

**Ramifications of Felony Disenfranchisement on the Voting  
Population in the Commonwealth of Virginia**

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ABSTRACT

*Virginia is one of 12 states in the United States that does not automatically restore the right to vote to all felons who have completed their sentences. This paper provides the historical context of felony disenfranchisement in the Commonwealth of Virginia, and includes an examination of legislation and the rationales behind it. Descriptive empirical analysis of individuals in Virginia who have been disenfranchised and the impact this has on the Commonwealth's voting population is conducted for the year 2000. In addition, analysis of the impact of disenfranchisement on voting in two counties and two cities is incorporated. Discussion of current policy and suggestions for change are also included.*

## I. INTRODUCTION

There are currently twelve states in the United States that do not automatically restore the right to vote to all felons who have completed their sentences, one of which is Virginia.<sup>1</sup> In Virginia, an ex-felon may apply to the Governor for restoration of voting rights after all aspects of a sentence have concluded and an additional period, which is contingent on the type of offense, has passed without further convictions.<sup>2</sup> Approximately five percent of the Virginia voting population is disenfranchised.<sup>3</sup>

This paper provides the historical context of felony disenfranchisement in the Commonwealth of Virginia, and includes an examination of legislation and the rationales behind it. This examination is important given the Constitution of Virginia was used as the model for the United States Constitution, and the laws regarding disenfranchisement in Virginia have not changed dramatically since 1830.<sup>4</sup> Empirical analysis of individuals in Virginia who have been disenfranchised and the impact this has on the Commonwealth's voting population was conducted for the year 2000.<sup>5</sup> In addition, analysis of the impact of disenfranchisement on voting in two counties and two cities is included. King and Mauer write such local level analysis is

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<sup>1</sup> Ryan S. King & Marc Mauer, THE SENTENCING PROJECT, *The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia* (2004) (on file with author), available at [http://www.sentencingproject.org/admin/documents/publications/fd\\_vanishingblackelectorate.pdf](http://www.sentencingproject.org/admin/documents/publications/fd_vanishingblackelectorate.pdf). This count was accurate at the time of writing, however, several of these states are in the process of considering legislation that would change the restoration process.

<sup>2</sup> See VA. CODE ANN. § 53.1-231.2 (2007).

<sup>3</sup> John R. Cosgrove, *Four New Arguments Against the Constitutionality of Felony Disenfranchisement*, 26 T. JEFFERSON L. REV. 157, 162 (2004).

<sup>4</sup> Angela Behrens, Christopher Uggen, & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559, 565 (2003).

<sup>5</sup> The year 2000 was chosen as complete records of those in prison, on parole, and on probation for felony offenses for later years were not available at time of writing.

necessary to assess whether specific communities are disproportionately affected by disenfranchisement legislation.<sup>6</sup>

## II. HISTORICAL CONTEXT AND LEGAL BACKGROUND

The Virginia Convention approved its Constitution on June 29, 1776.<sup>7</sup> The Virginia Declaration of Rights, which had been approved days earlier, and the Virginia Constitution, served as a model for other states and the United States.<sup>8</sup> The Virginia Constitution allowed the legislature flexibility in suspending or removing voting rights of individuals who committed criminal actions.<sup>9</sup> The disqualification of voting for criminals is understandable given the social climate of the time. Against the wishes of many Virginians, groups of “criminals” were sent to Virginia from about 1700 to 1755.<sup>10</sup> These groups of criminals ranged from Scottish Covenanters to Irish political prisoners.<sup>11</sup> Virginians did not want these people to be able to participate in governance and perhaps as a response to these newcomers, the Virginia Constitution was amended in 1830 to allow for expansion of criminal actions qualifying for disenfranchisement.<sup>12</sup>

In the United States Constitution, the Fourteenth, Fifteenth, Nineteenth, and Twenty-Fourth Amendments address voting rights for citizens.<sup>13</sup> Section Two of the Fourteenth Amendment allows a state to disqualify a citizen from voting under certain circumstances, including participation in criminal activities, and the intent of this section has been debated many

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<sup>6</sup> See generally King & Mauer, *supra* note 1.

<sup>7</sup> VA. CONST. (1776).

<sup>8</sup> THE HORNBOOK OF VIRGINIA HISTORY: A READY-REFERENCE GUIDE TO THE OLD DOMINION’S PEOPLE, PLACES, AND PAST (Emily J. Salmon & Edward D.C. Campbell, Jr. eds., The Library of Virginia 4<sup>th</sup> ed. 1994).

<sup>9</sup> Language addressing felonious convictions specifically did not appear in the Virginia Constitution until 1971.

<sup>10</sup> See Salmon, *supra* note 9; Aaron S. Fogleman, *From Slaves, Convicts, and Servants to Free Passengers: The Transformation of Immigration in the Era of the American Revolution*, 85 J. AM. HIST. 43, 46 (1998)

<sup>11</sup> Fogleman, *supra* note 10.

<sup>12</sup> VA. CONST. (1776).

<sup>13</sup> U.S. CONST. amends. XIV § 2, XV § 1, XIX § 1, XXIV § 1, .

times.<sup>14</sup> In 1866, the Supreme Court discussed the theory that states could curtail the civil rights of individuals who had been convicted of criminal acts.<sup>15</sup> In 1974, the Supreme Court held in *Richardson v. Ramirez* that states were justified in disqualifying convicted felons from voting even if they were convicted in other jurisdictions.<sup>16</sup>

Coupled with the conclusion of the Civil War and the passing of the Fourteenth and Fifteenth Amendments to the United States Constitution, criminal actions qualifying for disenfranchisement were extended again to include new crimes, such as crimes of moral turpitude.<sup>17</sup> State constitutions followed suit where the change was not statutory. A number of scholars have argued that Virginia's disenfranchisement laws were designed to increase the disqualification of black voters, as blacks were perceived to be far more likely to be convicted of crimes of moral turpitude than whites.<sup>18</sup>

In 1971, Constitutional Amendments were made in Virginia specifically to address disenfranchisement for felons and the restoration of rights by executive clemency or other authority.<sup>19</sup> In Article II of the Constitution of Virginia, titled Franchise and Officers, Section One details qualification of voters.<sup>20</sup> The section reads: "No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority."<sup>21</sup>

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<sup>14</sup> U.S. CONST. amend. XIV, § 2.

