §§ 70.20, 70.15; *In the Matter of Patrick T. Morphy v. Wade*, 617 N.Y.S.2d 400, 401 (N.Y. App.Div. 1994).
- ²⁸ N.Y. Elec. Law § 8-400(3).
- ²⁹ N.Y. Elec. Law § 5-708(2).
- ³⁰ N.Y. Elec. Law § 5-708(4)(b).
- ³¹ N.Y. Elec. Law § 5-614.
- ³² 42 U.S.C. § 1973gg-6(g)(1).
- ³³ N.Y. Elec. Law § 5-708; 42 U.S.C. § 1973gg-6(g)(1).
- ³⁴ N.Y. Elec. Law § 5-708.
- ³⁵ N.Y. Elec. Law § 5-708.