

FIEC

Voting

Restoration

Amendment

14-01

# Financial Impact Estimating Conference

## Voting Restoration Amendment Serial Number 14-01

### Table of Contents

Authorization.....	Tab 1
<ul style="list-style-type: none"><li>• Letter of Request for FIEC (including petition signature count and ballot language)</li><li>• Statute 100.371</li><li>• Notice of Meeting Dates</li></ul>	
Current Law .....	Tab 2
<ul style="list-style-type: none"><li>• Florida Constitution<ul style="list-style-type: none"><li>○ Article VI, Section 4. Disqualifications (Florida Constitution)</li></ul></li><li>• Florida Commission on Offender Review, Office of Executive Clemency<ul style="list-style-type: none"><li>○ Rules of Clemency</li><li>○ Overview of Office</li><li>○ Frequently Asked Questions About Clemency</li></ul></li><li>• Section 97.041, Florida Statutes – Qualifications to register or vote</li><li>• Section 97.052, Florida Statutes – Uniform statewide voter registration application</li><li>• Section 97.057, Florida Statutes – Voter registration by the Department of Highway Safety and Motor Vehicles</li><li>• Florida Voter Registration Application Form</li><li>• Section 101.043, Florida Statutes – Identification required at polls</li><li>• Section 944.605, Florida Statutes – Inmate release; notification; identification card</li><li>• Chapter 2011-207 – Committee Substitute for Senate Bill No. 146</li><li>• Section 98.075, Florida Statutes – Registration records maintenance activities; ineligibility determinations</li><li>• Section 98.093, Florida Statutes – Duty of officials to furnish information relating to persons convicted of a felony</li><li>• Section 951.29, Florida Statutes – Procedure for requesting restoration of civil rights of county prisoners convicted of felonies</li></ul>	
Florida State Agency Reports .....	Tab 3
<ul style="list-style-type: none"><li>• Florida Commission on Offender Review<ul style="list-style-type: none"><li>○ Executive Clemency Timeline 1991-2015</li><li>○ Collection of Statistics and Evaluation of Clemency Action, July 1, 2016</li><li>○ 2015 Annual Report</li></ul></li><li>• Florida Department of Corrections, Florida ID Data for August 2016 Releases</li></ul>	
Reports .....	Tab 4
<ul style="list-style-type: none"><li>○ Turnout and Party Registration among Criminal Offenders in the 2008 General Election, September 2011</li><li>○ Governing the restoration of civil rights for ex-felons: An evaluation of the Executive Clemency Board in Florida, December 2012</li></ul>	

- Rules of Executive Clemency Should Allow Level-1 Offenders to Have Their Civil Rights Automatically Restored Upon Completion of Their Sentences, A Report of the Florida Advisory Committee to the U.S. Commission on Civil Rights, June 2014
- Felony Disenfranchisement in Florida, Past, Present, and Future, Summer 2015
- National Conference of State Legislatures - Felon Voting Rights, September 2016
- The Sentencing Project - Felony Disenfranchisement: A Primer, May 2016
- ProCon.org - State Felon Voting Laws, August 2016
- Brennan Center for Justice - Criminal Disenfranchisement Laws across the United States, August 2016
- The Sentencing Project - 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016
- Berkeley La Raza Law Journal – The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism, 2012

Florida and Other State Legislation ..... Tab 5

- Florida Legislature, 2006 Regular Session, CS/SB 2230
  - Bill Analysis, April 19, 2006
- Commonwealth of Kentucky, 2008 Regular Session, HB 70, State Fiscal Note Statement, April 11, 2008
- Maryland General Assembly, 2015 Session, Senate Bill 340, Fiscal and Policy Note, Revised March 24, 2015
- State of New Mexico, First Session, 2001, CS/SB 204, Fiscal Impact Report, March 1, 2001
- State of Texas, House Bill 1001, 75th Regular Session, 1997

Presentations..... Tab 6

- Proponent’s Email
  - Proponent’s Fiscal Argument
  - Florida Parole Commission Report – July 1, 2011
- Ion Sancho
  - Mailing Costs
  - Certification of Eligibility Records Maintenance

Agency Responses ..... Tab 7

- Florida Commission on Offender Review
  - Clemency Databases
  - 2007 Automatic Approval of Restoration of Civil Rights or Alien Status under Florida Law
  - FCOR Checklist
  - Reasons RCR Applications Determined Ineligible Table
  - Restoration of Civil Rights Applications Received Between 2003-2015 Table
  - Exhibit D-3A, FY2009-10, Parole Commission, 10/15/2008, Pages 9-11
  - Florida Parole Commission – Proviso Report to the Legislature October 1, 2009
  - RCR Granted by Year
  - FDC TOS/EOS Restoration of Civil Rights Applications Received 2008
- Florida Department of Law Enforcement
  - Arrests and Dispositions for FS 104.011, July 2000 - June 2016
  - FDLE Voter Information

**Tab 1**

# **Authorization**



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

September 14, 2016

Financial Impact Estimating Conference  
c/o Ms. Amy Baker, Coordinator  
Office of Economic and Demographic Research  
111 West Madison Street, Ste. 574  
Tallahassee, Florida 32399-6588

Dear Ms. Baker:

Section 15.21, Florida Statutes, provides that the Secretary of State shall submit an initiative petition to the Financial Impact Estimating Conference when a sponsoring political committee has met the registration, petition form submission and signature criteria set forth in that section.

The criteria in section 15.21, Florida Statutes, has now been met for the initiative petition titled *Voter Restoration Amendment*, Serial Number 14-01. Therefore, I am submitting the proposed constitutional amendment petition form, along with a status update for the initiative petition, and a chart that provides a statewide signature count and count by congressional districts.

Sincerely,

A handwritten signature in blue ink that reads "Ken Detzner".

Ken Detzner  
Secretary of State

**RECEIVED**  
9-15-16  
SB  
hand-delivered

KD/am

pc: Desmond Meade, Chairperson  
Floridians for a Fair Democracy, Inc.

Enclosures

**Division of Elections**  
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399  
850.245.6200 • 850.245.6217 (Fax) • [DOS.MyFlorida.com/elections](http://DOS.MyFlorida.com/elections)



**Attachment for Initiative Petition  
Voter Restoration Amendment  
Serial Number 14-01**

1. **Name and address of the sponsor of the initiative petition:**  
Desmond Meade, Chairperson  
Floridians for a Fair Democracy  
3000 Gulf-to-Bay Blvd., Suite 503  
Clearwater, Florida 33759
2. **Name and address of the sponsor's attorney, if the sponsor is represented:**  
Unknown
3. **A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot:** As of September 14, 2016, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 683,149 valid signatures were required for placement on the 2016 general election ballot. The total number of signatures required to have an item placed on the 2018 general election ballot will not be known until after the 2016 general election
4. **If the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process:** As of September 14, 2016, the Supervisors of Elections have certified a total of 70,012 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2016 general election ballot.
5. **The date of the election during which the sponsor is planning to submit the proposed amendment to the voters:** Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 6, 2018, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2018.
6. **The last possible date that the ballot for the target election can be printed in order to be ready for the election:** Unknown
7. **A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request:** The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on September 14, 2016.
8. **The names and complete mailing addresses of all of the parties who are to be served:** This information is unknown at this time.

FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

**SUMMARY OF PETITION SIGNATURES**

Political Committee: **Floridians for a Fair Democracy, Inc.**

Amendment Title: **Voter Restoration Amendment**

Congressional District	Voting Electors in 2012 Presidential Election	For Review 10% of 8% Required By Section 15.21 Florida Statutes	For Ballot 8% Required By Article XI, Section 3 Florida Constitution	Signatures Certified	
FIRST	356,435	2,851	28,515	2,485	
SECOND	343,558	2,748	27,485	3,958	***
THIRD	329,165	2,633	26,333	1,290	
FOURTH	351,564	2,813	28,125	1,444	
FIFTH	279,598	2,237	22,368	6,013	***
SIXTH	363,402	2,907	29,072	1,767	
SEVENTH	333,990	2,672	26,719	1,718	
EIGHTH	365,738	2,926	29,259	4,140	***
NINTH	277,101	2,217	22,168	936	
TENTH	329,366	2,635	26,349	2,239	
ELEVENTH	359,004	2,872	28,720	1,496	
TWELFTH	345,407	2,763	27,633	679	
THIRTEENTH	344,500	2,756	27,560	1,378	
FOURTEENTH	295,917	2,367	23,673	2,557	***
FIFTEENTH	304,932	2,439	24,395	2,556	***
SIXTEENTH	360,734	2,886	28,859	1,720	
SEVENTEENTH	299,464	2,396	23,957	1,178	
EIGHTEENTH	345,399	2,763	27,632	2,152	
NINETEENTH	323,317	2,587	25,865	1,053	
TWENTIETH	264,721	2,118	21,178	5,300	***
TWENTY-FIRST	326,392	2,611	26,111	1,595	
TWENTY-SECOND	329,816	2,639	26,385	2,537	
TWENTY-THIRD	290,042	2,320	23,203	3,581	***
TWENTY-FOURTH	263,367	2,107	21,069	6,252	***
TWENTY-FIFTH	240,521	1,924	19,242	1,020	
TWENTY-SIXTH	268,898	2,151	21,512	4,817	***
TWENTY-SEVENTH	247,023	1,976	19,762	4,162	***
<b>TOTAL:</b>	<b>8,539,371</b>	<b>68,314</b>	<b>683,149</b>	<b>70,023</b>	

# CONSTITUTIONAL AMENDMENT PETITION FORM

**Note:**

- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections
- Under Florida Law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]
- If all requested information on this form is not completed, the form will not be valid.

Your name: \_\_\_\_\_  
Please Print Name as it appears on your Voter Information Card

Your address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Please change my legal address on my voter registration record to the above residence address (check box, if applicable).

Voter Registration Number: \_\_\_\_\_ or Date of Birth: \_\_\_\_\_

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

**BALLOT TITLE:** Voting Restoration Amendment

**BALLOT SUMMARY:** This amendment restores the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole or probation. The amendment would not apply to those convicted of murder or sexual offenses, who would continue to be permanently barred from voting unless the Governor and Cabinet vote to restore their voting rights on a case by case basis.

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Article VI, § 4.

**FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:**

**Article VI, Section 4. Disqualifications.—**

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

(b c) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

\_\_\_\_\_  
DATE OF SIGNATURE

X \_\_\_\_\_  
SIGNATURE OF REGISTERED VOTER

Initiative petition sponsored by Floridians for a Fair Democracy, Inc., 3000 Gulf-to-Bay Blvd., Suite 503, Clearwater, FL 33759

If paid petition circulator is used:

Circulator's name \_\_\_\_\_

Circulator's address \_\_\_\_\_

**RETURN TO:**

Floridians for a Fair Democracy, Inc.  
3000 Gulf-to-Bay Blvd., Suite 503  
Clearwater, FL 33759

For Official Use Only:

Serial Number: 14-01

Date Approved: 10/31/2014



**100.371 Initiatives; procedure for placement on ballot.—**

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election, provided the initiative petition has been filed with the Secretary of State no later than February 1 of the year the general election is held. A petition shall be deemed to be filed with the Secretary of State upon the date the secretary determines that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors under this code.

(2) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. [106.03](#) and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The Secretary of State shall adopt rules pursuant to s. [120.54](#) prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats.

(3) An initiative petition form circulated for signature may not be bundled with or attached to any other petition. Each signature shall be dated when made and shall be valid for a period of 2 years following such date, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The supervisor shall promptly verify the signatures within 30 days after receipt of the petition forms and payment of the fee required by s. [99.097](#). The supervisor shall promptly record, in the manner prescribed by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The supervisor may verify that the signature on a form is valid only if:

- (a) The form contains the original signature of the purported elector.
- (b) The purported elector has accurately recorded on the form the date on which he or she signed the form.
- (c) The form sets forth the purported elector's name, address, city, county, and voter registration number or date of birth.
- (d) The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector in the state.

The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee that circulated the petition is no longer seeking to obtain ballot position.

(4) The Secretary of State shall determine from the signatures verified by the supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. [101.161](#).

(5)(a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b) The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(c) All meetings of the Financial Impact Estimating Conference shall be open to the public. The President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation, and enforcement of this subsection.

1. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

2. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

3. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot pursuant to s. [101.161](#)(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(d) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. [101.161](#)(1).

(e)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial

impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. [101.20](#).

(6) The Department of State may adopt rules in accordance with s. [120.54](#) to carry out the provisions of subsections (1)-(5).

(7) No provision of this code shall be deemed to prohibit a private person exercising lawful control over privately owned property, including property held open to the public for the purposes of a commercial enterprise, from excluding from such property persons seeking to engage in activity supporting or opposing initiative amendments.

**History.**—s. 15, ch. 79-365; s. 12, ch. 83-251; s. 30, ch. 84-302; s. 22, ch. 97-13; s. 9, ch. 2002-281; s. 3, ch. 2002-390; s. 3, ch. 2004-33; s. 28, ch. 2005-278; s. 4, ch. 2006-119; s. 25, ch. 2007-30; s. 1, ch. 2007-231; s. 14, ch. 2008-95; s. 23, ch. 2011-40.

NOTICE OF WORKSHOPS AND CONFERENCE  
FINANCIAL IMPACT ESTIMATING CONFERENCE

The Financial Impact Estimating Conference (FIEC) will be holding workshops and a conference on the petition initiative entitled “***Voting Restoration Amendment***”. Unless otherwise indicated on the schedule below, all meetings will begin at 9:00 a.m. in Room 117, Knott Building, 415 W. St. Augustine Street, Tallahassee, Florida. They will continue until completion of the agenda.

The FIEC is required by s. 100.371, Florida Statutes, to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. In this regard, the FIEC is now in the process of preparing financial impact statements to be placed on the 2018 ballot that show the estimated increase or decrease in any revenues or costs to state and local governments resulting from the proposed initiative.

The purpose of the Public Workshop is to provide an opportunity for proponents and opponents of the initiative to make formal presentations to the FIEC regarding the probable financial impact of the initiative. In addition to the workshop, proponents and opponents may submit information at any time to the FIEC by contacting the Legislative Office of Economic and Demographic Research (contact information below).

***Voting Restoration Amendment***

- Public Workshop – October 5, 2016
- Principals’ Workshop – October 17, 2016
- Formal Conference – October 26, 2016

For additional information regarding the meetings, please contact the Florida Legislature’s Office of Economic and Demographic Research at (850) 487-1402.

Address for submitting information to the FIEC:

The Florida Legislature

Office of Economic and Demographic Research

111 West Madison, Suite 574

Tallahassee, FL 32399-6588

Email: [edrcoordinator@leg.state.fl.us](mailto:edrcoordinator@leg.state.fl.us)

FAX: (850) 922-6436

For additional information regarding the Financial Impact Estimating Conference process and the Initiative Petition process, please visit the Florida Legislature's Office of Economic and Demographic Research's website at: <http://edr.state.fl.us/Content/constitutional-amendments/index.cfm> and the Florida Department of State, Division of Elections' website at: <http://election.dos.state.fl.us/initiatives/initiativelist.asp>

**Tab 2**

# **Current Law**

**SECTION 4. Disqualifications.—**

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

**History.—**Am. by Initiative Petition filed with the Secretary of State July 23, 1992; adopted 1992.

## **RULES OF EXECUTIVE CLEMENCY**

### **1. STATEMENT OF POLICY**

Executive Clemency is a power vested in the Governor by the Florida Constitution of 1968.

Article IV, Section 8(a) of the Constitution provides:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

The Governor and members of the Cabinet collectively are the Clemency Board. Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposes.

### **2. ADMINISTRATION**

A. These rules were created by mutual consent of the Clemency Board to assist persons in applying for clemency. However, nothing contained herein can or is intended to limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative.

B. The Office of Executive Clemency was created to assist in the orderly and expeditious exercise of this executive power.

C. The Governor, with the approval of at least two members of the Clemency Board, appoints a Coordinator who hires all assistants. The Coordinator and assistants comprise the Office of Executive Clemency. The Coordinator must keep a proper record of all proceedings and is the custodian of all records.

### **3. PAROLE AND PROBATION**

The Clemency Board will neither grant nor revoke parole or probation.



#### **4. CLEMENCY**

The Governor has the unfettered discretion to deny clemency at any time, for any reason. The Governor, with the approval of at least two members of the Clemency Board, has the unfettered discretion to grant, at any time, for any reason, the following forms of clemency:

##### **I. Types of Clemency**

##### **A. Full Pardon**

A Full Pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms.

##### **B. Pardon Without Firearm Authority**

A Pardon Without Firearm Authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

##### **C. Pardon for Misdemeanor**

A Pardon for a Misdemeanor Conviction releases a person from punishment and forgives guilt.

##### **D. Commutation of Sentence**

A Commutation of Sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms. (See also Rule 15 on commutation of death sentences.)

##### **E. Remission of Fines and Forfeitures**

A Remission of Fines or Forfeitures suspends, reduces, or removes fines or forfeitures.

##### **F. Specific Authority to Own, Possess, or Use Firearms**

The Specific Authority to Own, Possess, or Use Firearms restores to an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal

firearms laws, the Clemency Board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts. In order to comply with the federal laws, a Presidential Pardon or a Relief of Disability from the Bureau of Alcohol, Tobacco and Firearms must be issued in cases involving federal court convictions. A pardon or restoration of civil rights with no restrictions on firearms must be issued by the state where the conviction occurred.

#### **G. Restoration of Civil Rights in Florida**

The Restoration of Civil Rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms. Such restoration shall not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

#### **H. Restoration of Alien Status under Florida Law**

The Restoration of Alien Status Under Florida Law restores to an applicant who is not a citizen of the United States such rights enjoyed by him or her, under the authority of the State of Florida, which were lost as a result of a conviction of any crime that is a felony or would be a felony under Florida law, except the specific authority to own, possess, or use firearms. However, restoration of these rights shall not affect the immigration status of the applicant (i.e., a certificate evidencing Restoration of Alien Status Under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

#### **II. Conditional Clemency**

All of the preceding forms of clemency may be granted subject to various conditions. If the conditions of clemency are violated or breached, such clemency may be revoked by the Clemency Board, returning the applicant to his or her status prior to receiving the conditional clemency.