<sup>15</sup> See *Cummings v. Missouri*, 71 U.S. 277, 321-22 (1867).

<sup>16</sup> *Richardson v. Ramirez*, 418 U.S. 24, 54, 56 (1974). Ramirez, a resident of California, was convicted of a felony in Texas and subsequently disenfranchised in California. *Id.* at 31.

<sup>17</sup> See *supra* note 4, at 561-62.

<sup>18</sup> See Jeff Manza & Christopher Uggen, *Punishment and Democracy: The Disenfranchisement of Nonincarcerated Felons in the United States*, PERSPECTIVES ON POLITICS, 491, 492-93 (2004).

<sup>19</sup> See VA. CONST. art. XIII, §1.

<sup>20</sup> VA. CONST. art. II, § 1.

<sup>21</sup> *Id.*

Since this time, there have been numerous attempts in Virginia to change the procedures for restoration of voting rights. In 1982, a proposed Amendment to the Virginia Constitution was passed in the General Assembly that would allow the restoration of voting rights by statute and federal precedent.<sup>22</sup> The bill was defeated by the people.<sup>23</sup> A similar bill introduced in 2001 was also defeated.<sup>24</sup>

In 2003, the Virginia State Crime Commission released its report on the restoration of civil rights to the Governor and General Assembly.<sup>25</sup> This report was largely in response to the defeat of the 2001 bill.<sup>26</sup> The Crime Commission recommended that the Virginia Department of Corrections (“VA DOC”) be required to provide felons with information on how they can have voting rights restored, and recommended that the VA DOC provide evidence of compliance with this requirement.<sup>27</sup> In researching this paper, it appears current practice is to inform ex-felons they are entitled to have their voting rights restored, but not specify how this can be done. Further, no information could be found on whether the VA DOC has released records of compliance.

Another recommendation made by the Crime Commission was to implement an automatic restoration process for non-violent felons five years after the completion of their sentences.<sup>28</sup> In practice, this would also mean people who had been convicted of non-violent drug related offenses could have their voting rights restored two years earlier. This report was

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<sup>22</sup>, See 1981 Va. Acts 1346, 1982 Va. Acts 645-46, 1592-93.

<sup>23</sup> VA CONST. art. II, § 1.

<sup>24</sup> Report of the *Virginia State Crime Comm'm, Restoration of Civil Rights* 5 (2003).

<sup>25</sup> See *id.*

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*

presented in the 2002 Session of the Virginia General Assembly as House Bill 1298.<sup>29</sup> The Bill was subsequently amended to exclude automatic restoration of voting rights to non-violent felons, and was passed.<sup>30</sup>

The process of disenfranchisement and restoration of voting rights in Virginia falls under Section 53.1-231.2 of the Code of Virginia.<sup>31</sup> Once a resident of Virginia has been convicted of a felony in Virginia or other jurisdiction, the US attorney, or district attorney, or election agencies, or the Central Criminal Records Exchange (CCRE), send notification of the felony to the Virginia Commonwealth Board of Elections.<sup>32</sup> Information is then sent to the county registrar where the person last resided, records are matched, and the county sends a notice of disenfranchisement to the last known address of the voter.<sup>33</sup>

An ex-felon is eligible to apply for restoration of voting rights in Virginia five years after the completion of all aspects of a felony sentence (including payment of fines and restitution, probation and parole), provided he or she has a clean criminal record for that period.<sup>34</sup> If the felony was drug related, the ex-offender can apply for restoration after seven years. In addition, there can be no charges of any kind (except traffic violations) pending in any jurisdiction.<sup>35</sup>

Section 53.1-231.2 of the Code of Virginia reads as follows:

the petitioner has completed, five or more years previously, service of any sentence and any modification of sentence including probation, parole, and

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<sup>29</sup> H.B. 1298, 2002 Gen. Assem. (Va 2002).

<sup>30</sup> *Id.*

<sup>31</sup> VA. CODE. ANN. § 53.1-231.2.

<sup>32</sup> The CCRE is a mandate of the Virginia State Police. VA. CODE. ANN § 19.2-387.

<sup>33</sup> The ACLU recently released a report outlining inaccuracies and inconsistencies with matching records in Virginia and other states. Lalen Ispahani & Nick Williams, *Purged: How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote*, ACLU, Oct. 2004.

<sup>34</sup> VA. CODE. ANN. § 53.1-231.2.

<sup>35</sup> *Id.*

suspension of sentence; that the petitioner has demonstrated civic responsibility through community or comparable service; and that the petitioner has been freed from criminal convictions, excluding traffic infractions, for the same period.<sup>36</sup>

Once an ex-felon has met eligibility requirements for restoration of voting rights, restoration is not automatic.<sup>37</sup> A petition must be submitted to the Office of the Secretary of the Commonwealth and must contain all of the following:

- a signed cover letter
- a notarized application form
- certified copies of all felony court and sentencing orders
- certified proof of payment of fines, court costs and restitution
- three letters of reference from “reputable” citizens
- a letter from the ex-felon’s most recent probation or parole officer outlining the period of supervision
- copies of pre and post sentencing reports
- a letter from the applicant to the Governor detailing the offense, the sentence, and a rationale for why voting rights should be restored.<sup>38</sup>

The Secretary of the Commonwealth’s Office estimates “most, if not all” applications are incomplete when first filed, but when correct, approximately sixty-five percent of applications are approved.<sup>39</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Va. Code Ann. § 53.1-229 – 53.1-231.

