

Issues Related to Felons in the Electoral Process

The Right to Vote:

New Mexico Constitution, Article VII, Section 1 provided at statehood:

Every male citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, **except** Indians not taxed, idiots, insane persons and **persons convicted of a felonious or infamous crime unless restored to political rights**, shall be qualified to vote at all elections for public officers.

New Mexico Constitution, Article VII, Section 1 as of October 14, 2016:

Every person who is a qualified elector pursuant to the constitution and laws of the United States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, **except as restricted by statute** either **by reason of criminal conviction for a felony** or by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference.

National Voter Registration Act of 1993:

The NVRA does not require any particular process for removing persons who have been disqualified from voting pursuant to State law based upon a criminal conviction or an adjudication of mental incapacity. However, the NVRA does permit states to restrict the voter franchise based upon either of these two factors.

Felons do not lose their right to vote, even while in jail, in Maine and Vermont. they lose their right to vote while incarcerated in 14 states and the District of Columbia. The right is restored when they get out.

The loss of voting rights continues after incarceration ends in 22 other states. This can be while the felon is on probation or for some other period of time, such as until they pay outstanding fines. Felons lose the right to vote indefinitely for some crimes or face a time period after jail, parole, probation and fines are paid before they can vote in 12 other states.

Section 1-4-27.1. Cancellation of registration following conviction; eligibility for voting upon satisfaction of conditions.

A. When a voter has been convicted of a felony in any state or federal court, the voter's registration shall be canceled.

B. A person convicted of a felony who is otherwise a qualified elector is eligible to register to vote when that person:

- (1) has been unconditionally discharged from a correctional facility or detention center;
- (2) has completed all conditions of parole or supervised probation; or
- (3) has had the conviction overturned on appeal.

C. The secretary of state shall each month maintain current in the statewide voter registration electronic management system the eligibility status of persons convicted of felonies to register to vote pursuant to this section.

D. The corrections department, the New Mexico sentencing commission and the administrative office of the courts shall deliver to the secretary of state information and data as needed to carry out the provisions of this section.

E. The secretary of state shall request from the United States attorney for the district of New Mexico, in conformance with 42 U.S.C. Section 1973gg-6(g), information and data as needed to carry out the provisions of this section.

History: Laws 2001, ch. 46, § 1; 2005, ch. 116, § 1; 2007, ch. 337, § 7; 2011, ch. 137, § 35.

The Right to Hold Office:

Section 31-13-1. Felony conviction; restoration of citizenship. (2005)

A. A person who has been convicted of a felony shall not be permitted to vote in any statewide, county, municipal or district election held pursuant to the provisions of the Election Code [1-1-1 NMSA 1978], unless the person:

- (1) has completed the terms of a suspended or deferred sentence imposed by a court;
- (2) was unconditionally discharged from a correctional facility under the jurisdiction of the corrections department or was conditionally discharged from a correctional facility under the jurisdiction of the corrections department and has completed all conditions of probation or parole;

(3) was unconditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency or was conditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency and has completed all conditions of probation or parole; or

(4) has presented the governor with a certificate verifying the completion of the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship.

B. When a person has completed the terms of a suspended or deferred sentence imposed by a court for a felony conviction, the clerk of the district court shall notify the secretary of state. The secretary of state shall notify all county clerks that the person is eligible for registration.

C. A person who has served the entirety of a sentence imposed for a felony conviction, including a term of probation or parole shall be issued a certificate of completion by the corrections department. Upon issuance, the corrections department shall inform the person that the person is entitled to register to vote. The certificate of completion shall state that the person's voting rights are restored.

D. When the corrections department issues a person a certificate of completion, the corrections department shall notify the secretary of state that the person is entitled to register to vote. The secretary of state shall notify all county clerks that the person is eligible for registration. Additionally, a county clerk shall accept the following documents as proof that a person has served the entirety of the sentence for a felony conviction and is eligible for registration:

(1) a judgment and sentence from a court of this state, another state or the federal government, which shows on its face that the person has completed the entirety of the sentence;

(2) a certificate of completion from the corrections department; or

(3) a certificate of completion from another state or the federal government.

E. A person who has been convicted of a felony shall not be permitted to hold an office of public trust for the state, a county, a municipality or a district, unless the person has presented the governor with a certificate verifying the completion of the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship.