## **5. Eligibility**

### **A. Pardons**

A person may not apply for a pardon unless he or she has completed all sentences imposed for the applicant's most recent felony conviction and all conditions of supervision imposed for the applicant's most recent felony conviction have expired or been completed, including but not limited to, parole, probation, community control, control release and conditional release, for a period of no less than 10 years. The applicant may not have outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes.

Persons who had adjudication of guilt withheld and were not convicted may apply for a pardon if they otherwise meet the eligibility requirements of this rule.

### **B. Commutations of Sentence**

A person may not be considered for a commutation of sentence unless he or she has been granted a Request for Review pursuant to Rule 8 or has had his or her case placed upon a Clemency Board agenda pursuant to Rule 17.

### **C. Remission of Fines and Forfeitures**

A person may not apply for a remission of fines and forfeitures unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including, but not limited to, parole, probation, community control, control release, and conditional release.

### **D. Specific Authority to Own, Possess, or Use Firearms**

A person may not apply for the specific authority to own, possess, or use firearms unless he or she has completed all sentences imposed for the applicant's most recent felony conviction and all

conditions of supervision imposed for the applicant's most recent felony conviction have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release, for a period of no less than eight (8) years. The applicant may not have outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes. Persons convicted in a federal, military, or out-of-state court are not eligible to apply.

#### **E. Restoration of Civil Rights or Alien Status under Florida Law**

A person who meets the requirements of Rule 9 may have his or her civil rights restored by the Clemency Board. Persons who do not qualify for restoration of civil or alien rights under Rule 9 may request restoration of civil rights pursuant to Rule 6 if the person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release; has no pending outstanding detainers or pending criminal charges; has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes; and has met the seven (7) year time requirement. Restoration of civil rights includes all rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess or use firearms.

If the person was convicted in a court other than a court of the State of Florida, he or she must be a legal resident of the State of Florida at the time the application is filed, considered, and acted upon. If the person is applying for Restoration of Alien Status under Florida Law, he or she must be domiciled in the State of Florida at the time the application is filed, considered, and acted upon.

Notwithstanding any provision of this rule, an individual who has previously had his or her civil rights or Alien Status under Florida Law restored and is subsequently convicted of any offense listed in Rule 9(A) shall be ineligible for restoration of civil rights or Alien Status under Florida law for a period of no less than seven (7) years after completing all sentences and conditions of supervision (including but not limited to, parole, probation, community control, control release and conditional release) arising from the subsequent conviction.

## **6. Applications**

### **A. Application Forms**

All correspondence regarding an application for clemency should be addressed to Coordinator, Office of Executive Clemency, 4070 Esplanade Way, Tallahassee, Florida, 32399-2450. Those persons seeking clemency shall complete an application and submit it to the Office of Executive Clemency.

Persons seeking Restoration of Civil Rights or Alien Status under Florida Law must submit an application. Application forms will be furnished by the Coordinator upon request or they may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. All applications for clemency must be filed with the Coordinator on the form provided by the Office of Executive Clemency.

### **B. Supporting Documents**

Each application for clemency shall have attached to it a certified copy of the charging instrument (indictment, information, or warrant with supporting affidavit) for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor, and a certified copy of the judgment and sentence for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor. (Note: The Office of Executive Clemency or Parole Commission may assist in preparation of applications in unique situations.) Each application for clemency may include

character references, letters of support, and any other documents that are relevant to the application for clemency.

### **C. Applicant Responsibility**

It is the responsibility of the applicant to answer all inquiries fully and truthfully and to keep the Office of Executive Clemency advised of any change in the information provided in the application, including change of address and phone number.

### **D. Failure to Meet Requirements**

If any application fails to meet the requirements of the Rules of Executive Clemency, the Coordinator may return it without further consideration.

### **E. Notification**

Upon receipt of a completed application that meets the requirements of the Rules of Executive Clemency, the Coordinator shall make reasonable attempts to notify the victims of record, the respective State Attorney's Office, the Office of the Statewide Prosecutor, if applicable, and the Office of the Attorney General, Bureau of Advocacy and Grants.

## **7. Applications Referred to the Florida Parole Commission**

Every application which meets the requirements of these Rules may be referred to the Florida Parole Commission for an investigation, report, and recommendation.

All persons who submit applications shall comply with the reasonable requests of the Florida Parole Commission in order to facilitate and expedite investigation of their cases. Failure to comply with such requests by the Commission, without adequate explanation, may result in denial of the application without further consideration.

## **8. Commutation of Sentence**

### **A. Request for Review**

An applicant who applies for commutation of sentence under Rule 5(B) may do so only if he or she has completed at least one third of the sentence imposed, or, if serving a minimum mandatory

sentence, has completed at least one half of the sentence.

Individuals eligible for commutation of sentence consideration may receive a “Request for Review” form by contacting the Office of Executive Clemency or it may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. Upon receipt of the original and four (4) copies of the Request for Review form, clemency application, and any other material to be considered, the Coordinator shall forward copies of the documents to the Clemency Board and the Florida Parole Commission. The Commission shall review the documents and make an advisory recommendation to the Clemency Board. Notification of receipt by the Office of Executive Clemency of such a request shall be provided as indicated under Rule 6.

Rule 17 may also be invoked by any member of the Clemency Board.

**B. Referral to Commission**

Upon receipt by the Coordinator of written notification from the Governor and at least one member of the Clemency Board granting a Request for Review, or notification invoking Rule 17, the Coordinator may refer the request to the Parole Commission for a full investigation and place the case on an agenda to be heard by the Clemency Board.

**C. Notification**

The Coordinator shall attempt to provide individuals seeking a request for commutation of sentences, and the respective prosecuting authority, with approximately 20 days notice prior to any such request being heard by representatives of the Clemency Board.

**D. § 944.30 Cases**

All remaining § 944.30, Florida Statutes, cases will be processed under this rule.

**E. Domestic Violence Case Review**

Domestic violence cases that meet the criteria adopted by the Clemency Board on December 18, 1991, as amended, will be processed as requests for review.

## **9. Restoration of Civil Rights or Alien Status under Florida Law Without A Hearing**

### **A. Criteria for Eligibility**

A person may have his or her civil rights or alien status under Florida Law restored by approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, without a hearing if the person has committed no crimes and has not been arrested for a misdemeanor or felony for five (5) years from the date of completion of all sentences and conditions of supervision imposed and the following requirements are met:

1. The person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;

2. The person has no outstanding detainers or pending criminal charges;

3. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;

4. The person has never been convicted of one of the following crimes:

a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);

b. DUI manslaughter, DUI Serious Bodily Injury (F.S. 316.193);

c. leaving the Scene of Accident involving Injury or Death;

d. sexual battery, attempted sexual battery, unlawful sexual activity with a minor, female genital mutilation (F.S. Chapter 794)

e. any violation of F.S. Chapter 800;

f. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);

g. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);

h. aggravated child abuse (F.S. 827.03);



- i. failure to register as a sexual predator (F.S. 775) or sexual offender ( F.S. 943.0435);
- j. computer pornography, transmission of computer pornography, or any crime involving a minor in violation of F.S. Chapter 847;
- k. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (F.S. Chapter 787);
- l. aggravated battery, attempted aggravated battery (F.S. 784.045), felony battery, domestic battery by strangulation (F.S. 784.041);
- m. robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (F.S. Chapter 812);
- n. poisoning of food or water (F.S. 859.01);
- o. abuse of a dead human body (F.S. 872.06);
- p. burglary of a dwelling, first degree burglary, or attempted first degree burglary (F.S. 810.02);
- q. arson, attempted arson, or conspiracy to commit arson (F.S. 806.01);
- r. aggravated assault (F.S. 784.021);
- s. aggravated stalking (F.S. 784.048);
- t. aggravated battery, battery, or aggravated assault on a law enforcement officer or other specified officer (F.S. 784.07);
- u. trafficking or conspiracy to traffic in illegal substances (F.S. 893.135); all other first and second degree felonies described in F. S. Chapter 893.
- v. aircraft piracy (F.S. 860.16);
- w. unlawful throwing, placing, or discharging of a destructive device or bomb (F.S. 790.161);
- x. facilitating or furthering terrorism (F.S. 775.31);
- y. treason (F.S. 876.32);

z. possession of a firearm by a convicted felon (F.S. 790.23) or possession of a firearm or ammunition by a violent career criminal (F.S. 790.235);

aa. bribery, misuse of public office (F.S. Chapter 838); extortion by officers of the state (F. S. 839.11); misappropriations of moneys by commissioners to make sales (F.S. 839.17);

bb. any crime committed by an elected official while in office;

cc. illegal use of explosives;

dd. RICO;

ee. exploitation of the elderly;

ff. public corruption;

gg. any felony violation of an election law;

hh. any crime designated a “dangerous crime” under F.S. 907.041;

ii. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State;

5. The person has not been declared to be one of the following:

a. Habitual Violent Felony Offender under F.S. 775.084(1)(b);

b. Three-time Violent Felony Offender under F.S. 775.084(1)(c);

c. Violent Career Criminal under F.S. 775.084;

d. Prison Releasee Reoffender under F.S. 775.082(9)(a);

e. Sexual Predator under F.S. 775.21;

6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida;

7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

## **B. Action by Clemency Board**

The Florida Parole Commission shall accept and retain the records of individuals released by the Department of Corrections by expiration of sentence or from community supervision. In a manner approved by the Board of Clemency, the Parole Commission may provide individuals released by the Department of Corrections with a written explanation of the Rules determining eligibility to apply for restoration of civil rights. The Parole Commission shall review the applications of individuals who have applied for restoration of civil rights pursuant to Rule 6. If an individual meets all requirements under Rule 9(A), then the Coordinator shall issue a preliminary review list of individuals eligible for restoration of civil rights or alien status under Florida law without a hearing to the Clemency Board members. If the Governor plus two members approve an individual's restoration of civil rights or alien status under Florida law without a hearing within 60 days of issuance of the preliminary review list, the Coordinator shall, pursuant to executive order, issue a certificate that grants the individual restoration of civil rights or alien status under Florida law in the State of Florida, without the specific authority to own, possess, or use firearms. Article IV, Section 8 of the Florida Constitution provides that an executive order granting clemency requires the signature of the Governor and two members of the Florida Cabinet. If approval is not granted, that candidate will be notified, and may elect to pursue restoration of civil rights with a hearing pursuant to Rule 10.

## **C. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule 9(A) are met. If the Commission certifies that all of the requirements in Rule 9(A) are met, the Coordinator shall follow procedures for the restoration of civil rights as enumerated herein.

## **10. Restoration of Civil Rights or Alien Status under Florida Law With a Hearing**

### **A. Criteria for 7 Year Eligibility**

An individual who does not qualify to be granted clemency under Rule 9 must comply with Rule 6 by filing an application to have his or her civil rights or alien status under Florida law restored, excluding the specific authority to own, possess, or use firearms, with a hearing. An individual is eligible to apply only if the following requirements are met:

1. The person has had no new felony convictions for a period of 7 years or more after completion of all sentences imposed for the applicant's most recent felony conviction and all conditions of supervision for the applicant's most recent felony conviction have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;

2. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;

3. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida;

4. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

### **B. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule 10(A) are met. If the Commission certifies that all of the requirements in Rule 10(A) are met, the Coordinator shall follow procedures for the restoration of civil rights or alien status with a hearing as enumerated herein.

## **11. Hearings by the Clemency Board on Pending Applications**

### **A. Cases on the Agenda**

After the Parole Commission investigation is complete, the Coordinator may place upon the agenda for consideration by the Clemency Board at its next scheduled meeting:

1. Timely applications that meet the eligibility requirements under Rule 5 for which any investigation, report and recommendation, conducted under Rule 7, has been completed;
2. Cases in which an applicant has requested a commutation of sentence under Rule 8 or when Rule 17 has been invoked so long as any investigation, report and recommendation conducted under Rule 7 has been completed.

### **B. Distribution of Agenda**

The Coordinator shall prepare an agenda which shall include all cases that qualify for a hearing under Subsection A of this Rule. A preliminary agenda shall be distributed to the Clemency Board at least 10 days before the next scheduled meeting.

### **C. Failure of Applicant to Comply With Rules**

An applicant's failure to comply with any rule of executive clemency may result in refusal, without notice, to place an application on the agenda for consideration.

## **12. Hearings Before the Clemency Board**

### **A. Scheduled Meetings**

The Clemency Board will meet in the months of March, June, September, and December of each year, or at such times as set by the Clemency Board. The Governor may call a special meeting at any time for any reason.

### **B. Notice of Appearance**

While applicants are not required to appear at the hearing, the Clemency Board encourages applicants to attend. The applicant, or any other person intending to speak on behalf of the applicant,

must notify the Office of Executive Clemency at least 10 days prior to the scheduled meeting of the Clemency Board.

### **C. Time Limits**

Any person making an oral presentation to the Clemency Board will be allowed no more than five minutes. All persons making oral presentations in favor of an application shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an application, including victims, shall be allowed cumulatively no more than 10 minutes.

### **D. Filing of Executive Orders**

Subsequent to the hearings of the Clemency Board, the Coordinator shall prepare executive orders granting clemency as directed and circulate them to the members of the Clemency Board. After the Executive Orders are fully executed, the Coordinator shall certify and mail a copy to the applicant. The original executive order shall be filed with the custodian of state records. The Coordinator shall send a letter to each applicant officially stating the disposition of his or her application. A seal is not used by the Office of Executive Clemency.

## **13. Continuance and Withdrawal of Cases**

An interested party may apply for a continuance of a case if the continuance is based on good cause. The Governor will decide if the case will be continued. Cases held under advisement for further information desired by the Governor will be marked “continued” and noted on each subsequent agenda until the case is decided.

The applicant may withdraw his or her application by notifying the Office of Executive Clemency at least 20 days prior to the next scheduled meeting of the Clemency Board. A request to withdraw a case made within 20 days of the hearing on the application will be allowed if the Governor or the Coordinator for the Office of Executive Clemency determines that there is good cause. Cases that are withdrawn from the agenda will not be considered again until the application is re-filed.

#### **14. Reapplication for Clemency**

Any otherwise eligible person who has been granted or denied any form of executive clemency may not reapply for further executive clemency for at least two years from the date that such action became final. Any person who has been denied a Rule 8 commutation of sentence may not apply for another request for at least five years from the date the prior request was denied.

#### **15. Commutation of Death Sentences**

This Rule applies to all cases where the sentence of death has been imposed. The Rules of Executive Clemency, except Rules 1, 2, 3, 4, 15 and 16 are inapplicable to cases where inmates are sentenced to death.

##### **A. Confidentiality**

Notwithstanding incorporation of Rule 16 by reference in cases where inmates are sentenced to death, the full text of Rule 16 is repeated below for clarification: Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor and no other member of the Clemency Board, nor any other state entity that may be in the possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials shall not constitute a waiver of confidentiality.

##### **B. Parole Commission Investigation**

In all cases where the death penalty has been imposed, the Florida Parole Commission may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board. The investigation shall include, but not be limited to, (1) an interview with the inmate, who may have clemency counsel present, by the Commission; (2)

an interview, if possible, with the trial attorneys who prosecuted the case and defended the inmate; (3) an interview, if possible, with the presiding judge and; (4) an interview, if possible, with the defendant's family. The Parole Commission shall provide notice to the Office of the Attorney General, Bureau of Advocacy and Grants, that an investigation has been initiated. The Office of the Attorney General, Bureau of Advocacy and Grants shall then provide notice to the victims of record that an investigation is pending and at that time shall request written comments from the victims of record. Upon receipt of comments from victims of record or their representatives, the Office of the Attorney General, Bureau of Advocacy and Grants shall forward such comments to the Parole Commission to be included in the final report to the Clemency Board.

### **C. Monitoring Cases for Investigation**

The investigation by the Parole Commission shall begin at such time as designated by the Governor. If the Governor has made no such designation, the investigation shall begin immediately after the defendant's initial petition for writ of habeas corpus, filed in the appropriate federal district court, has been denied by the 11th Circuit Court of Appeals, so long as all post-conviction pleadings, both state and federal, have been filed in a timely manner as determined by the Governor. An investigation shall commence immediately upon any failure to timely file the initial motion for postconviction relief in state court, and any appeal therefrom, or the initial petition for writ of habeas corpus in federal court, and any appeal therefrom. The time frames established by this rule are not tolled during the pendency of any petition for rehearing or reconsideration (or any similar such motion for clarification, etc.), request for rehearing en banc in the 11th Circuit Court of Appeals, or petition for writ of certiorari in the U.S. Supreme Court. Failure to conduct or complete the investigation pursuant to these rules shall not be a ground for relief for the death penalty defendant. The Parole Commission's Capital Punishment Research Specialist shall routinely monitor and track death penalty cases beyond direct appeal for this purpose. Cases investigated under previous administrations may be reinvestigated at the Governor's discretion.



#### **D. Parole Commission Report**

After the investigation is concluded, the Commissioners who personally interviewed the inmate shall prepare and issue a final report on their findings and conclusions. The final report shall include (1) any statements made by the defendant, and defendant's counsel, during the course of the investigation; (2) a detailed summary from each Commissioner who interviewed the inmate; and (3) information gathered during the course of the investigation. The final report shall be forwarded to all members of the Clemency Board within 120 days of the commencement of the investigation, unless the time period is extended by the Governor.

#### **E. Request for Hearing by any Clemency Board Member**

After the report is received by the Clemency Board, the Coordinator shall place the case on the agenda for the next scheduled meeting or at a specially called meeting of the Clemency Board if, as a result of the investigation, or final report, any member of the Clemency Board requests a hearing within 20 days of transmittal of the final report to the Clemency Board. Once a hearing is set, the Coordinator shall provide notice to the appropriate state attorney, the inmate's clemency counsel, the victim's rights coordinator in the Executive Office of the Governor and the Office of Attorney General, Bureau of Advocacy and Grants. The Office of the Attorney General, Bureau of Advocacy and Grants shall then notify the victims of record of the hearing.

#### **F. Request for Hearing by Governor**

Notwithstanding any provision to the contrary in the Rules of Executive Clemency, in any case in which the death sentence has been imposed, the Governor may at any time place the case on the agenda and set a hearing for the next scheduled meeting or at a specially called meeting of the Clemency Board.