<sup>39</sup> SJR, *J. Subcomm. To Study Election Law and Felon Disenfranchisement*, at 2 (Va. 1999), available at <http://dls.state.va.us/pubs/legisrec/1999/SJR423A.htm>.



A controversial practice in Virginia and a number of other states is the imposition of the residency state's disenfranchisement laws on people who commit felonies in less restrictive jurisdictions. In the previously mentioned Supreme Court case *Richardson v. Ramirez*, this practice was challenged, but deemed Constitutional.<sup>40</sup> Thus, if a Virginia resident is convicted of a felony in Vermont, where the punishment does not include the loss of the right to vote, the loss of voting rights are extended to that individual in Virginia. Therefore, Virginia is adding to the punishment decided by Vermont. Cosgrove argues such practices violate due process and the Full Faith and Credit Clause of the Fourth Amendment.<sup>41</sup>

### III. ESTIMATES OF DISENFRANCHISED VOTERS IN VIRGINIA

Estimates of the number of disenfranchised individuals in Virginia vary. As of 2000, Cosgrove estimated 5.3 percent or 269,900 Virginians were disenfranchised in 1996.<sup>42</sup> However, the number of felony convictions has increased every year since 1998, and Manza and Uggens estimate, there were 310,661 disenfranchised in Virginia in 2000.<sup>43</sup> Using a different methodology, Demeo and Ochoa estimate that, 328,302 individuals were disenfranchised in Virginia in 2001.<sup>44</sup>

Estimates of the disenfranchised population in Virginia are likely to be conservative as there are really five groups of people who are disenfranchised either legally or de facto.<sup>45</sup> These groups are: those currently incarcerated, those on parole, those serving felony probation

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<sup>40</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1973).

<sup>41</sup> See Cosgrove, *supra* note 3.

<sup>42</sup> *Id.*

<sup>43</sup> Manza, *supra* note 18.

<sup>44</sup> See Marisa J. Demeo & Steven A. Achoa, *Diminishing Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States*, NATIONAL NETWORK FOR ELECTION REFORM 12, available at <http://www.sentencingproject.org/pdfs/maldef-rpt.pdf> (Dec. 2003).

<sup>45</sup> See generally *Disenfranchisement of People with Felony Convictions*, NATIONAL NETWORK FOR ELECTION REFORM, <http://www.nationalcampaignforfairelections.org/page/-/FELON%20DISENFRANCHISEMENT.pdf> (discussing the groups of disenfranchised voters in different states).

sentences, those who have completed their sentences and have not applied for restoration, and those who are incarcerated or awaiting trials in Virginia jails.<sup>46</sup> Even though this last group is not legally disenfranchised, there is currently no mechanism in place for these people to vote.<sup>47</sup> During the 2000 presidential election, the Department of Justice estimated there were almost 600,000 individuals in this category across the country.<sup>48</sup>

Each year, a number of ex-felons apply for restoration of voting rights, but these numbers are low.<sup>49</sup> For example, The Virginia Commonwealth Crime Commission reports from 1999 to year end 2000, only 43 applications were approved,<sup>50</sup> and only 74 applications were approved in 2001.<sup>51</sup> Using these numbers and the numbers of restorations in previous years, typically, an average of about 0.04 percent of the felony population is having its voting rights restored annually.<sup>52</sup>

In order to work with accurate estimates of the disenfranchised population in Virginia, we contacted the Virginia State Police, who operate the CCRE, and asked for the number of disenfranchised individuals for the year 2000. They responded that the total number of disenfranchised individuals at that time was 663,465.<sup>53</sup> Although this number takes into account ex-felons, it does not take into consideration those individuals who have had their voting rights

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<sup>46</sup> *See id.* at 2.

<sup>47</sup> *Id.*

<sup>48</sup> U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics 2002, 380-84 (2003).

<sup>49</sup> Commonwealth of Virginia, Annual Report of Virginia State Crime Commission (1999-2000). This footnote should not be here. 53 to 55 are fine, but the sentence for 52 simply states these numbers are low. The next sentence explains why they are low.

<sup>50</sup> *Id.* at 6.

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> Correspondence with Virginia State Police (on file with author).

restored or those individuals who have been convicted of more than one felony.<sup>54</sup> In a study tracking prisoners released from Virginia prisons in 1998, Daniel and Anderson report 29.4% of prisoners were re-incarcerated (new felonies and felony technical violations) within a three-year period, and this number steadily decreased after three years.<sup>55</sup> This estimate has been confirmed by Cross (2005) who also found 29 percent of those released from the VA DOC in 1999 were re-incarcerated for new felonies within three years.<sup>56</sup> Using these re-incarceration rates, 194,980 people are not newly disenfranchised in the year 2000 bringing the number of disenfranchised to 468,485.<sup>57</sup> Assuming 0.04 percent of felons were having their voting rights restored annually, and have done so over a period of 20 years, there would be 37,480 restorations.<sup>58</sup>

Our estimate of disenfranchised in Virginia is thus 431,005.<sup>59</sup> This number is still considerably more than the estimate provided by Manza and Uggen for the year 2000;<sup>60</sup> however, it will be used in this study because the estimate is based on the Commonwealth's official records.

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<sup>54</sup> This number accounts for deceased individuals.

<sup>55</sup> Laura L. Daniel & Stephen V. Anderson, Va. Dep't of Corr., *Recidivism in Virginia: Tracking the 1998 release Cohort 4* (2003), <http://www.vadoc.state.va.us/about/facts/default.shtm> (follow "2003 Recidivism Study" hyperlink).