History: 1953 Comp., § 40A-29-14, enacted by Laws 1963, ch. 303, § 29-14; and recompiled as 1953 Comp., § 40A-29-38, by Laws 1977, ch. 216, § 16; 2001, ch. 46, § 2.; 2005, ch. 116, § 2.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 57

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO ELECTIONS; REPEALING CANCELLATION OF VOTING
REGISTRATION AFTER FELONY CONVICTION; AMENDING, REPEALING AND
ENACTING SECTIONS OF LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 1-4-24 NMSA 1978 (being Laws 1969,
Chapter 240, Section 80, as amended) is amended to read:

"1-4-24. CANCELLATION OF REGISTRATION--COUNTY
CLERK--GROUNDS.--The county clerk shall cancel certificates of
registration for the following reasons:

A. death of the voter;

~~B. legal insanity of the voter;~~

~~C. a felony conviction of the voter;~~

~~D.]~~ B. at the request of the voter; or

~~E.]~~ C. at the direction of the board of

1 registration."

2 SECTION 2. Section 1-4-27.1 NMSA 1978 (being Laws 2001,
3 Chapter 46, Section 1, as amended) is repealed and a new
4 Section 1-4-27.1 NMSA 1978 is enacted to read:

5 "1-4-27.1. [NEW MATERIAL] INMATES INELIGIBLE TO VOTE OR
6 REGISTER TO VOTE--ELIGIBILITY TO VOTE AND REGISTER TO VOTE UPON
7 RELEASE.--

8 A. A voter is ineligible to vote while imprisoned
9 in a correctional facility as part of a sentence for a felony
10 conviction. Except as provided in this section, a qualified
11 elector is ineligible to register to vote while imprisoned in a
12 correctional facility as part of a sentence for a felony
13 conviction.

14 B. At the time an inmate is preparing for release
15 from a state correctional facility, if the inmate is a voter or
16 qualified elector, the inmate shall be given an opportunity to
17 register to vote, or update an existing registration, by means
18 of a transaction with the motor vehicle division of the
19 taxation and revenue department prior to the inmate's release
20 from custody. If the inmate does not conduct a transaction
21 with the motor vehicle division of the taxation and revenue
22 department prior to the inmate's release from custody, the
23 corrections department shall provide the inmate an opportunity
24 to register to vote or update an existing registration by means
25 of an online portal provided by the secretary of state or, if

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1 such a portal is not available, by means of a paper
2 registration form.

3 C. The voter registration of a voter who is an
4 inmate may be canceled in any manner provided for in Chapter 1,
5 Article 4 NMSA 1978. In addition to being ineligible to vote,
6 a voter who is an inmate shall be considered to have changed
7 the voter's address from the voter's precinct of registration,
8 pursuant to Section 1-4-28 NMSA 1978, and shall follow the
9 procedures of that section, provided that the secretary of
10 state shall not send a confirmation mailing to a voter who is
11 an inmate.

12 D. The corrections department shall deliver to the
13 secretary of state information and data necessary to carry out
14 the provisions of this section. The secretary of state shall
15 maintain current information in the statewide voter
16 registration electronic management system on the ineligibility
17 status of an inmate to vote or register to vote pursuant to
18 this section, as well as an inmate's eligibility status to vote
19 upon release and to register to vote or update an existing
20 voter registration while preparing for release.

21 Notwithstanding a person's status in the statewide voter
22 registration electronic management system, a voter or a
23 qualified elector who appears personally before a county clerk,
24 the clerk's authorized representative or a precinct board
25 member is presumed eligible to vote or register to vote

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1 pursuant to the provisions of this section."

2 SECTION 3. Section 31-13-1 NMSA 1978 (being Laws 1963,
3 Chapter 303, Section 29-14, as amended) is repealed and a new
4 Section 31-13-1 NMSA 1978 is enacted to read:

5 "31-13-1. [NEW MATERIAL] FELONY CONVICTION--RESTORATION
6 OF RIGHTS.--

7 A. A person who has been convicted of a felony
8 shall not be permitted to hold an office of public trust for
9 the state or any political subdivision of this state, unless
10 the person's rights have been restored pursuant to this section.

11 B. The rights of a person who has been convicted of
12 a felony in this state are restored if the person receives a
13 pardon or, for purposes of this state only, if the governor of
14 New Mexico issues the person a certificate of restoration of
15 rights.

16 C. The rights of a person who has been convicted of
17 a felony in another state are restored if the governor of that
18 state issues the person a pardon or other restoration of rights
19 or, for purposes of this state only, if the governor of New
20 Mexico issues the person a certificate of restoration of
21 rights.

22 D. The rights of a person who has been convicted of
23 a felony in federal court are restored if the president of the
24 United States issues the person a pardon or other restoration
25 of rights or, for purposes of this state only, if the governor

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1 of New Mexico issues the person a certificate of restoration of
2 rights."

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underscoring material = new
~~[bracketed material] = delete~~