#### **G. Transcript of Interview**

Upon request, a copy of the actual transcript of any statements or testimony of the inmate relating to a clemency investigation shall be provided to the state attorney, the inmate's clemency

counsel, or victim's family. The attorney for the state, the inmate's clemency counsel, the victim's family, the inmate, or any other interested person may file a written statement, brief or memorandum on the case within 90 days of initiation of the investigation under Rule 15, copies of which will be distributed to the members of the Clemency Board. The person filing such written information should provide five (5) copies to the Coordinator of the Office of Executive Clemency.

#### **H. Time Limits**

At the clemency hearing for capital punishment cases, the inmate's clemency counsel and the attorneys for the state may make an oral presentation, each not to exceed 15 minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five minutes collectively. The Governor may extend these time frames at his or her discretion.

#### **I. Distribution and Filing of Orders**

If a commutation of a death sentence is ordered by the Governor with the approval of at least two members of the Clemency Board, the original order shall be filed with the custodian of state records, and a copy of the order shall be sent to the inmate, the attorneys representing the state, the inmate's clemency counsel, a representative of the victim's family, the Secretary of the Department of Corrections, and the chief judge of the circuit where the inmate was sentenced. The Office of the Attorney General, Bureau of Advocacy and Grants shall inform the victim's family within 24 hours of such action by the Clemency Board.

### **16. Confidentiality of Records and Documents**

Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor, and no other member of the Clemency Board, nor any other state entity that may be in the possession of Clemency Board

materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials, as approved by the Governor, does not constitute a waiver of confidentiality.

#### **17. Cases Proposed by the Governor or Members of the Clemency Board**

In cases of exceptional merit, any member of the Clemency Board may place a case on an upcoming agenda for consideration.

#### **18. Collection of Statistics and Evaluation of Clemency Action**

The Office of Executive Clemency, in conjunction with the Florida Parole Commission and Department of Corrections, shall collect and submit to the Clemency Board an annual written report providing statistics and evaluations regarding the status of those individuals whose rights were restored during the previous two calendar years. The first report shall be filed on July 1, 2011.

#### **19. Effective Dates**

History. - Adopted September 10, 1975, Rule 6 (formerly Rule 9) effective November 1, 1975; Rule 7 adopted December 8, 1976; Rule 6 amended December 8, 1976, effective July 1, 1977; revised September 14, 1977; Rule 12 amended October 7, 1981; revised December 12, 1984; amended January 8, 1985; amended July 2, 1985; Rule 12 amended September 18, 1986; Rules amended December 18, 1991, effective January 1, 1992; Rule 10 and Rule 15 amended June 22, 1992; Rules amended December 29, 1994, effective January 1, 1995. Rules amended January 7, 1997, effective January 15, 1997; Rule 4 and Rule 9 revised October 28, 1999, effective January 1, 2000; Rules revised June 14, 2001, effective June 14, 2001; Rules revised March 27, 2003; effective March 27, 2003; Rules revised June 20, 2003; effective June 20, 2003; Rules revised December 9, 2004; effective December 9, 2004; Rules revised April 5, 2007, effective April 5, 2007; Rules revised March 9, 2011, effective March 9, 2011.



Melinda N.  
Coonrod,  
Chairman

# FLORIDA COMMISSION ON OFFENDER REVIEW

(850) 922-0000

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## Clemency

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## Clemency

### Overview

Under the Florida Constitution, a convicted felon **cannot vote, serve on a jury, or hold public office** until civil rights have been restored.

When a person is convicted of a felony in Florida, he/she loses the right to vote, sit on a jury, hold public office, and possess a firearm.

Clemency is the constitutionally authorized process that provides the means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights. The clemency function is an act of mercy that absolves an individual from all, or any part, of the punishment that the law imposes. This is a power to grant full or conditional pardons, or commute punishment. If an individual was adjudicated delinquent of an offense as a juvenile and not adjudicated guilty in adult court, that person is not eligible for any form of clemency.

There are rules for these procedures, and these powers to grant clemency are vested in the Governor with the agreement of two cabinet members who are also statewide elected officials. The Governor also has the sole power to deny clemency.

### Types of Clemency

**Full Pardon** – A Full Pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms.

**Pardon Without Firearm Authority** – A Pardon Without Firearm Authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

**Pardon for Misdemeanor** – A Pardon for Misdemeanor conviction releases a person from punishment and forgives guilt.

**Commutation of Sentence** – A Commutation of Sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms.

**Remission of Fines and Forfeitures** – A Remission of Fines or Forfeitures suspends, reduces, or removes fines or forfeitures.

**Specific Authority to Own, Possess, or Use Firearms** – The Specific Authority to Own, Possess, or Use Firearms restores to an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal firearms laws, the Clemency Board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts. In order to comply with the federal laws, a Presidential Pardon or a Relief of Disability from the Bureau of Alcohol, Tobacco and Firearms must be issued in cases involving federal court convictions. A Pardon or Restoration of Civil Rights with no restrictions on firearms must be issued by the state where the conviction occurred.

**Restoration of Civil Rights in Florida** - The Restoration of Civil Rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms. Such restoration shall not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

**Restoration of Alien Status under Florida Law** - The Restoration of Alien Status Under Florida Law restores to an applicant who is not a citizen of the United States such rights enjoyed by him or her, under the authority of the State of Florida, which were lost as a result of a conviction of any crime that is a felony or would be a felony under Florida law, except the specific authority to own, possess, or use firearms. However, restoration of these rights shall not affect the immigration status of the applicant (i.e., a certificate evidencing Restoration of Alien Status Under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

For more information on the eligibility criteria for each form of clemency (Rule 5.) read the "[Rules of Executive Clemency](#)."

## Contact the Office of Executive Clemency

**Toll Free:** 1-800-435-8286

**Phone:** (850) 488-2952

**Fax:** (850) 488-0695

**Email:** [ClemencyWeb@fcor.state.fl.us](mailto:ClemencyWeb@fcor.state.fl.us)

The Office of Executive Clemency

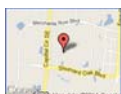
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- [Home](#)
- [Organization](#)
- [Clemency](#)
- [Release Types](#)
- [Media](#)
- [Inmate](#)
- [Supporters](#)
- [Victims' Rights](#)
- [Contact Us](#)

# Clemency

## Frequently Asked Questions About Clemency

*Click on a question below to expand and view the answer.*

- **How do I know if I need to have my civil rights restored? When can my rights be restored?**

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Upon conviction of a felony in the State of Florida, a person's civil rights are suspended indefinitely unless restored by the Clemency Board. The four members of the Clemency Board are the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services.

You may search our website at <https://fpcweb.fpc.state.fl.us/> to verify if your civil rights have been restored and print out a copy of the certificate. You will need to enter either your Date of Birth or Florida Department of Corrections ID number, and will only be able to find your name and retrieve a certificate if your rights have been granted. If you were granted clemency at a clemency hearing, you will need to contact the Office of Executive Clemency for a copy of your specific Executive Order.

A person's civil rights cannot be restored until all sentences or supervision periods have been completed; all restitution owed to current or prior victim(s) is paid in full (this includes judgments or liens); there are no pending criminal charges, warrants or detainers; and established waiting periods have been met.

Depending on your offense, you must wait until either five (5) or seven (7) years after completing your sentence or supervision to apply. The list of offenses and specific requirements for applying for the restoration of civil rights can be found in the Rules of Executive Clemency located on the [Clemency page](#) of this website. All persons seeking the restoration of civil rights must submit an application to the Office of Executive Clemency.

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- **What rights are restored?**

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The basic civil rights that are restored are: the right to vote, the right to serve on a jury, and the right to hold public office. The right to own, possess, or use firearms requires a waiting period of eight years from the date your sentence expired or supervision terminated.

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- **How can I apply for Clemency (including civil rights)?**

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All persons seeking clemency, including the restoration of civil rights, must complete an application and submit it to the Office of Executive Clemency. Application forms are furnished on the [Clemency page](#) of this website and by the Coordinator upon request. All applications for Clemency must be filed with the Coordinator on the form provided and include the required court documents.

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- **Do I need an attorney to handle my application?**

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No, you do not need an attorney to represent you in the clemency process.

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- **Is there a filing fee for the application process?**

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No, there is no fee involved. This is a service provided free of charge by the State of Florida.

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- **If my case is scheduled for a clemency hearing, do I have to attend the hearing?**

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You are not required to appear before the Clemency Board at the clemency hearing. However, any testimony you provide may aid the Governor and Cabinet in understanding your case and will be considered by the Clemency Board in its final decision.

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- **How does the clemency process work?**

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When an application for any form of clemency is received in the Office of Executive Clemency, it is screened for eligibility regarding the required time frames for the various offenses and the accompanying required certified court documents are reviewed.

If applicant is found eligible, the application is forwarded to the investigative phase of the process in the Office of Clemency Investigations. Cases are then assigned to examiners in the field offices on a first-in, first-out basis.

If the Office of Executive Clemency determines that an application does not meet the requirements, the applicant is advised of the disqualifying issues and guidance provided as to the next step. After the investigation and report is prepared, the eligible applications are forwarded to the Clemency Board for a decision.

If granted, the applicant is mailed a certificate of Restoration of Civil Rights.

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- **If adjudication of guilt was withheld in my case, do I need restoration of civil rights?**

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No, if adjudication of guilt was withheld in your case, you have not lost your civil rights. However, per the Florida Department of Law Enforcement (FDLE) Firearms Purchase Program, you are usually prohibited from purchasing firearms for at least three years from the date your supervision terminated. You may contact FDLE at (850) 410-8139 for more information.

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- **If I receive clemency, such as a pardon, will my record be automatically expunged?**

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No. There is no form of clemency that will expunge, remove or clear an offense from a criminal record. For questions pertaining to expunging or sealing of records, contact the Florida Department of Law Enforcement (FDLE) at [seal-expunge@fdle.state.fl.us](mailto:seal-expunge@fdle.state.fl.us).

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- **If I have my civil rights restored, will my criminal history record be expunged/removed?**

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No. In order to have your civil rights restored you had to have been convicted (adjudicated guilty) of a felony that was the basis for your loss of civil rights. Persons who have been convicted (adjudicated guilty) of a felony are not eligible for a seal or expunge of their criminal history under Florida law, regardless of whether their civil rights have been restored.

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## **Contact the Office of Executive Clemency**

**Toll Free:** 1-800-435-8286

**Phone:** (850) 488-2952



**Fax:** (850) 488-0695

**Email:** [ClemencyWeb@fcor.state.fl.us](mailto:ClemencyWeb@fcor.state.fl.us)

The Office of Executive Clemency  
Florida Commission on Offender Review  
4070 Esplanade Way  
Tallahassee, FL 32399-2450

Copied from <https://www.fcor.state.fl.us/faq-clemency.shtml> August 25, 2016

**97.041 Qualifications to register or vote.—**

(1)(a) A person may become a registered voter only if that person:

1. Is at least 18 years of age;
2. Is a citizen of the United States;
3. Is a legal resident of the State of Florida;
4. Is a legal resident of the county in which that person seeks to be registered; and
5. Registers pursuant to the Florida Election Code.

(b) A person who is otherwise qualified may preregister on or after that person's 16th birthday and may vote in any election occurring on or after that person's 18th birthday.

(2) The following persons, who might be otherwise qualified, are not entitled to register or vote:

(a) A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law.

(b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

(3) A person who is not registered may not vote.

**History.**—ss. 1, chs. 3850, 3879, 1889; RS 154; s. 1, ch. 4328, 1895; GS 170; RGS 215; s. 1, ch. 8583, 1921; CGL 248; s. 1, ch. 26870, 1951; s. 2, ch. 28156, 1953; s. 1, ch. 63-408; s. 3, ch. 65-60; s. 1, ch. 67-67; ss. 1, 4, ch. 71-108; s. 1, ch. 72-197; s. 2, ch. 73-157; s. 31, ch. 73-333; s. 1, ch. 74-5; s. 1, ch. 77-175; s. 2, ch. 89-338; s. 8, ch. 94-224; s. 12, ch. 2007-30; s. 2, ch. 2008-95.

**Note.**—Former s. 98.01.

**97.052 Uniform statewide voter registration application.—**

(1) The department shall prescribe by rule a uniform statewide voter registration application for use in this state.

(a) The uniform statewide voter registration application must be accepted for any one or more of the following purposes:

1. Initial registration.
2. Change of address.
3. Change of party affiliation.
4. Change of name.
5. Replacement of a voter information card.
6. Signature update.

(b) The department is responsible for printing the uniform statewide voter registration application and the voter registration application form prescribed by the Election Assistance Commission pursuant to federal law. The applications and forms must be distributed, upon request, to the following:

1. Individuals seeking to register to vote or update a voter registration record.

2. Individuals or groups conducting voter registration programs. A charge of 1 cent per application shall be assessed on requests for 10,000 or more applications.

3. The Department of Highway Safety and Motor Vehicles.
4. Voter registration agencies.
5. Armed forces recruitment offices.
6. Qualifying educational institutions.
7. Supervisors, who must make the applications and forms available in the following manner:
  - a. By distributing the applications and forms in their offices to any individual or group.
  - b. By distributing the applications and forms at other locations designated by each supervisor.
  - c. By mailing the applications and forms to applicants upon the request of the applicant.

(c) The uniform statewide voter registration application may be reproduced by any private individual or group, provided the reproduced application is in the same format as the application prescribed by rule under this section.

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

- (a) Last, first, and middle name, including any suffix.
- (b) Date of birth.
- (c) Address of legal residence.
- (d) Mailing address, if different.
- (e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.
- (f) County of legal residence.
- (g) Race or ethnicity that best describes the applicant:
  1. American Indian or Alaskan Native.
  2. Asian or Pacific Islander.
  3. Black, not Hispanic.
  4. White, not Hispanic.
  5. Hispanic.
- (h) State or country of birth.
- (i) Sex.
- (j) Party affiliation.

- (k) Whether the applicant needs assistance in voting.
- (l) Name and address where last registered.
- (m) Last four digits of the applicant's social security number.
- (n) Florida driver license number or the identification number from a Florida identification card issued under s. [322.051](#).
- (o) An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida identification card, or a social security number.
- (p) Telephone number (optional).
- (q) Signature of applicant under penalty for false swearing pursuant to s. [104.011](#), by which the person subscribes to the oath required by s. 3, Art. VI of the State Constitution and s. [97.051](#), and swears or affirms that the information contained in the registration application is true.
- (r) Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.
- (s) Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?" and providing boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
- (t) Whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored by including the statement "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.
- (u) Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored by including the statement "I affirm I have not been adjudicated mentally incapacitated with respect to voting, or, if I have, my competency has been restored." and providing a box for the applicant to check to affirm the statement.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

- (3) The uniform statewide voter registration application must also contain:
  - (a) The oath required by s. 3, Art. VI of the State Constitution and s. [97.051](#).
  - (b) A statement specifying each eligibility requirement under s. [97.041](#).
  - (c) The penalties provided in s. [104.011](#) for false swearing in connection with voter registration.
  - (d) A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and may be used only for voter registration purposes.
  - (e) A statement that informs the applicant who chooses to register to vote or update a voter registration record that the office at which the applicant submits a voter registration application or updates a voter registration record will remain confidential and may be used only for voter registration purposes.
  - (f) A statement informing an applicant who has not been issued a Florida driver license, a Florida identification card, or a social security number that if the application is submitted by mail and the applicant is registering for the first time in this state, the applicant will be required to provide identification prior to voting the first time.
- (4) A supervisor may produce a voter registration application that has the supervisor's direct mailing address if the department has reviewed the application and determined that it is substantially the same as the uniform statewide voter registration application.
- (5) The voter registration application form prescribed by the Election Assistance Commission pursuant to federal law or the federal postcard application must be accepted as an application for registration in this

state if the completed application or postcard application contains the information required by the constitution and laws of this state.

(6) If a voter registration applicant fails to provide any of the required information on the voter registration application form, the supervisor shall notify the applicant of the failure by mail within 5 business days after the supervisor has the information available in the voter registration system. The applicant shall have an opportunity to complete the application form to vote in the next election up until the book closing for that next election.

**History.**—s. 5, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 59-231; s. 8, ch. 65-134; s. 1, ch. 67-170; s. 8, ch. 69-377; ss. 10, 35, ch. 69-106; s. 2, ch. 72-63; s. 5, ch. 77-175; s. 23, ch. 84-302; s. 6, ch. 89-338; s. 10, ch. 94-224; s. 2, ch. 96-327; s. 26, ch. 97-13; s. 4, ch. 98-129; ss. 1, 7, ch. 2002-189; s. 3, ch. 2003-415; s. 4, ch. 2005-277; s. 5, ch. 2005-278; s. 1, ch. 2013-192.

**Note.**—Former s. 97.05; s. 98.111.

**97.057 Voter registration by the Department of Highway Safety and Motor Vehicles. –**

(1) The Department of Highway Safety and Motor Vehicles shall provide the opportunity to register to vote or to update a voter registration record to each individual who comes to an office of that department to:

- (a) Apply for or renew a driver license;
- (b) Apply for or renew an identification card pursuant to chapter 322; or
- (c) Change an address on an existing driver license or identification card.

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual, orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;
2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;
3. Information provided can also be used to update a voter registration record;
4. All declinations will remain confidential and may be used only for voter registration purposes; and
5. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote or update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote or to update a voter registration record:

- a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.
- b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).
- c. A voter registration application with all of the applicant's voter registration information required to establish the applicant's eligibility pursuant to s. [97.041](#) must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.

(3) For the purpose of this section, the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, shall prescribe:

- (a) A voter registration application that is the same in content, format, and size as the uniform statewide voter registration application prescribed under s. [97.052](#); and
- (b) A form that will inform applicants under subsection (1) of the information contained in paragraph (2) (a).

(4) The Department of Highway Safety and Motor Vehicles must electronically transmit completed voter registration applications within 24 hours after receipt to the statewide voter registration system. Completed paper voter registration applications received by the Department of Highway Safety and Motor Vehicles shall be forwarded within 5 days after receipt to the supervisor of the county where the office that processed or received that application is located.