<sup>56</sup> *Id.*

<sup>57</sup> *See id.*

<sup>58</sup> A twenty-year period was chosen as records on the restoration of civil rights in Virginia prior to this time could not be located. This is therefore a conservative estimate and has numerous limitations. However, as Uggen and Manza (2002) write in their national study, estimating the number of ex-felons who are disenfranchised is extremely challenging. Although Uggen and Manza comment they have accounted for differences in restoration rates by state, they did not explain how this was done. Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 *Am Soc. Rev.* 777, 786 (2002), [http://www.soc.umn.edu/~Uggen/Uggen\\_Manza\\_ASR.02.pdf](http://www.soc.umn.edu/~Uggen/Uggen_Manza_ASR.02.pdf).

<sup>59</sup> *See infra* Table 2: Felony Disenfranchisement in Virginia: 2000, p. 46..

<sup>60</sup> Manza, *supra* note 18, at 491.

## IV. STUDY PROCEDURE

This section of the study provides descriptive empirical analysis of those disenfranchised in Virginia, and is a comparative study of the effects of disenfranchisement on voting populations. Descriptive statistics for comparison purposes in this study came from a variety of sources. Voting age population statistics were extracted from the 2000 U.S. Census.<sup>61</sup> Voting registration and actual voting rates came from the Virginia State Board of Elections,<sup>62</sup> the 2000 Census,<sup>63</sup> and the 2000 Voter Supplement dataset of the Current Population Survey conducted by the U.S. Census Bureau.<sup>64</sup> Disenfranchisement statistics were provided by the Virginia Commonwealth Board of Elections<sup>65</sup> and by the Virginia State Police.<sup>66</sup> Prison and parole statistics were provided by the Bureau of Justice Statistics<sup>67</sup> and the VA DOC,<sup>68</sup> and probation statistics were provided by the VA DOC.<sup>69</sup>

Focus for this analysis is centered on the Commonwealth of Virginia, the three main racial/ethnic groups in Virginia – white, black and Hispanic<sup>70</sup> - and also two counties and two cities. These four locations were chosen based on numbers of minorities residing in those counties, or the general population size of the area. For example, Fairfax County has the highest

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<sup>61</sup> See U.S. Census Bureau, United States Census 2000, <http://www.census.gov/main/www/cen2000.html>.

<sup>62</sup> Virginia State Board of Elections, [http://www.sbe.virginia.gov/cms/Statistics\\_Polling\\_Places/Index.html](http://www.sbe.virginia.gov/cms/Statistics_Polling_Places/Index.html).

<sup>63</sup> U.S. Census Bureau, *supra* note 64.

<sup>64</sup> U.S. Census Bureau, *November 2000: Voting and Registration Supplement File*, CURRENT POPULATION SURVEY, <http://www.census.gov/aprd/techdoc/cps/cpsnov00.pdf>.

<sup>65</sup> See Virginia State Board of Elections, *supra* note 65.

<sup>66</sup> See Virginia State Police, *supra* note 56..

<sup>67</sup> United States Department of Justice Office of Justice Programs, Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs>.

<sup>68</sup> DIV. OF OPERATIONS AND CMTY. CORR., VA. DEP'T OF CORR., POPULATION SUMMARY (2000), available at <http://www.vadoc.state.va.us/about/facts/research/new-popsum/2000/jun00popsummary.pdf>

<sup>69</sup> *Id.*

<sup>70</sup> Hispanic in this study refers to Hispanics or Latinos of any race.

percentage of whites and Hispanics, and is the most populated county in Virginia;<sup>71</sup> the City of Richmond has the largest percentage of blacks in Virginia;<sup>72</sup> and the City of Virginia Beach has the second largest population in Virginia.

Table 1 depicts the adult population of Virginia by gender, race, and ethnicity for the chosen locations. Table 1 also includes the numbers of non-citizens in each racial, ethnic, and gender category. Note almost half of Hispanics in Virginia are not citizens and are thus ineligible to vote. There are also a number of black non-citizens in Virginia, about 2.5 percent of the total black adult population. The largest numbers of non-citizens in the Commonwealth of Virginia reside in Fairfax County. This is likely due to Fairfax County's proximity to Washington D.C., where there are a number of international companies and agencies who may have brought workers with them from their home countries, or it may be due to a concentrated number of specialty jobs in the Washington metropolitan area that have been allocated a large number of H visas.

*A. Estimated Disenfranchisement in Virginia*

Table 2 depicts total disenfranchisement rates for whites and blacks in Virginia, as provided by the Virginia State Police.<sup>73</sup> Totals include those incarcerated, on parole, serving felony probation sentences, or those who have previously been convicted of a felony.<sup>74</sup>

The statistics provided here indicate nineteen percent of African American voters in Virginia are disenfranchised, which is alarming, and certainly not at odds with previous estimates. Cosgrove estimated twenty-five percent of black males of voting age were

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<sup>71</sup> <http://factfinder.census.gov/>

<sup>72</sup> *Id.*

<sup>73</sup> The Virginia State Police operates the State Crime Commission and provides felony conviction information to the Commonwealth Board of Elections. See VA CODE ANN. § 19.2-389 (LexisNexis 2007).

<sup>74</sup> See *infra* Table 2, p. 41.

permanently disenfranchised in Virginia in 1998.<sup>75</sup> However, it should be noted that because the VA DOC records Hispanics as primarily “other race,” but sometimes as white or black, and so the estimate of disenfranchised Hispanics is likely conservative.<sup>76</sup> This does afford some indication of the racial and ethnic breakdown of disenfranchised in Virginia, although some caution should be taken in interpreting these findings. Using national data, the Bureau of Justice Statistics reports in 2000, Hispanics made up 15.46 percent of convicted felons in the United States, which would mean of the total number of disenfranchised in Virginia in 2000, some 102,571 would be Hispanic.<sup>77</sup> Unfortunately, national data does not reflect the Hispanic population in Virginia, which is much larger than in other states.<sup>78</sup>

*B. Impact on Voter Registration*

The next step in this analysis was to assess the impact of disenfranchisement on voter registration. The registration rate for blacks is eleven percent less than it is for whites.<sup>79</sup> However, the registration rate for Hispanics in Virginia is less than one-third of the registration rate for whites.<sup>80</sup> This means less than one fifth of all Hispanics in Virginia are registered to vote. Table 3 depicts registration rates by race for the Commonwealth of Virginia.