(5) The Department of Highway Safety and Motor Vehicles must send, with each driver license renewal extension application authorized pursuant to s. [322.18](#)(8), a uniform statewide voter registration application, the voter registration application prescribed under paragraph (3)(a), or a voter registration application developed especially for the purposes of this subsection by the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, which must meet the requirements of s. [97.052](#).

(6) A person providing voter registration services for a driver license office may not:

- (a) Seek to influence an applicant's political preference or party registration;
- (b) Display any political preference or party allegiance;
- (c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- (d) Disclose any applicant's voter registration information except as needed for the administration of voter registration.

(7) The Department of Highway Safety and Motor Vehicles shall collect data determined necessary by the Department of State for program evaluation and reporting to the Election Assistance Commission pursuant to federal law.

(8) The Department of Highway Safety and Motor Vehicles must ensure that all voter registration services provided by driver license offices are in compliance with the Voting Rights Act of 1965.

(9) The Department of Highway Safety and Motor Vehicles shall retain complete records of voter registration information received, processed, and submitted to the statewide voter registration system by the Department of Highway Safety and Motor Vehicles. These records shall be for the explicit purpose of supporting audit and accounting controls established to ensure accurate and complete electronic transmission of records between the statewide voter registration system and the Department of Highway Safety and Motor Vehicles.

(10) The department shall provide the Department of Highway Safety and Motor Vehicles with an electronic database of street addresses valid for use as the address of legal residence as required in s. [97.053](#)(5). The Department of Highway Safety and Motor Vehicles shall compare the address provided by the applicant against the database of valid street addresses. If the address provided by the applicant does not match a valid street address in the database, the applicant will be asked to verify the address provided. The Department of Highway Safety and Motor Vehicles shall not reject any application for voter registration for which a valid match cannot be made.

(11) The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the department to match information in the statewide voter registration system with information in the database of the Department of Highway Safety and Motor Vehicles to the extent required to verify the accuracy of the driver license number, Florida identification number, or last four digits of the social security number provided on applications for voter registration as required in s. [97.053](#).

(12) The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the Commissioner of Social Security as required by the Help America Vote Act of 2002 to verify the last four digits of the social security number provided in applications for voter registration as required in s. [97.053](#).

History.—s. 13, ch. 94-224; s. 2, ch. 2002-189; s. 9, ch. 2005-278; s. 3, ch. 2016-23.



**To Register in Florida, you must be:**

- a U.S. citizen,
- a Florida resident,
- at least 18 years old (you may pre-register at 16 or 17, but cannot vote until you are 18).

If you have been convicted of a felony, or if a court has found you to be mentally incapacitated as to your right to vote, you cannot register until your right to vote is restored.

**If you do not meet any ONE of these requirements, you are not eligible to register.**

**Questions?**

Contact the Supervisor of Elections in your county:  
[dos.myflorida.com/elections/contacts/supervisor-of-elections](http://dos.myflorida.com/elections/contacts/supervisor-of-elections)

Visit the Florida Division of Elections' website at:  
[dos.myflorida.com/elections](http://dos.myflorida.com/elections)

**CRIMINAL OFFENSE:** It is a 3rd degree felony to submit false information. Maximum penalties are \$5,000 and/or 5 years in prison.

**PUBLIC RECORD:** Once filed, all information including your phone number and email address as provided become public record except for the following which can only be used for voter registration purposes: your FL DL#, FL ID#, SSN, where you registered to vote, and whether you declined to register or to update your voter registration record at a voter registration agency. Your signature can be viewed but not copied. (Section 97.0585, Fla. Stat.)

**Where to Register:** You can register to vote by completing this application and delivering it in person or by mail to any supervisor of elections' office, office that issues driver's licenses, or voter registration agency (public assistance office, center for independent living, office serving persons with disabilities, public library, or armed forces recruitment office) or the Division of Elections. Mailing addresses are on page 2 of this form.

**Deadline to Register:** The deadline to register to vote is 29 days before any election. You can update your registration record at any time, but for a Primary Election, party changes must be completed 29 days before that election. You will be contacted if your new application is incomplete, denied or a duplicate of an existing registration. Your Voter Information Card will be mailed to you once you are registered.

**Identification (ID) Requirements:** New applicants must provide a current and valid Florida driver's license number (FL DL#) or Florida identification card number (FL ID#). If you do not have a FL DL# or FL ID#, then you must provide the last four digits of your Social Security number (SSN). If you do not have any of these numbers, check "None." If you leave the field and box blank, your new registration may be denied. See section 97.053(6), Fla.Stat.

**Special ID requirements:** If you are registering by mail, have never voted in Florida, and have never been issued one of the ID numbers above, include one of the following with your application, or at a later time before you vote: 1) A copy of an ID that shows your name and photo (*acceptable IDs*--U.S. Passport, debit or credit card, military ID, student ID, retirement center ID, neighborhood association ID, or public assistance ID); or 2) A copy of an ID that shows your name and current residence address (*acceptable documents*--utility bill, bank statement, government check, paycheck, or other government document).

The special ID is not required if you are 65 or older, have a temporary or permanent physical disability, are a member of the active uniformed services or merchant marine who is absent from the county for active duty, or a spouse or dependent thereof, or are currently living outside the U.S. but otherwise eligible to vote in Florida.

**Political Party Affiliation:** Florida is a closed primary election state. In primary elections, registered voters can only vote for their registered party's candidates in a partisan race on the ballot. In a primary election, all registered voters, regardless of party affiliation, can vote on any issue, nonpartisan race, and race where a candidate faces no opposition in the General Election. If you do not indicate your party affiliation, you will be registered with no party affiliation. For a list of political parties, visit the Division of Elections' website at: [dos.myflorida.com/elections](http://dos.myflorida.com/elections)

**Race/Ethnicity:** It is optional to list your race or ethnicity.

**Boxes:** Please check boxes ( ) where applicable.

**Numbered rows 1 through 7 and 12 must be completed for a new registration.**



**Florida Voter Registration Application**

Part 2 – Form (DS-DE #39, R1S-2.040, F.A.C.) (eff. 10/2013)

The downloadable/printable online form is available at:

[dos.myflorida.com/elections/for-voters/voter-registration](http://dos.myflorida.com/elections/for-voters/voter-registration)

This is:  New Registration  Record Update/Change (e.g., Address, Party Affiliation, Name, Signature)  Request to Replace Voter Information Card

1	Are you a citizen of the United States of America? <input type="checkbox"/> YES <input type="checkbox"/> NO				OFFICIAL USE ONLY	
	2 <input type="checkbox"/> I affirm that I am not a convicted felon, or if I am, my right to vote has been restored.					
	3 <input type="checkbox"/> I affirm that I have not been adjudicated mentally incapacitated with respect to voting or, if I have, my right to vote has been restored.					
4	Date of Birth (MM-DD-YYYY) [ ][ ] - [ ][ ] - [ ][ ][ ][ ]				FVRS No:	
5	Florida Driver License (FL DL) or Florida identification (FL ID) Card Number [ ][ ][ ][ ] - [ ][ ][ ][ ] - [ ][ ][ ][ ] - [ ][ ][ ][ ]				If no FL DL or FL ID, then provide →	Last 4 digits of Social Security Number [ ][ ][ ][ ]
6	Last Name		First Name		Middle Name	Name Suffix (Jr., Sr., I, II, etc.):
7	Address Where You Live (legal residence-no P.O. Box)		Apt/Lot/Unit	City	County	Zip Code
8	Mailing Address (if different from above address)		Apt/Lot/Unit	City	State or Country	Zip Code
9	Address Where You Were Last Registered to Vote		Apt/Lot/Unit	City	State	Zip Code
10	Former Name (if name is changed)		Gender <input type="checkbox"/> M <input type="checkbox"/> F	State or Country of Birth		Telephone No. (optional) ( )
11	<input type="checkbox"/> Email me SAMPLE BALLOTS if option is available in my county. (See Public Record Notice above) My email address is: _____					
<b>Party Affiliation</b> (Check only one. If left blank, you will be registered without party affiliation) <input type="checkbox"/> Florida Democratic Party <input type="checkbox"/> Republican Party of Florida <input type="checkbox"/> No party affiliation <input type="checkbox"/> Minor party (print party name): _____		<b>Race/Ethnicity (Check only one)</b> <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Black, <i>not of</i> Hispanic Origin <input type="checkbox"/> Hispanic <input type="checkbox"/> White, <i>not of</i> Hispanic Origin <input type="checkbox"/> Multi-racial <input type="checkbox"/> Other: _____		<b>(Check only one if applicable)</b> <input type="checkbox"/> I am an active duty <b>Uniformed Services or Merchant Marine member</b> <input type="checkbox"/> I am a <b>spouse or a dependent</b> of an active duty uniformed services or merchant marine member <input type="checkbox"/> I am a <b>U.S. citizen residing outside the U.S.</b>		<input type="checkbox"/> I will need assistance with voting.  <input type="checkbox"/> I am interested in becoming a poll worker.
12	<b>Oath:</b> I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true.				<b>SIGN/MARK HERE</b> 	
						Date



**Address your envelope to  
your County Supervisor of  
Elections. (Updated 7/2016)**

**ALACHUA COUNTY**

Supervisor of Elections  
515 N Main Street, Suite 300  
Gainesville FL 32601-6819  
352-374-5252

**BAKER COUNTY**

Supervisor of Elections  
PO Box 505  
MacClenny FL 32063-0505  
904-259-6339

**BAY COUNTY**

Supervisor of Elections  
830 W. 11th St.  
Panama City FL 32401  
850-784-6100

**BRADFORD COUNTY**

Supervisor of Elections  
PO Box 58  
Starke FL 32091-0058  
904-966-6266

**BREVARD COUNTY**

Supervisor of Elections  
PO Box 410819  
Melbourne FL 32941-0819  
321-633-2124

**BROWARD COUNTY**

Supervisor of Elections  
PO Box 029001  
Fort Lauderdale FL 33302  
954-357-7050

**CALHOUN COUNTY**

Supervisor of Elections  
20859 Central Ave. E., Rm 117  
Blountstown FL 32424-2264  
850-674-8568

**CHARLOTTE COUNTY**

Supervisor of Elections  
226 Taylor Street, Unit 120  
Punta Gorda FL 33950  
941-833-5400

**CITRUS COUNTY**

Supervisor of Elections  
120 N. Apopka Ave.  
Inverness FL 34450-4238  
352-341-6740

**CLAY COUNTY**

Supervisor of Elections  
PO Box 337  
Green Cove Springs FL 32043-0337  
904-269-6350

**COLLIER COUNTY**

Supervisor of Elections  
Rev. Dr. MLK Jr. Bldg.  
3750 Enterprise Ave.  
Naples FL 34104  
239-252-VOTE (8683)

**COLUMBIA COUNTY**

Supervisor of Elections  
971 W. Duval St., Suite 102  
Lake City FL 32055-3734  
386-758-1026

**DESOTO COUNTY**

Supervisor of Elections  
PO Box 89  
Arcadia FL 34265-4451  
863-993-4871

**DIXIE COUNTY**

Supervisor of Elections  
PO Box 2057  
Cross City FL 32628-2057  
352-498-1216

**DUVAL COUNTY**

Supervisor of Elections  
105 E. Monroe St.  
Jacksonville FL 32202-3215  
904-630-1414

**ESCAMBIA COUNTY**

Supervisor of Elections  
PO Box 12601  
Pensacola FL 32591-2601  
850-595-3900

**FLAGLER COUNTY**

Supervisor of Elections  
PO Box 901  
Bunnell FL 32110-0901  
386-313-4170

**FRANKLIN COUNTY**

Supervisor of Elections  
47 Ave. F  
Apalachicola FL 32320-2311  
850-653-9520

**GADSDEN COUNTY**

Supervisor of Elections  
PO Box 186  
Quincy FL 32353  
850-627-9910

**GILCHRIST COUNTY**

Supervisor of Elections  
112 S. Main St., Room 128  
Trenton FL 32693-3249  
352-463-3194

**GLADES COUNTY**

Supervisor of Elections  
PO Box 668  
Moore Haven FL 33471-0668  
863-946-6005

**GULF COUNTY**

Supervisor of Elections  
401 Long Ave.  
Port St. Joe FL 32456-1707  
850-229-6117

**HAMILTON COUNTY**

Supervisor of Elections  
1153 US Hwy. 41 NW, Suite 1  
Jasper FL 32052-5856  
386-792-1426

**HARDEE COUNTY**

Supervisor of Elections  
311 N. 6th Ave.  
Wauchula FL 33873-2361  
863-773-6061

**HENDRY COUNTY**

Supervisor of Elections  
PO Box 174  
LaBelle FL 33975-0174  
863-675-5230

**HERNANDO COUNTY**

Supervisor of Elections  
20 N. Main St., Room 165  
Brooksville FL 34601-2864  
352-754-4125

**HIGHLANDS COUNTY**

Supervisor of Elections  
PO Box 3448  
Sebring FL 33871-3448  
863-402-6655

**HILLSBOROUGH COUNTY**

Supervisor of Elections  
2514 N. Falkenburg Rd.  
Tampa FL 33619-0917  
813-744-5900

**HOLMES COUNTY**

Supervisor of Elections  
201 N. Oklahoma St., Suite 102  
Bonifay FL 32425-2243  
850-547-1107

**INDIAN RIVER COUNTY**

Supervisor of Elections  
4375 43rd Ave.  
Vero Beach FL 32967-1024  
772-226-3440

**JACKSON COUNTY**

Supervisor of Elections  
PO Box 6046  
Marianna FL 32447-6046  
850-482-9652

**JEFFERSON COUNTY**

Supervisor of Elections  
380 W. Dogwood St.  
Monticello FL 32344-1470  
850-997-3348

**LAFAYETTE COUNTY**

Supervisor of Elections  
PO Box 76  
Mayo FL 32066-0076  
386-294-1261

**LAKE COUNTY**

Supervisor of Elections  
PO Box 457  
Tavares FL 32778-0457  
352-343-9734

**LEE COUNTY**

Supervisor of Elections  
PO Box 2545  
Fort Myers FL 33902-2545  
239-533-VOTE (8683)

**LEON COUNTY**

Supervisor of Elections  
PO Box 7357  
Tallahassee FL 32314-7357  
850-606-VOTE (8683)

**LEVY COUNTY**

Supervisor of Elections  
421 S. Court St.  
Bronson FL 32621-6520  
352-486-5163

**LIBERTY COUNTY**

Supervisor of Elections  
PO Box 597  
Bristol FL 32321-0597  
850-643-5226

**MADISON COUNTY**

Supervisor of Elections  
239 SW Pinckney St.  
Madison FL 32340  
850-973-6507

**MANATEE COUNTY**

Supervisor of Elections  
PO Box 1000  
Bradenton FL 34206-1000  
941-741-3823

**MARION COUNTY**

Supervisor of Elections  
PO Box 289  
Ocala FL 34478-0289  
352-620-3290

**MARTIN COUNTY**

Supervisor of Elections  
PO Box 1257  
Stuart FL 34995-1257  
772-288-5637

**MIAMI-DADE COUNTY**

Supervisor of Elections  
Attn: Registration  
PO Box 521550  
Miami FL 33152-1550  
305-499-VOTE (8683)

**MONROE COUNTY**

Supervisor of Elections  
530 Whitehead St., Suite 101  
Key West FL 33040-6577  
305-292-3416

**NASSAU COUNTY**

Supervisor of Elections  
96135 Nassau Place, Suite 3  
Yulee FL 32097-8635  
904-491-7500

**OKALOOSA COUNTY**

Supervisor of Elections  
302 Wilson St. N., Suite 102  
Crestview FL 32536-3440  
850-689-5600

**OKEECHOBEE COUNTY**

Supervisor of Elections  
304 NW 2nd St., Room 144  
Okeechobee FL 34972-4120  
863-763-4014

**ORANGE COUNTY**

Supervisor of Elections  
PO Box 562001  
Orlando FL 32856-2001  
407-836-2070

**OSCEOLA COUNTY**

Supervisor of Elections  
2509 E. Irls Bronson Memorial Hwy.  
Kissimmee FL 34744-4909  
407-742-6000

**PALM BEACH COUNTY**

Supervisor of Elections  
PO Box 22309  
West Palm Beach FL 33416-2309  
561-656-6200

**PASCO COUNTY**

Supervisor of Elections  
PO Box 300  
Dade City FL 33526-0300  
1-800-851-8754

**PINELLAS COUNTY**

Supervisor of Elections  
13001 Starkey Road  
Largo FL 33773-1416  
727-464-VOTE (8683)

**POLK COUNTY**

Supervisor of Elections  
PO Box 1460  
Bartow FL 33831-1460  
863-534-5888

**PUTNAM COUNTY**

Supervisor of Elections  
2509 Crill Ave., Suite 900  
Palatka FL 32177-4267  
386-329-0224

**SANTA ROSA COUNTY**

Supervisor of Elections  
6495 Caroline St., Suite F  
Milton FL 32570-4592  
850-983-1900

**SARASOTA COUNTY**

Supervisor of Elections  
PO Box 4194  
Sarasota FL 34230-4194  
941-861-8600

**SEMINOLE COUNTY**

Supervisor of Elections  
PO Box 1479  
Sanford FL 32772-1479  
407-585-VOTE (8683)

**ST. JOHNS COUNTY**

Supervisor of Elections  
4455 Ave. A, Suite 101  
St. Augustine FL 32095-5200  
904-823-2238

**ST. LUCIE COUNTY**

Supervisor of Elections  
4132 Okeechobee Road  
Fort Pierce FL 34947  
772-462-1500

**SUMTER COUNTY**

Supervisor of Elections  
900 N. Main St.  
Bushnell FL 33513-5008  
352-569-1540

**SUWANNEE COUNTY**

Supervisor of Elections  
220 Pine Ave. SW  
Live Oak FL 32064-2315  
386-362-2616

**TAYLOR COUNTY**

Supervisor of Elections  
PO Box 1060  
Perry FL 32348-1060  
850-838-3515

**UNION COUNTY**

Supervisor of Elections  
175 W. Main St.  
Lake Butler FL 32054  
386-496-2236

**VOLUSIA COUNTY**

Supervisor of Elections  
125 W. New York Ave.  
DeLand FL 32720-5415  
386-736-5930

**WAKULLA COUNTY**

Supervisor of Elections  
PO Box 305  
Crawfordville FL 32326-0305  
850-926-7575

**WALTON COUNTY**

Supervisor of Elections  
571 US Hwy. 90 East, Suite 102  
DeFuniak Springs FL 32433-1378  
850-892-8112

**WASHINGTON COUNTY**

Supervisor of Elections  
1331 South Blvd., Suite 900  
Chipley FL 32428-2233  
850-638-6230

**101.043 Identification required at polls.—**

(1)(a) The precinct register, as prescribed in s. [98.461](#), shall be used at the polls for the purpose of identifying the elector at the polls before allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present one of the following current and valid picture identifications:

1. Florida driver license.
2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
3. United States passport.
4. Debit or credit card.
5. Military identification.
6. Student identification.
7. Retirement center identification.
8. Neighborhood association identification.
9. Public assistance identification.
10. Veteran health identification card issued by the United States Department of Veterans Affairs.
11. A license to carry a concealed weapon or firearm issued pursuant to s. [790.06](#).
12. Employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality.