The voting registration rates for Virginia are not that different from those reported in other locations. For example, King and Mauer reported in the state of Georgia, the registration

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<sup>75</sup> See Cosgrove, *supra* note 3, at 164.

<sup>76</sup> See Daniel & Anderson, *supra* note 58, at 6.

<sup>77</sup> See Table 2, *infra* p. 41; see also Allen J. Beck & Paige M. Harrison, *Prisoners in 2000*, BUREAU OF JUSTICE STATISTICS BULLETIN, August 2001, <http://www.ojp.usdoj.gov/bjs/pub/pdf/p00.pdf>.

<sup>78</sup> U.S. Census Bureau, United States Census 2000, <http://www.census.gov/main/www/cen2000.html>.

<sup>79</sup> See *id.* .

<sup>80</sup> See *id.*

rate for non-blacks was 64.1 percent, and for blacks, 51.4 percent.<sup>81</sup> However, the voting registration rates in Table 3 do not account for those who are ineligible to vote in Virginia because of disenfranchisement. Therefore, Table 4 below depicts voter registration after ineligible voters have been removed.

Once ineligible voters have been removed from the equation, the statewide difference between white and black voters drops from eleven percent to two percent, while the gap grows wider between whites and Hispanics and blacks and Hispanics.<sup>82</sup>

Using the same analysis for the state of Georgia, King and Mauer found there was a seven percent difference between the registration rates for black males when disenfranchisement rates were not considered compared with when they were considered.<sup>83</sup> In Virginia the eleven percent difference indicates disenfranchisement is having an even larger impact on registration rates for blacks than it is having in Georgia.<sup>84</sup>

### C. *Impact on Voter Registration and Participation in Local Communities*

From Commonwealth analysis, we then moved to the two counties and two cities chosen for further analysis. Each location total was derived from the Virginia Commonwealth Board of Elections.<sup>85</sup> Given the Virginia Commonwealth Board of Elections does not collect voting statistics by race, we have relied on the Current Population Survey for estimates of percentage of registration by race.<sup>86</sup> Table 5 depicts registration and voting rates for the four locations.

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<sup>81</sup> Ryan S. King & Marc Mauer, *The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia*, THE SENTENCING PROJECT, September 2004, available at [http://www.sentencingproject.org/Admin/Documents/publications/fd\\_vanishingblackelectorate.pdf](http://www.sentencingproject.org/Admin/Documents/publications/fd_vanishingblackelectorate.pdf).

<sup>82</sup> See Tables 3-4 *infra*, pp. 41-42.

<sup>83</sup> King & Mauer, *supra* note 81, at 6.

<sup>84</sup> See Tables 4 *infra*, p. 42.

<sup>85</sup> Correspondence received from the Virginia Board of Elections (on file with author).

<sup>86</sup> *Id.*

By location, there are large differences in the numbers of people who were registered and actually voted. For example, the voting rate of people residing in Virginia Beach City was almost ten percent lower than the rate in Arlington or Fairfax Counties.<sup>87</sup> However, what is striking in this table is how similar the percentage of those registered actually vote by race. Almost sixty-one percent of registered whites voted in each of the four counties, while just less than fifty-two percent of blacks who were registered in these four locations, voted.<sup>88</sup> Although explanations of why people vote and do not vote are beyond the scope of this paper, it appears getting people to register is more than half the battle against voter non-participation. Table 5 also continues to illustrate the trend in voting by race, in which Hispanics vote considerably less than people from other racial groups.

In collecting information about disenfranchised individuals in the four locations, we encountered an interesting problem. The Commonwealth Board of Elections could provide us with the total number of *newly* disenfranchised in each location, but they could not provide a *total* number of disenfranchised for each location.<sup>89</sup> The Virginia State Police could also not provide that information.<sup>90</sup> Neither agency appears to keep a running total by location.<sup>91</sup> Therefore, Table 6 below provides information about the number of voters in the 2000 elections, and the number of newly disenfranchised in each of the four locations. Included in this table is an estimate of newly disenfranchised individuals for a twenty-year period. This estimate is very rudimentary, and assumes disenfranchisement has been taking place or would continue to take

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<sup>87</sup> See Table 5 *infra*, p. 42.

<sup>88</sup> See U.S. Census Bureau, CURRENT POPULATION SURVEY, available at <http://www.census.gov/cps/>.

<sup>89</sup> Correspondence from VA Board of Elections (on file with author).

<sup>90</sup> See Virginia State Police Interview, *supra* note 53.

<sup>91</sup> Numerous contacts were made to different individuals at both agencies to check and re-check that totals by location were not kept.



place at its current rates, so does not consider fluctuations in felony conviction rates.<sup>92</sup> However, the estimate does provide an idea of the effects of disenfranchisement on the different locations. Given these estimates are based on newly disenfranchised, people who are already disenfranchised, or who have been convicted of subsequent felonies, are not included here.

Recognizing the limitations of the estimates, in the two locations where blacks make up a large percentage of the adult population, Richmond City and Virginia Beach, disenfranchisement rates are much higher than for the other locations. These very preliminary findings echo those of King and Mauer for counties in Georgia.<sup>93</sup>

*D. Examining the Commonwealth-Wide Newly Disenfranchised Population*

The final section of this study examines the population of inmates who are incarcerated, on parole, on felony probation, or were released from the same in Virginia during the year 2000. Statistics for this examination came from the National Corrections Reporting Program tabulated by the Bureau of Justice Statistics and the VA DOC.<sup>94</sup>

Table 7 depicts the numbers of those individuals incarcerated in prison, jail, on parole and on felony probation in Virginia at mid-year in 2000. Race and ethnic estimates are based on national statistics of prisoners, parolees, and probationers.<sup>95</sup> Felony probation is based on a total

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<sup>92</sup> This estimate also does not include a correction for mortality, which could be done complexly with ages of felons and life expectancy trends. However, even using such complex techniques would still only provide an estimate with numerous limitations. We would argue that failure to account for mortality here is balanced by increases in the felony probation population in the past several years. See T. Minton & P. Harrison, *Adults on Probation in the United States*, BJS ANNUAL PROBATION DATA SURVEY DATA SERIES 2000, available at <http://www.ojp.usdoj.gov/bjs/data/corpop11.csv>.

<sup>93</sup> King & Mauer, *supra* note 81, at 6

<sup>94</sup> See *infra* text and accompanying note 96.

<sup>95</sup> A. J. Beck & J.C. Karberg, *Prison and Jail Inmates at Midyear 2000*, BUREAU OF JUSTICE STATISTICS BULLETIN, March 2001, <http://ojp.usdoj.gov/bjs/pub/pdf/pjim00.pdf>. In the year 2000, 6.6 percent of prison inmates were women, 35.7 percent were white, 46.2 percent were black, 16.4 percent were Hispanic, and 1.7 percent was of some other race. Thirteen percent of parolees for the same period for females, 40 percent were white, 41 percent were black, 18 percent were Hispanic, and one percent was some other race. Twenty-three percent of felony probationers were female during 2000, 56 percent were white, 30 percent were black, 12 percent were Hispanic, and two percent were of some other race. See *id.*

probation count of 32,496 provided by the VA DOC, of which fifty-two percent are on felony probation.<sup>96</sup>

In June of 2000, there were 10,600 inmates released from Virginia prisons, 3,367 released from parole, and approximately 7,960 released from felony probation.<sup>97</sup> Table 8 below depicts these offenders by race, ethnicity, and gender.

Of the prison releases, blacks account for 46.2 percent, whites 35.7 percent, and Hispanics an estimated 16.4 percent.<sup>98</sup> Slightly less than seven percent of offenders released from prison were females.<sup>99</sup> The percentage of females increases dramatically for parole (13%) and probation (23%), and the number of blacks on felony probation decreases substantially from those in prison (46.2% versus 30%).<sup>100</sup>

In the annual probation and parole survey data series, the Bureau of Justice Statistics analysis indicates the number of probationers in Virginia tripled from 1978 to 2000,<sup>101</sup> but the numbers of offenders on parole has been fairly stable over the past several years.<sup>102</sup>

Using the numbers from Tables 7 and 8, further analysis examined the percentage of the voting population who were newly disenfranchised in the year 2000. It is important to note this examination does not include anyone that was released from prison, parole or felony probation in

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<sup>96</sup> Press Release, Bureau of Justice Statistics, National Correctional Population Reaches New High – Grows by 126,400 during 2000 to Total 6.5 Million Adults (Aug. 26, 2001) *available at* [www.ojp.usdoj.gov/bjs/pub/press/ppus00pr.htm](http://www.ojp.usdoj.gov/bjs/pub/press/ppus00pr.htm)

<sup>97</sup> Virginia Department of Corrections. Population Summary June 2000, Richmond, VA: Division of Operations and Community Corrections, *available at* <http://www.vadoc.state.va.us/about/facts/research/new-popsum/2000/jun00popsummary.pdf>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Minton & Harrison, *supra* note 96.

<sup>102</sup> *Id.*

any other year. Therefore, the numbers are very conservative. Table 9 presents the disenfranchised in Virginia for the year 2000.

Again recognizing the limitations of the data, we find white females are the least likely to be disenfranchised in Virginia. Among minority groups, 6% of black males in Virginia were newly disenfranchised in 2000.<sup>103</sup> This is lower than was found for black males in Georgia,<sup>104</sup> but still is four times the disenfranchisement rate for white males. For Hispanics, even after adjusting the statistics for voting eligibility, almost nine percent of Hispanic males were disenfranchised in Virginia in 2000.<sup>105</sup> Although this is at best a rough estimate, coupled with the low numbers of Hispanic citizens in Virginia, the Hispanic population currently has a very weak voice in the democratic process.

#### IV. DISCUSSION

This paper provided the historical context of felony disenfranchisement in the Commonwealth of Virginia, and empirically examined disenfranchisement and its effect on voting in the Commonwealth and in four locations using descriptive statistics.

Historical analysis revealed disenfranchisement laws in Virginia have roots dating back to 1830, and have not changed dramatically since then, despite several recent attempts at change. Virginia remains one of the most restrictive states in the United States. However, given the constitution of Virginia allows for restoration of civil rights by the Governor or “appropriate authority,” there is room for legal measures that would allow automatic restoration of civil rights. In a climate where almost every study on re-entry and recidivism prevention discusses the

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<sup>103</sup> See Table 9 *infra*, p. 28.

<sup>104</sup> See King & Mauer, *supra* note 85.

<sup>105</sup> See Table 9 *infra*, p. 28.

importance of community involvement, and civic responsibility,<sup>106</sup> the Commonwealth of Virginia needs to re-assess how they are dealing with this issue and re-visit the Crime Commissions 2003 recommendations, only a few of which appear to have been implemented.