(b) If the picture identification does not contain the signature of the elector, an additional identification that provides the elector's signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence. The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector's signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

(c) When an elector presents his or her picture identification to the clerk or inspector and the elector's address on the picture identification matches the elector's address in the supervisor's records, the elector may not be asked to provide additional information or to recite his or her home address.

(2) If the elector fails to furnish the required identification, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot pursuant to s. [101.048\(2\)](#).

**History.**—s. 1, ch. 77-267; s. 533, ch. 95-147; s. 10, ch. 98-129; s. 3, ch. 2001-40; s. 13, ch. 2003-415; s. 23, ch. 2005-277; s. 30, ch. 2005-278; s. 26, ch. 2007-30; s. 25, ch. 2011-40; s. 2, ch. 2016-167.

**Note.**—Former s. 98.471.

**944.605 Inmate release; notification; identification card.—**

(1) Within 6 months before the release of an inmate from the custody of the Department of Corrections or a private correctional facility by expiration of sentence under s. [944.275](#), any release program provided by law, or parole under chapter 947, or as soon as possible if the offender is released earlier than anticipated, notification of such anticipated release date shall be made known by the Department of Corrections to the chief judge of the circuit in which the offender was sentenced, the appropriate state attorney, the original arresting law enforcement agency, the Department of Law Enforcement, and the sheriff as chief law enforcement officer of the county in which the inmate plans to reside. In addition, unless otherwise requested by the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, the victim's next of kin in the case of a homicide, the state attorney or the Department of Corrections, whichever is appropriate, shall notify such person within 6 months before the inmate's release, or as soon as possible if the offender is released earlier than anticipated, when the name and address of such victim, or the name and address of the parent, guardian, next of kin, or lawful representative of the victim has been furnished to the agency. The state attorney shall provide the latest address documented for the victim, or for the victim's parent, guardian, next of kin, or lawful representative, as applicable, to the sheriff with the other documents required by law for the delivery of inmates to those agencies for service of sentence. Upon request, within 30 days after an inmate is approved for community work release, the state attorney, the victim, the victim's parent or guardian if the victim is a minor, the victim's next of kin in the case of a homicide, or the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor shall be notified that the inmate has been approved for community work release. This section does not imply any repeal or modification of any provision of law relating to notification of victims.

(2) Within 60 days before the anticipated release of an inmate under subsection (1), a digitized photograph of the inmate to be released shall be made by the Department of Corrections or a private correctional facility, whichever has custody of the inmate. If a private correctional facility makes the digitized photograph, this photograph shall be provided to the Department of Corrections. Additionally, the digitized photograph, whether made by the Department of Corrections or a private correctional facility, shall be placed in the inmate's file. The Department of Corrections shall make the digitized photograph available electronically to the Department of Law Enforcement as soon as the digitized photograph is in the department's database and must be in a format that is compatible with the requirements of the Florida Crime Information Center. The department shall provide a copy of the digitized photograph to a local law enforcement agency upon request.

(3)(a) If an inmate is to be released after having served one or more sentences for a conviction of robbery, sexual battery, home-invasion robbery, or carjacking, or an inmate to be released has a prior conviction for robbery, sexual battery, home-invasion robbery, or carjacking or similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records, the department shall release to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality, the following information, which must include, but need not be limited to:

1. Name.
2. Social security number.
3. Date of birth.
4. Race.
5. Sex.
6. Height.

7. Weight.
8. Hair and eye color.
9. Tattoos or other identifying marks.
10. Fingerprints.
11. A digitized photograph as provided in subsection (2).

The department shall release the information specified in this paragraph within 6 months prior to the discharge of the inmate from the custody of the department.

(b) The department may electronically submit the information listed in paragraph (a) to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality.

(4) An inmate who refuses to submit to the taking of a digitized photograph commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(5) The department shall, at least 10 days before the anticipated date of release on work release of an inmate, notify in writing the county law enforcement agency in the county in this state in which the inmate is scheduled to be released.

(6) Upon request of the victim, the personal representative of the victim, or the state attorney, the department shall notify the requesting person when an inmate has been approved for community work release within 30 days after the date of approval.

(7)(a) The department, working in conjunction with the Department of Health and the Department of Highway Safety and Motor Vehicles, shall provide every Florida-born inmate with a certified copy of his or her birth certificate and a state identification card before the inmate's release upon expiration of his or her sentence. A replacement driver license shall be provided in lieu of a state identification card when an inmate has a valid state driver license issued by the Department of Highway Safety and Motor Vehicles which was lost, stolen, or destroyed.

(b) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.
2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.
3. Are released due to an emergency release or a conditional medical release under s. [947.149](#).
4. Are not in the physical custody of the department at or within 180 days before release.
5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

(c) The department shall assist each inmate in applying for and obtaining a social security card before release if the inmate needs a social security card.

(d) The department, for purposes of assisting the inmate in obtaining a birth certificate, shall submit to the Department of Health on all Florida-born inmates in its custody, the department's inmate photo or digitized photo, and as provided by the inmate his or her date of birth, full name at birth and any subsequent legal name changes, city or county of birth, mother's full name including her maiden surname, and father's full name.

(e) For inmates born outside of this state, the department shall assist the inmate in completing the necessary forms or applications to obtain a social security card, driver license, or state identification card. The department shall also provide the inmate with the location and address of the appropriate licensing

authority the inmate will need to obtain a valid identification card in proximity to the inmate's release address.

(f) The department shall, as part of its annual report, provide a report that identifies the number of inmates released with and without identification cards, identifies any impediments in the implementation of this subsection, and provides recommendations to improve obtaining release documents and identification cards for all inmates.

**History.**—s. 3, ch. 85-107; s. 9, ch. 88-96; s. 54, ch. 88-122; s. 1, ch. 91-65; s. 22, ch. 91-225; s. 2, ch. 92-76; s. 35, ch. 96-312; s. 10, ch. 97-299; s. 9, ch. 98-81; s. 3, ch. 2001-124; s. 1, ch. 2001-209; s. 9, ch. 2010-64; s. 4, ch. 2014-193.

# CHAPTER 2011-207

## Committee Substitute for Senate Bill No. 146

An act relating to criminal justice; providing a short title; providing legislative intent; requiring state agencies to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders; amending s. 112.011, F.S.; prohibiting state agencies from denying an application for a license, permit, certificate, or employment based solely on a person's lack of civil rights; providing an exception; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Jim King Keep Florida Working Act."

Section 2. Restrictions on the employment of ex-offenders; legislative intent; state agency reporting requirements.—

(1) The Legislature declares that a goal of this state is to clearly identify the occupations from which ex-offenders are disqualified based on the nature of their offenses. The Legislature seeks to make employment opportunities available to ex-offenders in a manner that serves to preserve and protect the health, safety, and welfare of the general public, yet encourages them to become productive members of society. To this end, state agencies that exercise regulatory authority are in the best position to identify all restrictions on employment imposed by the agencies or by boards that regulate professions and occupations and are obligated to protect the health, safety, and welfare of the general public by clearly setting forth those restrictions in keeping with standards and protections determined by the agencies to be in the least restrictive manner.

(2) Each state agency, including, but not limited to, those state agencies responsible for professional and occupational regulatory boards, shall ensure the appropriate restrictions necessary to protect the overall health, safety, and welfare of the general public are in place, and by December 31, 2011, and every 4 years thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes:

(a) A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any incarceration and restitution to which they have been sentenced for such crime.

(b) A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees.

(c) The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders.

Section 3. Effective January 1, 2012, section 112.011, Florida Statutes, is amended to read:

112.011 Disqualification from licensing and public employment based on criminal conviction ~~Felons; removal of disqualifications for employment, exceptions.—~~

(1)(a) Except as provided in s. 775.16, a person ~~may shall~~ not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

(b) Except as provided in s. 775.16, a person ~~whose civil rights have been restored shall not be~~ disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person ~~whose civil rights have been restored~~ may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or first-degree first-degree misdemeanor that is and directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

(c) Notwithstanding any law to the contrary, a state agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights. However, this paragraph does not apply to applications for a license to carry a concealed weapon or firearm under chapter 790.

(2)(a) This section ~~does shall~~ not ~~apply be applicable~~ to any law enforcement or correctional agency.

(b) This section ~~does shall~~ not ~~apply be applicable~~ to the employment practices of any fire department relating to the hiring of firefighters. An applicant for employment with any fire department ~~who has with~~ a prior felony conviction shall be excluded from employment for a period of 4 years after expiration of sentence or final release by the Parole Commission unless the applicant, ~~before prior to~~ the expiration of the 4-year period, has received a full pardon or has had his or her civil rights restored.

(c) This section ~~does shall~~ not ~~apply be applicable~~ to the employment practices of any county or municipality relating to the hiring of personnel for positions deemed to be critical to security or public safety pursuant to ss. 125.5801 and 166.0442.

(3) Any complaint concerning the violation of this section shall be adjudicated in accordance with the procedures set forth in chapter 120 for administrative and judicial review.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.

**98.075 Registration records maintenance activities; ineligibility determinations.—**

(1) MAINTENANCE OF RECORDS.—The department shall protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records. List maintenance activities must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002. The department may adopt by rule uniform standards and procedures to interpret and administer this section.

(2) DUPLICATE REGISTRATION.—The department shall identify those voters who are registered more than once or those applicants whose registration applications would result in duplicate registrations. The most recent application shall be deemed an update to the voter registration record.

(3) DECEASED PERSONS.—

(a)1. The department shall identify those registered voters who are deceased by comparing information received from either:

a. The Department of Health as provided in s. [98.093](#); or

b. The United States Social Security Administration, including, but not limited to, any master death file or index compiled by the United States Social Security Administration.

2. Within 7 days after receipt of such information through the statewide voter registration system, the supervisor shall remove the name of the registered voter.

(b) The supervisor shall remove the name of a deceased registered voter from the statewide voter registration system upon receipt of a copy of a death certificate issued by a governmental agency authorized to issue death certificates.

(4) ADJUDICATION OF MENTAL INCAPACITY.—The department shall identify those registered voters who have been adjudicated mentally incapacitated with respect to voting and who have not had their voting rights restored by comparing information received from the clerk of the circuit court as provided in s. [98.093](#). The department shall review such information and make an initial determination as to whether the information is credible and reliable. If the department determines that the information is credible and reliable, the department shall notify the supervisor and provide a copy of the supporting documentation indicating the potential ineligibility of the voter to be registered. Upon receipt of the notice that the department has made a determination of initial credibility and reliability, the supervisor shall adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter from the statewide voter registration system.

(5) FELONY CONVICTION.—The department shall identify those registered voters who have been convicted of a felony and whose rights have not been restored by comparing information received from, but not limited to, a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office, as provided in s. [98.093](#). The department shall review such information and make an initial determination as to whether the information is credible and reliable. If the department determines that the information is credible and reliable, the department shall notify the supervisor and provide a copy of the supporting documentation indicating the potential ineligibility of the voter to be registered. Upon receipt of the notice that the department has made a determination of initial credibility and reliability, the supervisor shall adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(6) OTHER BASES FOR INELIGIBILITY.—If the department or supervisor receives information from sources other than those identified in subsections (2)-(5) that a registered voter is ineligible because he or she is deceased, adjudicated a convicted felon without having had his or her civil rights restored, adjudicated mentally incapacitated without having had his or her voting rights restored, does not meet the age



requirement pursuant to s. [97.041](#), is not a United States citizen, is a fictitious person, or has listed a residence that is not his or her legal residence, the supervisor must adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(7) PROCEDURES FOR REMOVAL.—

(a) If the supervisor receives notice or information pursuant to subsections (4)-(6), the supervisor of the county in which the voter is registered shall:

1. Notify the registered voter of his or her potential ineligibility by mail within 7 days after receipt of notice or information. The notice shall include:

a. A statement of the basis for the registered voter's potential ineligibility and a copy of any documentation upon which the potential ineligibility is based.

b. A statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and in removal of the registered voter's name from the statewide voter registration system.

c. A return form that requires the registered voter to admit or deny the accuracy of the information underlying the potential ineligibility for purposes of a final determination by the supervisor.

d. A statement that, if the voter is denying the accuracy of the information underlying the potential ineligibility, the voter has a right to request a hearing for the purpose of determining eligibility.

e. Instructions for the registered voter to contact the supervisor of elections of the county in which the voter is registered if assistance is needed in resolving the matter.

f. Instructions for seeking restoration of civil rights following a felony conviction, if applicable.

2. If the mailed notice is returned as undeliverable, the supervisor shall publish notice once in a newspaper of general circulation in the county in which the voter was last registered. The notice shall contain the following:

a. The voter's name and address.

b. A statement that the voter is potentially ineligible to be registered to vote.

c. A statement that failure to respond within 30 days after the notice is published may result in a determination of ineligibility by the supervisor and removal of the registered voter's name from the statewide voter registration system.

d. An instruction for the voter to contact the supervisor no later than 30 days after the date of the published notice to receive information regarding the basis for the potential ineligibility and the procedure to resolve the matter.

e. An instruction to the voter that, if further assistance is needed, the voter should contact the supervisor of elections of the county in which the voter is registered.

3. If a registered voter fails to respond to a notice pursuant to subparagraph 1. or subparagraph 2., the supervisor shall make a final determination of the voter's eligibility. If the supervisor determines that the voter is ineligible, the supervisor shall remove the name of the registered voter from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

4. If a registered voter responds to the notice pursuant to subparagraph 1. or subparagraph 2. and admits the accuracy of the information underlying the potential ineligibility, the supervisor shall make a final determination of ineligibility and shall remove the voter's name from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

5. If a registered voter responds to the notice issued pursuant to subparagraph 1. or subparagraph 2. and denies the accuracy of the information underlying the potential ineligibility but does not request a hearing,

the supervisor shall review the evidence and make a final determination of eligibility. If such registered voter requests a hearing, the supervisor shall send notice to the registered voter to attend a hearing at a time and place specified in the notice. Upon hearing all evidence presented at the hearing, the supervisor shall make a determination of eligibility. If the supervisor determines that the registered voter is ineligible, the supervisor shall remove the voter's name from the statewide voter registration system and notify the registered voter of the supervisor's determination and action.

(b) The following shall apply to this subsection:

1. All determinations of eligibility shall be based on a preponderance of the evidence.
2. All proceedings are exempt from the provisions of chapter 120.
3. Any notice shall be sent to the registered voter by certified mail, return receipt requested, or other means that provides a verification of receipt or shall be published in a newspaper of general circulation where the voter was last registered, whichever is applicable.
4. The supervisor shall remove the name of any registered voter from the statewide voter registration system only after the supervisor makes a final determination that the voter is ineligible to vote.
5. Any voter whose name has been removed from the statewide voter registration system pursuant to a determination of ineligibility may appeal that determination under the provisions of s. [98.0755](#).
6. Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.

(8) CERTIFICATION.—

(a) No later than July 31 and January 31 of each year, the supervisor shall certify to the department the activities conducted pursuant to this section during the first 6 months and the second 6 months of the year, respectively. The certification shall include the number of persons to whom notices were sent pursuant to subsection (7), the number of persons who responded to the notices, the number of notices returned as undeliverable, the number of notices published in the newspaper, the number of hearings conducted, and the number of persons removed from the statewide voter registration systems and the reasons for such removals.

(b) If, based on the certification provided pursuant to paragraph (a), the department determines that a supervisor has not satisfied the requirements of this section, the department shall satisfy the appropriate requirements for that county. Failure to satisfy the requirements of this section shall constitute a violation of s. [104.051](#).

History.—s. 29, ch. 94-224; s. 1386, ch. 95-147; s. 20, ch. 2005-278; s. 9, ch. 2011-40.

**98.093 Duty of officials to furnish information relating to deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony.—**

(1) In order to identify ineligible registered voters and maintain accurate and current voter registration records in the statewide voter registration system pursuant to procedures in s. [98.065](#) or s. [98.075](#), it is necessary for the department and supervisors of elections to receive or access certain information from state and federal officials and entities in the format prescribed.

(2) To the maximum extent feasible, state and local government agencies shall facilitate provision of information and access to data to the department, including, but not limited to, databases that contain reliable criminal records and records of deceased persons. State and local government agencies that provide such data shall do so without charge if the direct cost incurred by those agencies is not significant.

(a) The Department of Health shall furnish monthly to the department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.

(b) Each clerk of the circuit court shall furnish monthly to the department a list of those persons who have been adjudicated mentally incapacitated with respect to voting during the preceding calendar month, a list of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month, and a list of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address. Each list shall include the name, address, date of birth, race, sex, and, whichever is available, the Florida driver license number, Florida identification card number, or social security number of each such person.

(c) Upon receipt of information from the United States Attorney, listing persons convicted of a felony in federal court, the department shall use such information to identify registered voters or applicants for voter registration who may be potentially ineligible based on information provided in accordance with s. [98.075](#).

(d) The Department of Law Enforcement shall identify those persons who have been convicted of a felony who appear in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables the department to meet its obligations under state and federal law.