Included in this study was a comparative analysis of the impact of disenfranchisement on voting populations in Virginia and on four locations in the Commonwealth. There are a number of limitations of this analysis, primarily because of the way data is collected by agencies in Virginia. However, using national population statistics for prison, parole, and felony probation, analysis here indicates disenfranchisement of both blacks and Hispanics is a serious concern in Virginia. In order to get a much more accurate picture of how politically disadvantaged these groups are, the VA DOC needs to start collecting data by race. The Virginia Commonwealth Board of Elections does not collect any data by race since racial information is not required to vote,<sup>107</sup> and the VA DOC does not collect data on Hispanics under their supervision.<sup>108</sup> Currently, Hispanics in the VA DOC are counted as other, or sometimes as black or white, making estimates of all racial and ethnic groups in the VA DOC difficult. Given the extreme difficulty we encountered in ascertaining disenfranchised statistics in Virginia, it appears also the process is in need of streamlining.

Again, in a time when less than half the population casts a ballot on election day, the impact ex-felons could have on elections in Virginia could be substantial. Using estimates, previous studies have confirmed such significant impacts in Virginia and other states.<sup>109</sup> Further adding to the argument against felony disenfranchisement is recent research indicates the

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<sup>106</sup> See Jeremy Travis, *But They All Come Back: Re-Thinking Prisoner Reentry*, PAPERS FROM THE EXECUTIVE SESSIONS ON SENTENCINGS AND CORRECTIONS (Office of Justice Programs), May 2000, at 2.

<sup>107</sup> See *supra* text and accompanying notes 89-90.

<sup>108</sup> *Id.*

<sup>109</sup> See Manza, *supra* note 18, at 498.

American public is not overwhelmingly supportive of felony disenfranchisement generally, and specifically, is overwhelmingly against felony probation disenfranchisement.<sup>110</sup>

Travis writes disenfranchisement is an example of an invisible punishment placed on felons in addition to their visible sentence.<sup>111</sup> Many felons may not know they will lose their voting rights, or public housing assistance, or eligibility for welfare etc., if they are convicted of a felony.<sup>112</sup> Further, Travis also maintains invisible sanctions such as disenfranchisement remain so because they are out of the public view, are outside the scope of traditional sentences, and most importantly, because they are not addressed in the same legal codes as the felonies they are attached to are addressed.<sup>113</sup> Even legislators do not see the full impact of felony convictions.<sup>114</sup> In Virginia, there appears to be a growing division of those people who have civil rights and those people who do not. This division disadvantages both black and Hispanic voters.

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<sup>110</sup> Jeff Manza, Clem Brooks, & Christopher Uggen, *Public Attitudes toward Felon Disenfranchisement in the United States*. 68 PUB. OPINION Q. 275, 281-83 (2004).

<sup>111</sup> JEREMY TRAVIS, *Invisible Punishment: An Instrument of Social Exclusion*, in INVISIBLE PUNISHMENT 15, 15-17 (March Mauer & Meda Chesney-Lind eds., 2002).

<sup>112</sup> *See id.* at 18.

<sup>113</sup> *Id.* at 15-17.

<sup>114</sup> *See id.* at 20-25.

**Table 1: Population Estimates of Adults over 18 in Virginia by Race and Ethnicity<sup>115</sup>**

Area	Race/Gender	Number	Percent	Number of Non-Citizens
Virginia	Total Males	2,579,825		129,981
	Total Females	2,762,866		115,685
	White Males	1,924,709		52,255
	White Females	2,034,663		54,581
	Black Males	466,156		12,399
	Black Females	514,078		12,461
	Hispanic Males	121,058		65,327
	Hispanic Females	104,878		48,643
Arlington County	White Males	56,008	2.90	6,568
	White Females	65,393	3.20	6,043
	Black Males	6,924	1.48	1,270
	Black Females	8,954	1.74	1,220
	Hispanic Males	14,037	11.59	10,297
	Hispanic Females	12,028	11.46	7,678
Richmond City	White Males	32,619	1.69	818
	White Females	35,334	1.73	456
	Black Males	34,003	7.29	313
	Black Females	38,233	7.44	355
	Hispanic Males	2,364	1.95	1,370
	Hispanic Females	1,605	1.53	588
Fairfax County	White Males	252,162	13.10	18,877
	White Females	236,060	11.60	19,848

<sup>115</sup> Three largest ethnic groups included only. These are statistics for those people who indicated one race only. For 2000, 98% of respondents indicated only one race in the Census. See U.S. Census Bureau, *supra* note 64.

	Black Males	28,219	6.05	4,017
	Black Females	30,293	5.89	4,230
	Hispanic Males	39,309	32.57	24,653
	Hispanic Females	35,994	34.31	20,217
Virginia Beach City	White Males	113,054	5.87	1,530
	White Females	115,162	5.66	2,931
	Black Males	24,444	5.24	416
	Black Females	28,245	5.49	526
	Hispanic Males	5,697	4.70	693
	Hispanic Females	5,739	5.47	912

Source: U.S. Census 2000, Summary File 4

**Table 2: Felony Disenfranchisement in Virginia: 2000**

Race	Voting Age Population (minus non-citizens)	No. Disenfranchised	Percent Disenfranchised
Total	5,263,000	431,005 <sup>116</sup>	8.18%
Total White	3,852,536	239,029	6.20%
Total Black	955,374	186,952	19.56%
Total Hispanics <sup>117</sup>	111,966	2,805	2.50%

**Table 3: Virginia Registration Rates (2000)**

Race & Gender	Voting Age Population	Number Registered	Percent Registered
Total	5,342,691	3,063,000	57.33
Total White	3,959,372	2,435,000	63.20
Total Black	980,234	503,000	52.65
Total Hispanic	225,936	32,000	14.16

Source: CPS 2000 Voter and Registration Supplement

<sup>116</sup> Categories will not equal total as some racial categories, such as Asian Americans and Native Americans have not been included here.