(e) The Florida Commission on Offender Review shall furnish at least bimonthly to the department data, including the identity of those persons granted clemency in the preceding month or any updates to prior records which have occurred in the preceding month. The data shall contain the commission's case number and the person's name, address, date of birth, race, gender, Florida driver license number, Florida identification card number, or the last four digits of the social security number, if available, and references to record identifiers assigned by the Department of Corrections and the Department of Law Enforcement, a unique identifier of each clemency case, and the effective date of clemency of each person.

(f) The Department of Corrections shall identify those persons who have been convicted of a felony and committed to its custody or placed on community supervision. The information must be provided to the department at a time and in a manner that enables the department to identify registered voters who are convicted felons and to meet its obligations under state and federal law.

(g) The Department of Highway Safety and Motor Vehicles shall furnish monthly to the department a list of those persons whose names have been removed from the driver license database because they have been licensed in another state. The list shall contain the name, address, date of birth, sex, social security number, and driver license number of each such person.

(3) This section does not limit or restrict the supervisor in his or her duty to remove the names of persons from the statewide voter registration system pursuant to s. [98.075\(7\)](#) based upon information received from other sources.

**History.**—s. 3, ch. 14730, 1931; CGL 1936 Supp. 302(1); s. 10, ch. 24203, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 29917; s. 9, ch. 29934, 1955; s. 33, ch. 73-333; s. 27, ch. 77-147; s. 5, ch. 77-175; s. 32, ch. 94-224; s. 1388, ch. 95-147; s. 7, ch. 99-8; s. 24, ch. 2005-278; s. 10, ch. 2011-40; s. 4, ch. 2012-5; s. 6, ch. 2014-191.

**Note.**—Former s. 98.41; s. 98.301.

**951.29 Procedure for requesting restoration of civil rights of county prisoners convicted of felonies.**

—

(1) With respect to a person who has been convicted of a felony and is serving a sentence in a county detention facility, the administrator of the county detention facility shall provide to the prisoner, at least 2 weeks before discharge, if possible, an application form obtained from the Florida Commission on Offender Review which the prisoner must complete in order to begin the process of having his or her civil rights restored.

(2) This section shall not apply to prisoners who are discharged from a county detention facility to the custody or control of the Department of Corrections.

**History.**—s. 1, ch. 2006-174; s. 53, ch. 2014-191.

**Tab 3**

**Florida State Agency  
Reports**



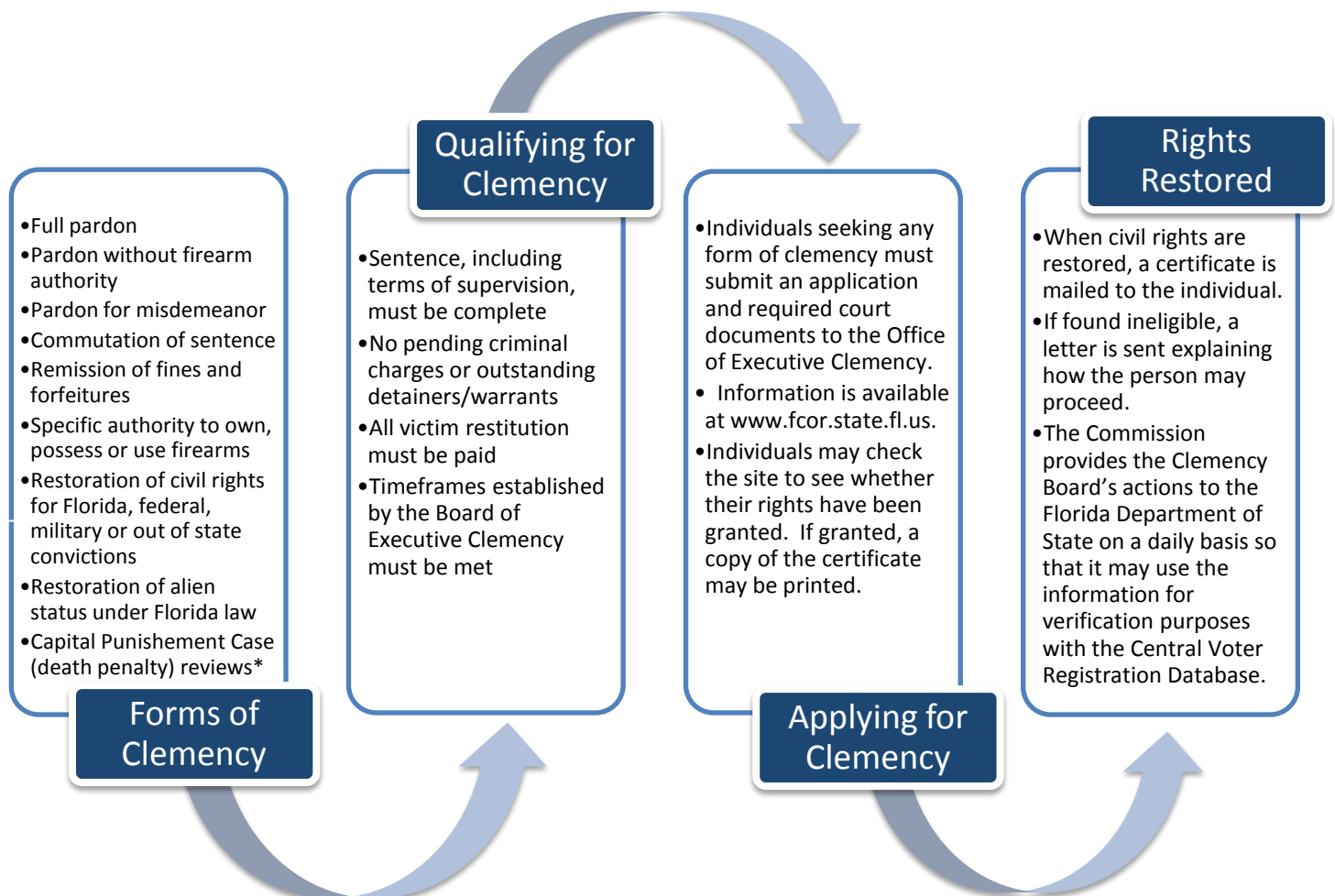
# FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

## Executive Clemency Timeline: 1991-2015

**CLEMENCY** - Under the Florida Constitution, a person convicted of a felony loses the right to vote, serve on a jury, hold public office, and possess a firearm.

Clemency is the constitutionally authorized process that provides the means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights. The clemency function is an act of mercy that absolves an individual from all, or any part, of the punishment that the law imposes. This is a power to grant full or conditional pardons, or commute punishment. There are rules for these procedures, and these powers to grant clemency are vested in the Governor with the agreement of two Cabinet members who are also statewide elected officials. The Governor also has the sole power to deny clemency.



\*Capital Punishment Clemency Cases follow a different qualifying and application process. For more information visit <https://www.fcor.state.fl.us/clemencyOverview.shtml>

## Clemency Administration







2011- Present - Governor Scott's Administration

- Under Governor Scott's Administration, The Florida Board of Executive Clemency amended the Rules of Executive Clemency (Rules), which became effective on March 9, 2011.
- The Rule changes resulted in the redesign of the application, related instructional information, and website content.
- Felons seeking to have their rights restored must complete a five (5) or seven (7) year waiting period upon completion of the sentence to become eligible.
- >>more info



2007-2010 - Governor Crist's Administration

- Under Governor Crist's Administration, Rule revisions were made effective on April 5, 2007.
- For restoration of civil rights, the Board implemented Rules which designated three levels of eligibility based upon the severity of offense for exoffenders who had completed their sentences or supervision and paid all restitution.
- >>more info



1999-2006 - Governor Bush's Administration

- Under Governor Bush's Administration, Rule revisions were made effective January 1, 2000.
- The Board amended the rule on the restoration of civil rights to add a list of disqualifying crimes and new language stating that restoration of civil rights does not relieve a person from the registration, notification requirements, or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.
- >>more info



1991-1998 - Governor Chiles' Administration

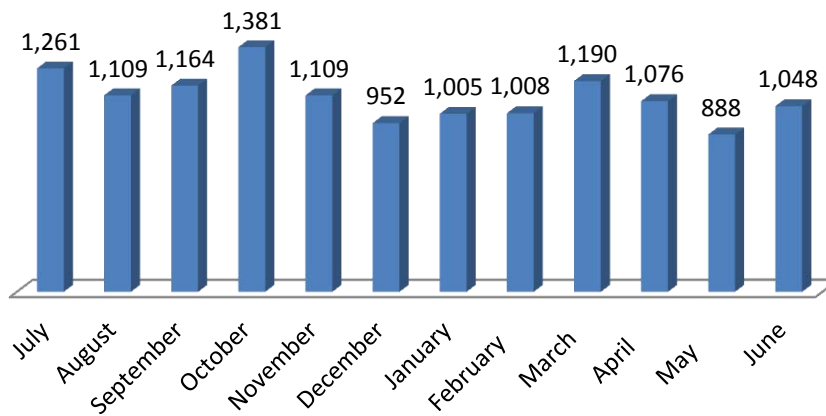
- Under Governor Chiles' Administration, Rule revisions were made effective January 1992.
- The Board expanded the Commission's duties to allow capital case inmates to receive interviews by panels of three commissioners and created a waiver procedure for female inmates to be evaluated by special panels if they met criteria to claim they were victims of the "battered woman syndrome." Requests for clemency increased due to more inmates being ineligible for any other form of early release consideration.
- >>more info

## Recent Activity

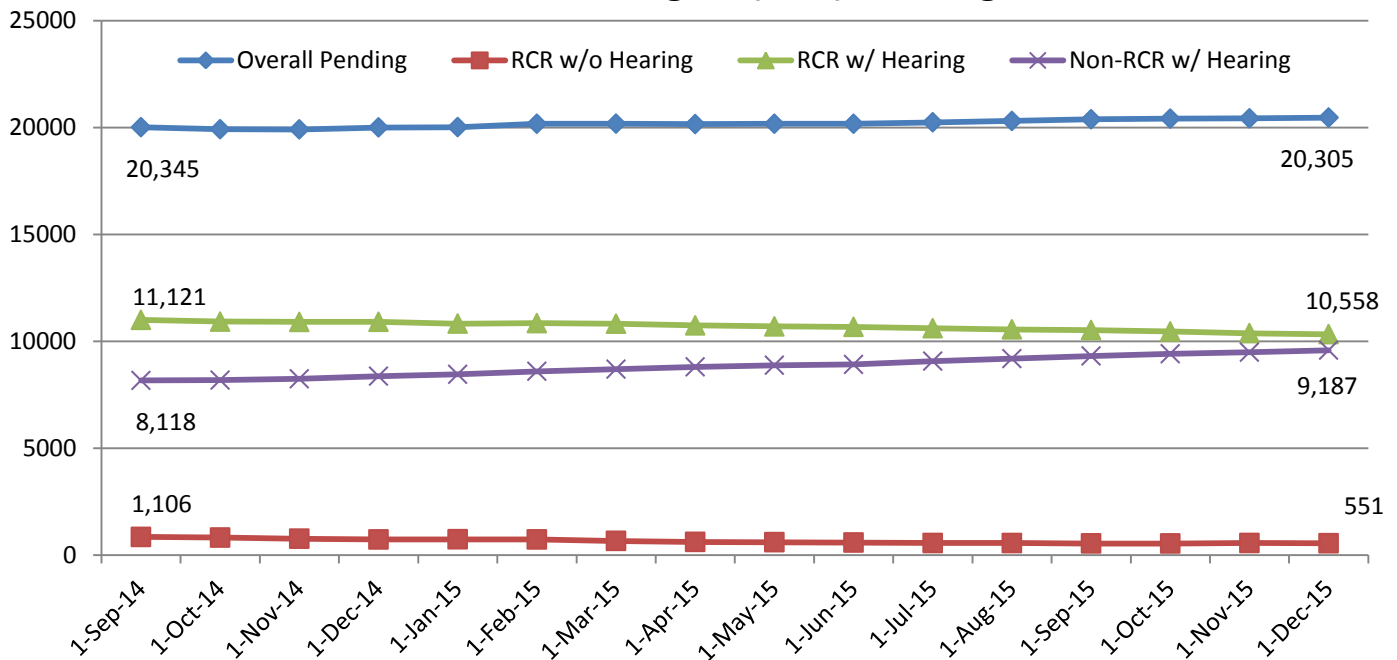
### Customer Service

- Stakeholders are provided updates of the most current information by phone and email.
- FCOR staff is trained to assist the public efficiently and courteously.
- Applicants are informed of their eligibility in timely manner.
- FCOR Website (as of September 2015): Searches for Restoration of Civil Rights: 1,123,585; RCR Certificates Located: 129,403; RCR Certificates Printed 78,457; RCR Certificates Available: 376,648.

### Executive Clemency Toll Free Line Calls Received FY 2014-15



### Restoration of Civil Rights (RCR) Pending Cases



## Funding

- Additional \$350,000 in recurring OPS General Revenue funds for clemency received in 2012 Legislative Session.
- Additional \$25,000 in non-recurring OPS General Revenue funds for clemency received in 2013 Legislative Session.
- Nine additional full-time clemency employees (FTEs), \$46,500 increase in OPS funds for clemency phone operators, and \$125,000 in contracted services funding to manage clemency for capital case proceedings received in 2014 Legislative Session.

## Victims' Services

- Identifies, locates and contacts victims of record by working with State Attorneys and the Attorney General's Victims' Services Office.
- Provides guidance, support and assistance to victims and victim's family members throughout the clemency process and at Clemency Hearings.

## 2011- Present Governor Scott's Administration

- Under Governor Scott's Administration, the Florida Board of Executive Clemency amended the Rules of Executive Clemency (Rules), which became effective on March 9, 2011.
- The Rule changes resulted in the redesign of the application, related instructional information, and website content.
- Felons seeking to have their rights restored must complete a five (5) or seven (7) year waiting period upon completion of the sentence to become eligible.
- In 2011, the *Jim King Keep Florida Working Act* was established to allow offenders lacking civil rights the ability to apply for a license, permit, certificate, or employment. As a safeguard, the Act specified exemptions for positions deemed to be critical to security or public safety, law enforcement agencies, and correctional agencies.

Restoration of Civil Rights (RCR) cases are now classified as follows: *Without a Hearing* (Rule 9.A.) and *With a Hearing* (Rule 10.A.). *Without a Hearing* investigations are those where offenders are eligible for consideration only after five (5) years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions, if no crimes have been committed and if the applicant has not been arrested for a misdemeanor or felony for the five (5) years prior to the date the application is being reviewed. *With a Hearing* investigations are those where offenders are eligible for consideration only after seven (7) years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions.

### Clemency Funding Summary

Under Governor Scott's administration, an additional \$350,000 in recurring OPS General Revenue funds for Clemency were received in 2012 Legislative Session. And an additional \$25,000 in non-recurring OPS General Revenue funds for Clemency were received in 2013 Legislative Session. In 2014 Legislative Session, clemency funding included nine additional full-time clemency employees (FTEs), \$46,500 increase in OPS funds for clemency phone operators, and \$125,000 in contracted services funding to manage clemency for capital case proceedings. In fiscal year 2015-16, the Commission received additional funding in the amount of \$153,537 for capital clemency counsel services for a total funding of \$250,000.

## 2007-2010 Governor Crist's Administration

- Under Governor Crist's Administration, Rule revisions were made effective on April 5, 2007.
- For restoration of civil rights, the Board implemented Rules which designated three levels of eligibility based upon the severity of offense for exoffenders who had completed their sentences or supervision and paid all restitution.

Cases were sent electronically to the Commission (Clemency Investigations Office) by the Florida Department of Corrections (Department) based on offenders either ending their prison sentence (EOS) or being terminated from community supervision (TOS). An eligibility review was conducted by the Commission for these electronic requests and if deemed eligible, the case was placed on an Executive Order and submitted to the Board for signature. If found ineligible, the person was notified and told of the process to request a hearing. **This amended process did not eliminate the requirements that the exoffender must still be reviewed for eligibility, deemed eligible, then placed on an Executive Order for signature of the Clemency Board.** Once the order was signed, certificates were mailed to persons granted restoration of civil rights. Applications were also being submitted and reviewed for persons who had been released from incarceration or terminated supervision previously, had Federal, military or out-of-state convictions and now reside in Florida or were requesting other forms of clemency.

The amended Rules designated three levels of eligibility for the Restoration of Civil Rights: The persons eligible for Level I approval were those convicted of less serious offenses such as Grand Theft, Burglary of a Dwelling, Possession of Firearm by Convicted Felon; Robbery (No Deadly Weapon); Felony DUI; and Sale of a Controlled Substance. The cases were reviewed for eligibility and placed on an executive order for signature by the Board. These cases still required the Commission to conduct an eligibility review and required approval by the Board. Once the order was signed, certificates were mailed to the persons granted restoration of civil rights.

Those offenders convicted of more serious offenses such as Aggravated Battery/Assault, Trafficking in Cocaine, Aggravated Stalking, Kidnapping/False Imprisonment or designated as a Three-Time Violent Felony Offender, were eligible for a Level II review for restoration of civil rights without a hearing. An investigation was required on these cases, with the information forwarded to the Board for a 30-day review. If approved by the Board, the names of the offenders found eligible were placed on an executive order for signature by the Board and restoration of civil rights certificates were mailed to those persons once the order was signed.

Persons convicted of the most serious offenses such as Murder/Manslaughter, Sexual Battery, Aggravated Child Abuse, or persons designated as Sexual Predators required a more in-depth investigation for restoration of civil rights with a hearing as a Level III case.

### Clemency Funding Summary

The streamlining of the clemency RCR process by the Governor and Cabinet in April 2007 created a greater clemency workload for the Commission. In 2008-2009, due to an economic downturn and statewide budget challenges, the Commission's budget was reduced by 20% with reductions made primarily in the clemency staffing area.

## 1999-2006 Governor Bush's Administration

- Under Governor Bush's Administration, Rule revisions were made effective January 1, 2000.
- The Board amended the rule on the restoration of civil rights to add a list of disqualifying crimes and new language stating that restoration of civil rights does not relieve a person from the registration, notification requirements, or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

In June 2001, the rule on Restoration of Civil Rights (RCR) was amended to: eliminate owing outstanding monetary obligations excluding restitution as a disqualifier; eliminate having more than two felony convictions as a disqualifier for RCR without a hearing; and offenders including habitual felony offenders, habitual violent felony offenders, three-time violent felony offenders, violent career criminals, and prison release re-offenders were required to have a hearing before the Clemency Board.

“Lawsuit” Cases and Clemency Funding: In 2002, a lawsuit filed against the Florida Department of Corrections by the Florida Conference of Black State Legislators resulted in an additional 155,000 RCR cases being reviewed by the Commission, substantially impacting the workload of the Office of Executive Clemency and the Office of Clemency Investigations.

Bush Lawsuit Cases’ Implementation Plan: In a letter dated December 14, 2001, Governor Bush directed the Office of Executive Clemency to implement a plan to provide the clemency application form to all prison or community supervision releases. This plan required the Department to submit to the Commission a monthly computer-generated list of offenders being released from prison (EOS – expiration of sentence) and offenders being terminated from supervision (TOS) who might be eligible for restoration of civil rights without a hearing. Data regarding these individuals was then downloaded into the Commission’s clemency database. This process ensured that all offenders would be notified of their eligibility or ineligibility for RCR without a hearing.

Computer generated “EOS/TOS” lists provides the names of offenders determined eligible for RCR without a hearing were forwarded to the Board of Executive Clemency for approval and then notified of the Board’s action. Offenders determined ineligible from the computer-generated lists were provided a hard-copy application and instructions regarding further consideration of restoration of their civil rights. The names of individuals determined eligible for RCR without a hearing were electronically placed on a list for submission to the Clemency Board. If the Board review did not result in objection by the Board, the names were electronically placed on an Executive Order and submitted to the Board for signature. Once the Executive Order was signed, certificates were electronically generated. If the Board objected to RCR without a hearing, the individual was notified. All lawsuit cases were completed June 2004.

Governor Bush’s Paperless RCR Initiative Beginning in July 2004, Governor Bush eliminated the use of a paper application and persons seeking to have their civil rights restored could call, send a letter to the Office of Executive Clemency, send an e-mail, or fill out a data information form directly online at the Commission’s website.

On December 9, 2004, the rule on the restoration of civil rights was revised to: eliminate a Board hearing provision that individuals who have been granted RCR or a pardon in the past 10 years be required to have a hearing before the Board. Allow individuals with certain disqualifying convictions to be eligible for RCR Without a Hearing if they remained crime-free for a period of five years after completion of all sentences; and allow any individual, regardless of the nature of any conviction, to be eligible for RCR Without a Hearing if they remained crime-free for a period of 15 years after completion of all sentences.

### **Clemency Funding Summary**

As a result of the lawsuit cases, Governor Bush recognized the seriousness of the situation and recommended funding for additional clemency positions to help reduce the pending cases. The Legislature agreed and provided funding for 14 Parole Examiner positions for FY 2003-04. With the additional positions, these “lawsuit” cases were completed by mid-June 2004. The Legislature then reduced the 14 Parole Examiner positions by 10. This was the last funding for positions for clemency provided by the Legislature to the Commission until the 2012 Legislative Session, wherein the General Appropriations Act provided \$350,000 in recurring annual general revenue OPS funds for FY 2012-13 for the reduction of the RCR Without a Hearing pending cases.

## 1991-1998 Governor Chiles' Administration

- Under Governor Chiles' Administration, Rule revisions were made effective January 1992.
- The Board expanded the Commission's duties to allow capital case inmates to receive interviews by panels of three commissioners and created a waiver procedure for female inmates to be evaluated by special panels if they met criteria to claim they were victims of the "battered woman syndrome." Requests for clemency increased due to more inmates being ineligible for any other form of early release consideration.

In 1991-92, the clemency workload was adversely affected by the State's budget crisis and worked much of the year with positions either frozen or eliminated. A backlog in pending applications resulted in decreases in some workload categories.

### **Clemency Funding Summary**

The Commission experienced budget cuts in FY 1990-91 of \$895,238 and 28 positions. The adjusted annual budget for FY 1990-91 was \$7,799,264. One professional position in Clemency Investigations was reduced and 27 positions eliminated in the revocation function as a result of budget cuts. A majority of the Commission's budget was allocated to the control release function.



# FLORIDA COMMISSION ON OFFENDER REVIEW

MELINDA N. COONROD  
*Commissioner/Chairman*

RICHARD D. DAVISON  
*Commissioner/Vice-Chair*

DAVID A. WYANT  
*Commissioner/Secretary*

75 YEARS OF  
SERVICE EXCELLENCE  
1941-2016

July 1, 2016

The Honorable Rick Scott, Governor  
The Honorable Pam Bondi, Attorney General  
The Honorable Jeff Atwater, Chief Financial Officer  
The Honorable Adam Putnam, Commissioner of Agriculture

Dear Governor Scott, General Bondi, CFO Atwater, and Commissioner Putnam:

Pursuant to the Rules of Executive Clemency, attached is the sixth annual report required by Rule 18 - "Collection of Statistics and Evaluation of Clemency Action."

This report provides information on the status of individuals, whose rights were restored for the previous two calendar years, including recidivism statistics and evaluative data. The felon population reviewed and subsequent data measured includes those individuals whose civil rights were granted during the reporting period and are identified in the clemency database.

If you have any questions regarding the content of this report, please contact me at your convenience at 850-487-1980.

Respectfully,

Melinda N. Coonrod  
Chairman

Cc:

John Heekin, Assistant General Counsel, Executive Office of the Governor  
Carolyn Snurkowski, Associate Deputy Attorney General, Legal Affairs  
Robert Tornillo, Director, Cabinet Affairs, Financial Services  
Christie Utt, Senior Attorney, Agriculture and Consumer Services

COMMITTED TO PROTECTING THE PUBLIC

OFFICE OF THE CHAIRMAN  
4070 ESPLANADE WAY, TALLAHASSEE, FL 32399-2450 • (850) 487-1980  
[www.fcor.state.fl.us](http://www.fcor.state.fl.us)

# RESTORATION OF CIVIL RIGHTS' RECIDIVISM REPORT FOR 2014 & 2015

*Presented to the Florida Board of Executive Clemency*

*July 1, 2016*



## FLORIDA COMMISSION ON OFFENDER REVIEW

A Governor and Cabinet Agency Created in 1941

**75** YEARS OF  
SERVICE EXCELLENCE  
1941-2016



## THE BOARD OF EXECUTIVE CLEMENCY



**Rick Scott**  
*Governor*

**Pam Bondi**  
*Attorney General*

**Jeff Atwater**  
*Chief Financial Officer*

**Adam Putnam**  
*Commissioner of Agriculture & Consumer Services*

## FLORIDA COMMISSION ON OFFENDER REVIEW

The Commission acts as the investigative and administrative arm of the Board of Executive Clemency.

### **Mission Statement**

*To Ensure Public Safety and Provide Victim Assistance  
Through the Post Prison Release Process*

### **Commissioners**

Melinda N. Coonrod, *Chairman*

Richard D. Davison, *Vice Chair*

David A. Wyant, *Secretary*

### **Office of Executive Clemency**

Julia McCall, *Coordinator*

### **Office of Clemency Investigations**

Stephen Hebert, *Director*

# REPORT OVERVIEW

## Introduction

Pursuant to Rule 18, Rules of Executive Clemency, the Office of Executive Clemency, the Florida Commission on Offender Review, and the Florida Department of Corrections are directed to provide annually, beginning July 1, 2011 and each year thereafter, a report on the status of individuals whose rights were restored for the previous two calendar years, including recidivism statistics and evaluative data.

Rule 18 states:

“18. Collection of Statistics and Evaluation of Clemency Action

The Office of Executive Clemency, in conjunction with the Florida Commission on Offender Review and Department of Corrections, shall collect and submit to the Clemency Board an annual written report providing statistics and evaluations regarding the status of those individuals whose rights were restored during the previous two calendar years. The first report shall be filed on July 1, 2011.”<sup>1</sup>

This report provides data on the number of individuals whose civil rights were restored during calendar years 2014 and 2015, along with data indicating the number and percentage of these individuals that have reoffended by committing a new felony conviction subsequent to the date their civil rights were granted by the Clemency Board.

## Methodology

### TABLE I

All individuals whose civil rights were granted during the reporting period were identified in the Florida Commission on Offender Review’s Management of Application for Clemency (MAC) database and are included in this report.

### TABLE II

The definition of “reoffend” for this table is any individual who has been convicted of a new felony offense and has returned to the custody of the Florida Department of Corrections (FDC), the Federal Bureau of Prisons, a Florida county jail, or another out-of-state entity, subsequent to the date their civil rights were granted by the Clemency Board.

All individuals whose civil rights were granted during the reporting period were reviewed by Commission staff to determine if any new felony convictions occurred subsequent to the date an individual’s civil rights were granted. Criminal histories for each individual were reviewed by running queries in three criminal justice databases between June 1-8, 2016. The databases utilized were the Florida Crime Information Center/ National Crime Information Center (FCIC/NCIC), the Corrections Data Center (CDC), and the Comprehensive Case Information System (CCIS).

### TABLE III

The definition of “reoffend” for this table is any individual who has returned to the custody of the Florida Department of Corrections (FDC) subsequent to the date their civil rights were granted by the Clemency Board.

All individuals whose civil rights were granted during the reporting period and are identified by a FDC Number in the MAC database were cross-referenced against the FDC database on June 1, 2016. Some individuals in the MAC database do not have a FDC Number if they only had an out-of-state or federal felony conviction, or a felony conviction which resulted in service of a county jail sentence.

<sup>1</sup> Florida Rules of Executive Clemency, Rule 18, revised March 9, 2011, effective March 9, 2011.

## DATA TABLES

**TABLE I**  
**PERSONS GRANTED RCR**  
**Calendar Years 2014 & 2015**

CLEMENCY TYPE	PERSONS GRANTED RCR IN 2014	PERSONS GRANTED RCR IN 2015	TOTAL
Restoration of Civil Rights	562	427	989

**TABLE II**  
**PERSONS REOFFENDING WITH NEW FELONY CONVICTION**  
**Calendar Years 2014 & 2015**

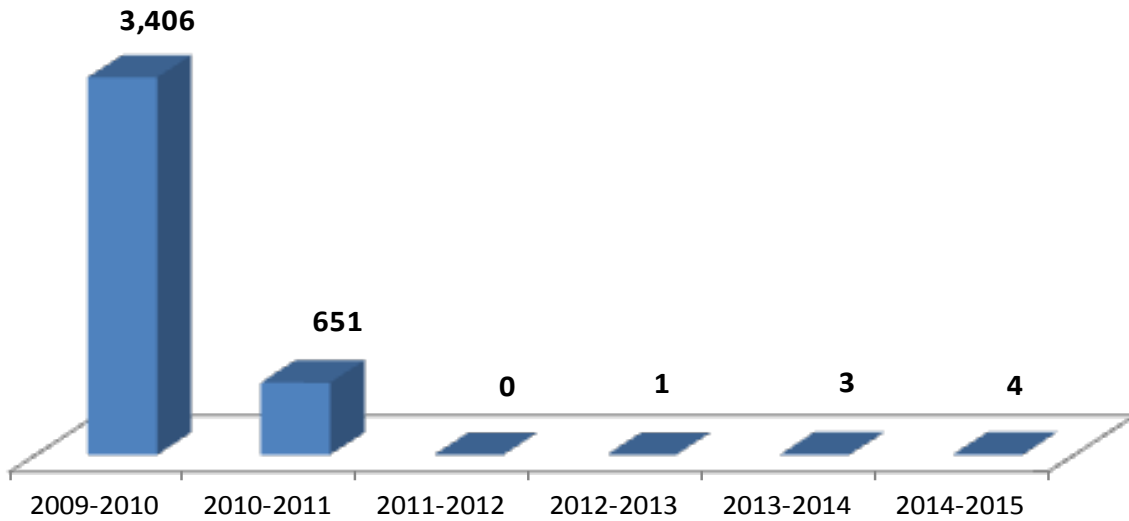
CALENDAR YEAR GRANTED	TOTAL PERSONS GRANTED RCR	TOTAL PERSONS REOFFENDING WITH NEW FELONY CONVICTION	PERCENTAGE OF PERSONS REOFFENDING WITH NEW FELONY CONVICTION
2014	562	3	0.5%
2015	427	1	0.2%
Total	989	4	0.4%

**TABLE III**  
**PERSONS RETURNED TO FDC CUSTODY BY REPORT YEAR & CURRENT YEAR**

RCR RECIDIVISM REPORT YEAR	CALENDAR YEARS	PERSONS GRANTED RCR*	PERSONS RETURNED TO FDC CUSTODY AT TIME OF ORIGINAL REPORT	PERCENTAGE AT TIME OF ORIGINAL REPORT	PERSONS RETURNED TO FDC CUSTODY AS OF 6/8/16	PERCENTAGE AS OF 6/8/16
Jul 01, 2011	2009-2010	30,672	3,406	11.1%	8,340	27.2%
Jul 01, 2012	2010-2011	5,771	651	11.3%	1,477	25.6%
Jul 01, 2013	2011-2012	420	0	0.0%	2	0.5%
Jul 01, 2014	2012-2013	911	1	0.1%	5	0.5%
Jul 01, 2015	2013-2014	1,131	3	0.3%	7	0.6%
Jul 01, 2016	2014-2015	989	4	0.4%	4	0.4%

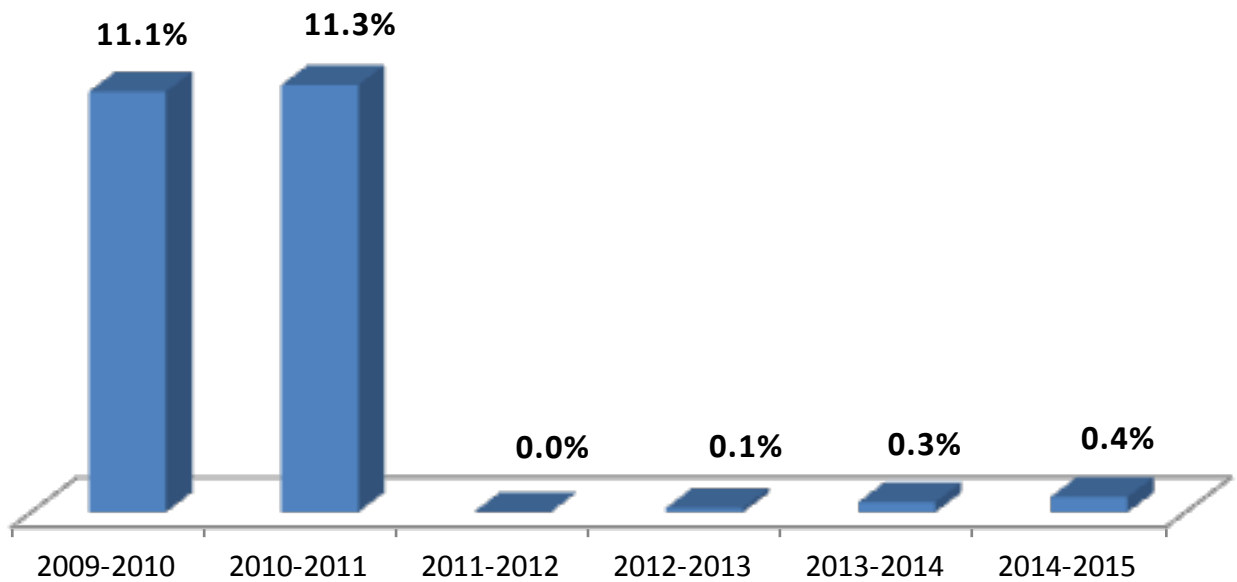
\* THE FLORIDA RULES OF EXECUTIVE CLEMENCY WERE AMENDED ON MARCH 9, 2011 TO INCLUDE ELIGIBILITY CRITERIA FOR RESTORATION OF CIVIL RIGHTS.

### PERSONS GRANTED CIVIL RIGHTS THAT WERE RETURNED TO FDC CUSTODY\*



\* AT TIME OF ORIGINAL REPORT

### PERCENTAGE OF PERSONS GRANTED CIVIL RIGHTS THAT WERE RETURNED TO FDC CUSTODY\*



\* AT TIME OF ORIGINAL REPORT

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## CONTACT INFORMATION

### Florida Commission on Offender Review

4070 Esplanade Way  
Tallahassee, FL 32399-2450  
(850) 922-0000  
[www.fcor.state.fl.us](http://www.fcor.state.fl.us)

*For information concerning the contents of this report contact:*

**Office of Executive Clemency**

Julia McCall, Coordinator (850) 488-2952

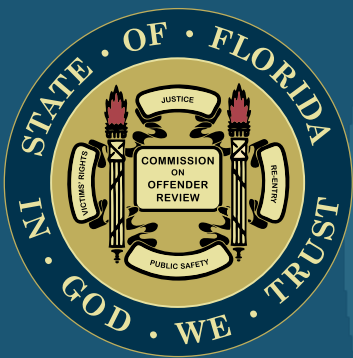
**Office of Clemency Investigations**

Stephen Hebert, Director (850) 487-1175

For information regarding applications for restoration of civil rights; restoration of alien status under Florida law; pardons; commutation of sentence; remission of fines/forfeitures; and specific authority to own, possess or use firearms, call toll-free (800) 435-8286 or (850) 488-2952 or visit [www.fcor.state.fl.us](http://www.fcor.state.fl.us).

**Media & Legislative Inquiries**

Press inquiries and public records requests regarding the Florida Commission on Offender Review should be directed to (850) 921-2816 or [publicaffairs@fcor.state.fl.us](mailto:publicaffairs@fcor.state.fl.us).