<sup>117</sup> Information on Hispanic race is currently not systematically recorded by the VA DOC, but is recorded primary as “other race”. The number of “other race” individuals is therefore used here.



**Table 4: Virginia Registration and the Impact of Disenfranchisement**

Race	Voting Age Population	#Disenfranchised	# Eligible to Register	# Registered	% Registered (of all adults)
Total	5,342,691	431,005	4,911,686	3,063,000	62.36
Total White	3,959,372	239,029	3,720,353	2,435,000	65.45
Total Black	980,234	186,952	793,282	503,000	63.40
Total H.	225,936	2,805	223,131	32,000	14.34

**Table 5: Virginia Registration/ Voting Rates by Location**

County/Race/Gender	Number Registered	Percent Registered	Number Voted	Percent Voted (of those registered)
Arlington County	118,105	94.75	83,559	70.74
Whites	67,776	62.3	41,122	60.67
Blacks	7,048	52.65	3,642	51.67
Hispanics	2,306	28.50	533	23.11
Fairfax County	583,926	96.39	413,775	70.86
Whites	280,037	62.3	169,910	60.67
Blacks	26,465	52.65	13,672	51.66
Hispanics	8,673	28.50	2,009	23.16
Richmond City	102,204	68.09	65,926	64.50
Whites	41,541	62.3	25,205	60.67
Blacks	37,681	52.65	19,466	51.65
Hispanics	573	28.50	133	23.21

Virginia Beach City	242,882	81.37	149,771	61.66
Whites	139,400	62.3	84,579	60.67
Blacks	27,245	52.65	14,075	51.66
Hispanics	2,802	28.50	649	23.16

Source: Virginia Commonwealth Board of Elections. Statistics by race and gender were not available. Race statistics were estimated using the CPS averages for the Commonwealth of VA. Racial groups will not add to totals, as only three racial groups are included in analysis.

**Table 6: Impact of Disenfranchisement in the Four Counties**

Location	Voters in the 2000 Presidential Election	#Newly Disenfranchised	Percent	20 year estimate	20yr estimate of percent disenfranchised
Arlington County	83,559	88	0.10	1,760	2.10%
Fairfax County	413,775	365	0.08	7,300	1.76%
Richmond City	65,926	332	0.50	6,640	10.07%
Virginia Beach	149,771	441	0.29	8,820	5.89%

**Table 7: Current Felons in Virginia for the Year 2000**

Race/gender	Prison	Parole	Felony Probation	Jail	Total
Males	27,917	4,803	13,005	2,624	48,349
Females	1,973	718	3,885	338	6,914
Total	29,890	5,521	16,890	2,962	55,263
Total White	10,671	2,208	9,458	1,241	23,578
White Males	9,967	1,921	7,283	1,100	20,271
W. Females	704	287	2,175	141	3,307
Total Black	13,809	2,264	5,067	1,223	22,363
Black Males	12,898	1,970	3,902	1,084	19,854
B. Females	911	294	1,165	139	2,509
Total Other <sup>118</sup>	508	55	337	47	947
Other Males	474	48	260	42	824
O. Females	34	7	77	5	123
Total H.	4,902	994	2,027	444	8,367
H. Males	4,579	865	1,561	394	7,399
H. Females	323	129	466	50	968

<sup>118</sup> Other race refers to Native Americans, Asians, Hawaiians, Pacific Islanders, and any other race. The largest racial group in Virginia of this category is Asians, who according to the US Census, make up about 86% of the individuals in the other race group.

**Table 8: Prison, Parole, and Felony Probation Releases in Virginia**

Race/gender	Prison Release	Parole Release	Felony Probation Release	Total
Males	9,481	3,069	5,855	18,405
Females	1,119	298	1,749	3,166
Total	10,600	3,358	7,604 <sup>119</sup>	21,571
White Total	3,384	1,343	4,258	8,985
White Males	3,046	1,168	3,279	7,493
White Females	338	175	979	1,492
Black Total	4,897	1,377	2,281	8,555
Black Males	4,407	1,198	1,756	7,361
Black Females	490	179	525	1,194
Other Race Tot	180	28	152	360
Other Male	162	24	117	303
Other Female	18	4	35	57
Hispanic Tot <sup>120</sup>	1,738	321	912	2,971
Hispanic Males	1,564	279	702	2,545
H. Females	174	42	210	426

<sup>119</sup> Estimates based on VA DOC total number of probationers and the Bureau of Justice Statistics counts of 52% of probationers nationally in 2000 were felony probationers, and 45% of these were released from probation in 2000.

<sup>120</sup> Given VA DOC does not collect information on offender’s Hispanic origin, we have used the national estimate of Hispanics incarcerated, on parole, and on felony probation from the Bureau of Justice Statistics National Corrections Reporting Program.

**Table 9: Newly Disenfranchised in Virginia in 2000**

Race/Gender	Total Tables 7 and 8	Percent of Eligible Voting Population
Males	66,754	
Females	10,080	
Total	76,834	
White Males	27,764	1.48%
White Females	4,799	0.24%
White Total	32,563	0.84%
Black Males	27,215	6.00%
Black Females	3,703	0.73%
Black Total	30,918	3.23%
Other Male	1,127	1.05%
Other Female	180	0.15%
Other Race Tot	1,307	0.58%
Hispanic Males	9,944 (4,927 citizens)	8.84%
H. Females	1,394 (686 citizens)	1.20%
Hispanic Tot <sup>121</sup>	11,338 (5,613 citizens)	5.01%

<sup>121</sup> Given VA DOC does not collect information on offender’s Hispanic origin, we have used the national estimate of Hispanics incarcerated, on parole, and on felony probation from the Bureau of Justice Statistics National Corrections Reporting Program.