# FLORIDA COMMISSION ON OFFENDER REVIEW

A GOVERNOR AND CABINET AGENCY CREATED IN 1941

2015

Annual Report

## FLORIDA COMMISSION ON OFFENDER REVIEW



Commissioner Tena M. Pate, Chair

Governor Rick Scott

Commissioner Melinda N. Coonrod, Vice Chair

Commissioner Richard D. Davison, Secretary

*(Pictured from right to left)*

## FLORIDA BOARD OF EXECUTIVE CLEMENCY

Rick Scott, Governor

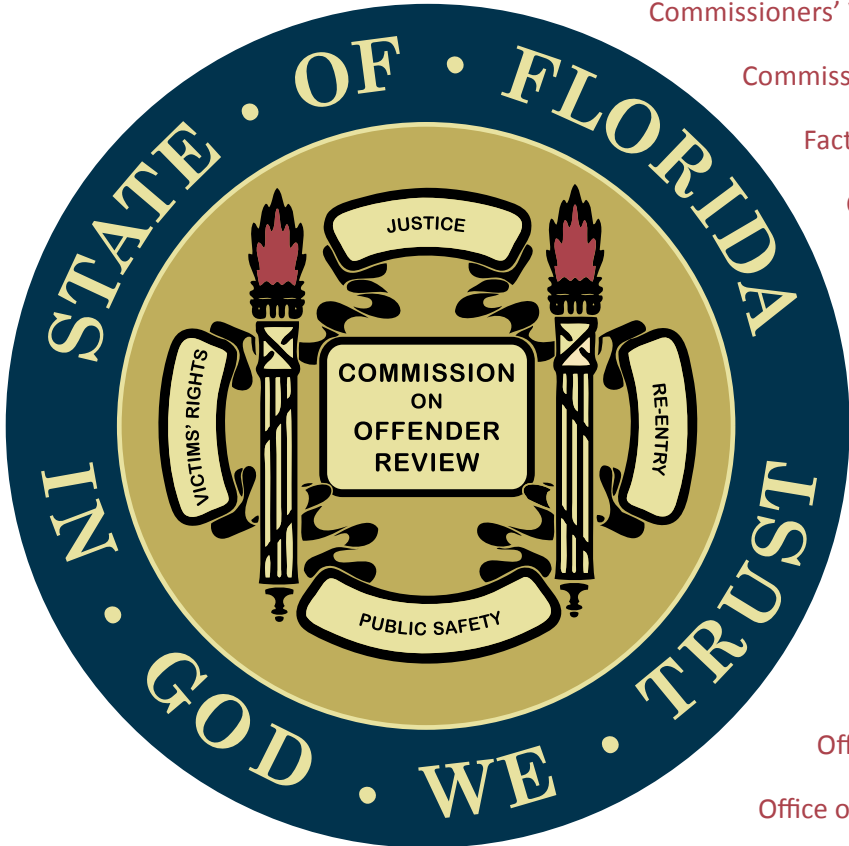
Pam Bondi, Attorney General

Jeff Atwater, Chief Financial Officer

Adam Putnam, Commissioner of Agriculture  
and Consumer Services



# TABLE OF CONTENTS



Chair’s Message ..... 2

Commissioners’ Vitae ..... 3

Commission History ..... 4

Facts about the Commission ..... 5

Commission Activities ..... 6

Year in Summary Statistics ..... 8

Financial Disclosure & Performance Measures ..... 9

Division of Operations ..... 10

Division of Administration ..... 12

Office of General Counsel ..... 12

Office of Legislative Affairs ..... 13

Office of Communications ..... 13

Office of Executive Clemency ..... 14

Office of Clemency Investigations ..... 15

Contact Information ..... 16

Field Services Directory ..... 17

### *FCOR Mission Statement*

*Ensuring public safety and providing victim assistance through the post prison release process.*



## CHAIR'S MESSAGE



*FCOR Commissioners and 'A Conversation about Crime Victims' Rights' panelists. (Pictured from left to right) State Attorney William "Willie" Meggs, Commissioner Richard Davison, Commission Chair Tena Pate, Peyton Tuthill Foundation founder Pat Tuthill, crime victim survivor and victims' advocate Cecilia McAdams, Commissioner Melinda Coonrod, and Director of Victim Services & Criminal Justice Programs for the Office of the Attorney General Emery Gainey.*

### December 2015

Dear Governor Scott and Members of the Cabinet, Senate President Gardiner, and Speaker Crisafulli:

With the support of our state leaders and the diligence of our dedicated staff, the Commission continued its commitment to protecting our state's residents and visitors this fiscal year under our new agency name, the Florida Commission on Offender Review (FCOR). During the 2014-15 fiscal year, the Commission provided accurate information to the Clemency Board for quarterly clemency hearings, held three successful out-of-town hearings, performed 21,176 victim assists, and continued to strengthen relationships with other public safety and law enforcement agencies locally, nationally and globally. Additional accomplishments are as follows:

- Hosted 'A Conversation about Crime Victims' Rights' panel presentation in observance of National Crime Victims' Rights Week at the Florida Capitol focused on victims' rights issues and services in Florida's post conviction processes. Panelists included State Attorney William "Willie" Meggs, Peyton Tuthill Foundation founder Pat Tuthill, Director of Victim Services & Criminal Justice Programs for the Office of the Attorney General Emery Gainey, and crime victim survivor and victims' advocate Cecilia McAdams. With guests including lawmakers, victims' rights advocates and public safety stakeholders, topics covered included current victims' issues and possible opportunities for future partnerships.
- Held a Victim Offender Dialogue (VOD) facilitator training session in preparation for the first state agency led VOD program in



Florida. The program is designed to provide victims and survivors of violent crime the opportunity to participate in a single face-to-face meeting with their offender in a safe and structured environment.

- Broadened our crime prevention initiative to educate at-risk youth on the potential consequences of poor life decisions.
- Created an online staff directory to increase familiarity and communication among employees and earned a Prudential Productivity Award for internal staff training innovations.
- Recognized as a model for parole, both nationally and internationally, through our continued efforts to improve the field of public safety and share the Commission's best practices with others. The Commission's media policy regarding victim interaction was cited in The National Parole Resource Center's Public and Stakeholder Education Toolkit as an example of strong communication practices for other parole boards to emulate.

The Commission plays a vital role in Florida's criminal justice system and contributes to ensuring public safety for residents and visitors to Florida, thereby reducing the number of crime victims. Commissioners Coonrod, Davison and I will continue to hold offenders accountable and through careful selection, also provide the opportunity for deserving offenders to become contributing, law-abiding members of society.

Respectfully,

Tena M. Pate, Chair

## COMMISSIONERS' VITAE



**TENA M. PATE**  
**COMMISSIONER**  
*Chair*

Serving the State of Florida and the public safety community for more than 30 years, Commissioner Pate has leveraged her extensive knowledge of the pre/post conviction and prison release process to propel the Commission forward in becoming a recognized model for parole and supervision release processes and policies across the globe. Pate is also an ardent advocate for citizens who have fallen prey to crime and has played a key role in the extensive enhancement and awareness of Florida's crime victims' rights.

Commissioner Pate has served in four of Florida's gubernatorial administrations including Martinez, Chiles, MacKay and Bush and received confirmation by the Florida Senate following her appointments to the Commission by Governors Bush, Crist, Scott, and the Florida Cabinet. Pate has also been tapped for numerous positions on national and statewide public safety boards and task forces including the National Institute of Corrections National Experts Panel on Victims Services in the Post Conviction Process, Florida Supreme Court's Florida Innocence Commission, the Attorney General's Domestic Violence Fatality Review Team and the Self-Inflicted Crimes Task Force.

She currently serves as President-elect for the Association of Paroling Authorities International, is a member of the Florida Council on Crime and Delinquency, the Florida Police Chiefs Association, Leadership Florida, Leadership Tallahassee, and is a graduate of the Florida Department of Law Enforcement Chief Executive Seminar.



**MELINDA N. COONROD**  
**COMMISSIONER**  
*Vice Chair*

Commissioner Melinda N. Coonrod began her criminal justice career in 1992 when she was appointed to serve as an Assistant State Attorney for the Second Judicial Circuit. As a prosecutor, Commissioner Coonrod handled a diverse set of criminal cases and served as lead prosecutor in more than 57 jury trials and more than 30 non-jury trials where she gained extensive criminal law experience, and became well versed in the Florida criminal justice system. She prosecuted perpetrators of crimes, advocated sentencing of those found guilty and worked closely with victims and various law enforcement agencies.

Commissioner Coonrod later served as an Administrative Hearing Officer with the Florida Department of Agriculture and Consumer Services Division of Licensing, where she presided over hearings involving the denial, suspension and revocation of licensure under Chapters 493 and 790, F.S. Her experience also includes representing children before the courts as a certified court appointed Guardian Ad-Litem, providing training seminars to various law enforcement agencies, and teaching graduate and undergraduate courses as an adjunct instructor at Florida State University College of Criminology and Criminal Justice.

Commissioner Coonrod received a Bachelor of Science degree from Florida State University College of Business and a Juris Doctor degree from Nova University. Commissioner Coonrod was appointed by the Governor and Cabinet on June 26, 2012 and was confirmed by the Florida Senate on April 29, 2013 to serve a six-year term, which extends until June 30, 2018.



**RICHARD D. DAVISON**  
**COMMISSIONER**  
*Secretary*

Commissioner Richard D. Davison began his criminal justice career in 1989 as an Assistant State Attorney in the Ninth Judicial Circuit where he prosecuted juvenile delinquency, misdemeanor, and traffic cases in jury and non jury trials. In 1991, he became the staff attorney for the Florida House of Representatives Committee on Criminal Justice. He then served as an Assistant Statewide Prosecutor for Florida's Office of Statewide Prosecution where he prosecuted white collar crime, organized crime, and other criminal enterprises.

Following the creation of the Florida Department of Juvenile Justice in 1994, Commissioner Davison served as that Department's Director of Legislative Affairs, Assistant General Counsel, and Deputy Secretary. Subsequently, Commissioner Davison was appointed Deputy Secretary of the Florida Department of Corrections. Prior to his appointment to the Commission, Davison served as Legal Counsel and Director of Administration for the Gadsden County Sheriff's Office, as well as a program coordinator for the City of Tallahassee Community Connections Restorative Justice Program.

Commissioner Davison received a Bachelor of Science degree from Florida State University and a Doctor of Jurisprudence from the University of Florida in 1988. Commissioner Davison was appointed by Governor Scott and the Cabinet on August 19, 2014 and was confirmed by the Florida Senate on April 29, 2015 to serve a six-year term, which extends until June 30, 2020.

## Commission History

In the early 1800's, state prisoners were leased to Florida companies to work as slave laborers. This era of inhumane and bitter treatment of prisoners ended after the notorious Taber case. Martin Taber was a young prisoner convicted of stealing a ride on a freight train, after which he died as a result of the brutal treatment administered by the lumber company boss to whom he was leased. An incensed public demanded the discontinuance of leasing prisoners, but prison overcrowding, the high cost of housing, and pressures for better treatment of prisoners set the stage for opportunists to peddle their influence in the pardoning of prisoners. The Pardon Board was created by the 1885 Florida Constitution and was composed of the Governor and Cabinet. Due to the limitations of the pardon system, the Florida Parole and Probation Commission was established in 1941. The Commission selected sentenced inmates for parole release and its field staff provided supervision. In 1975, the responsibilities of the supervising field staff were transferred to the Florida Department of Corrections (Department). Below is an abbreviated timeline outlining the Commission's role in Florida's criminal justice system.

**1978** The Florida Legislature enacted the Objective Parole Guidelines Act, which required the Commission to develop and implement rules and criteria upon which parole decisions were to be made. It required the development of guidelines according to an acceptable research method based on the seriousness of the offense and the likelihood of a favorable parole outcome. The Act also provided for reorganization of the agency into functional areas.

**1983** Under Sentencing Guidelines, the Commission retained paroling authority primarily for inmates whose offenses were committed prior to October 1, 1983.

**1988** The *Victim Assistance Law* was enacted and provided that the crime victim, or family of the victim, have the opportunity to provide input into the decision-making process.

**1988** *Conditional Release Program* was enacted and provides that inmates convicted of certain crimes, and who have served at least one prior felony commitment at a state or federal correctional institution or have been sentenced as a habitual offender, violent habitual offender, violent career criminal or sexual predator, shall be released under supervision on their tentative release date subject to specified terms and conditions established by the Commission.

**1989** *Control Release Authority* was established. This legislation directed the Commission to develop a system of uniform criteria to determine the number and type of inmates released into the community in order to maintain the state's prison population between 99% and 100% of its total capacity. The *Control Release Program* became effective September 1, 1990, and over the next four years, 75,000 inmates were released through this program.

**1992** *Conditional Medical Release Program* was established. This program authorizes the Department to recommend to the Commission terminally ill or permanently incapacitated inmates for early release due to their medical conditions.

**1996** The Commission began reviewing and establishing *presumptive parole release dates* (PPRD) for inmates convicted of capital felonies with 25-year minimum mandatory terms.

**2001** The Legislature created the *Addiction Recovery Supervision Program* and placed it under the Commission's administration. The law requires the Commission to set the terms and conditions of supervision, and to address alleged violations of supervision if the offender fails to abide by the conditions.

**2010** During Legislative Session, SB 200, a victim-friendly bill was passed and became law on July 1, 2010. The new law amended ss. 947.16, 947.174, and 947.1745, F.S., giving the Commission authority to increase the interval between parole consideration re-interviews to within seven years for parole eligible offenders who have been convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or who are serving a 25-year minimum mandatory sentence under s. 775.082, F.S. For victims and their families, reduction in the frequency of parole opportunities lessens the trauma, stress, and financial burden associated with the potential release of an offender.

**2013** HB 685 was signed by the Governor on June 5, 2013 and became law on July 1, 2013. The law expanded the list of crimes eligible for subsequent interview dates to be set within seven years to include the act or attempt of kidnapping, and the crimes of robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted. The sexual act or attempt thereof does not apply to the kidnapping offenses.

**2014** SB 1636 was passed and the name of the Commission was changed from the Florida Parole Commission to the Florida Commission on Offender Review.

The Legislature passed HB 5303 which reassigned the responsibility for appointing capital clemency counsel from the Justice Administrative Commission to the Board of Executive Clemency. Under the bill, the Board may only appoint private counsel with the fees paid from funds appropriated to the Commission.

## FACTS ABOUT THE COMMISSION



*Commissioners and staff during a hearing held in West Palm Beach in January 2015.*

The Commission performs a vital role in Florida's criminal justice system by preserving the autonomy needed in post release decisions affecting inmates and ex-offenders. The Commission functions as a quasi-judicial, decision-making body.

Commissioners preside over approximately 36 meetings annually at the Central Office in Tallahassee and various other locations throughout the state to encourage participation by victims, victims' families and inmates' families who would otherwise not be able to attend. While offenders are not present at these hearings, the Commission provides a victims' coordinator and an inmate family coordinator to assist both parties with participating in the proceedings and understanding the Commission's decisions. During these public proceedings the Commissioners make a variety of determinations regarding parole and other releases. In addition, the Commission reviews releasees' supervision status every two years.

Every parole eligible inmate has a constitutionally protected right to proper consideration for parole, and these proceedings must be conducted as required by law. In both parole and conditional medical release, testimony and pertinent information may be provided by representatives of the inmate, the inmate's family, by persons who were victims of the crime, and the victim's family. This proceeding is often the first opportunity for a victim, or family member of a victim, to provide input in a non-adversarial venue. If parole is granted, the Commissioners will address victim restitution issues, as well as special conditions needed to ensure the protection of the citizens in our state and the successful re-entry of the offender into society. The Commissioners may also hear from law enforcement, state and private attorneys, and other interested parties.

During meetings, the Commission also conducts other types of proceedings, such as imposing conditions of conditional release or addiction recovery supervision. The Commission makes final determinations with regard to revocation of post release supervision, where a releasee

may have violated the conditions of their release. When the Commission determines that the releasee is guilty of a willful and substantial violation, the Commission may order the violator's return to state prison to complete service of the original term of imprisonment.

The Commission serves as a cost-saving mechanism for the taxpayers of the State of Florida by conducting revocation hearings for post release supervision violators in informal surroundings conducted before an investigator, and usually held at a county jail, with witnesses to the violation providing the pertinent testimony. The United States Supreme Court has fully sanctioned the state's use of these less costly proceedings, with limited due process requirements. Probation revocation hearings, by contrast, require that proceedings be conducted in a courtroom before a judge, with an assistant state attorney prosecuting the case, and generally an appointed public defender representing the offender, plus all other expenses attendant to a criminal proceeding, at much greater expense to the state.

The Commission also acts as the administrative and investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency in clemency matters. Clemency is a constitutionally authorized process and the forms of clemency include: a full pardon; pardon without firearm authority; pardon for misdemeanor; commutation of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights (RCR) in Florida; restoration of alien status under Florida law; and capital case (death penalty) reviews.

When offenders are convicted of a felony, they lose the right to vote, sit on a jury, hold public office, and possess a firearm in Florida. The clemency process administered by the Commission provides the means through which offenders may have some or all of their rights restored.

### Commission Quick Facts

- Functions as a quasi-judicial, decision-making body.
- Responsible for the careful selection of candidates who are appropriate for parole.
- Holds 36 hearings per year - including hearings held throughout the state to encourage participation by victims, victims' families and inmates' families who would otherwise not be able to attend.
- Administers parole, conditional medical release, control release, conditional release and addiction recovery release supervision.
- Acts as the administrative and investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency.

## COMMISSION ACTIVITIES

### Parole

The Commission administers parole, a discretionary prison release, which allows an inmate who has been granted parole to serve the remainder of his prison sentence outside of the confines of the institution. Once released, the parolee is subject to strict conditions of supervision set by the Commission. The Commission monitors their progress through supervision reviews and conducts revocation hearings when alleged violations are reported. If the parolee is found to have willfully and substantially violated the conditions of his supervision, the Commission may return the parolee to prison.

Parole eligible inmates are those who committed:

1. A first degree murder, a felony murder, or the crime of making, possessing, throwing, projecting, placing, or discharging a destructive device (or the attempt of) prior to May 25, 1994;
2. All other capital felonies prior to October 1, 1995;
3. A continuing criminal enterprise (violation of section 893.20, Florida Statutes) prior to June 17, 1993;
4. A murder of a law enforcement officer (and other specified officers) prior to January 1, 1990;
5. A murder of a justice or judge prior to October 1, 1990;
6. Any felony prior to October 1, 1983, or those who elected to be sentenced "outside the guidelines" for felonies committed prior to July 1, 1984;
7. Any habitual offender sentence prior to October 1, 1988.

The following capital felonies require a minimum of 25 years to be served before becoming parole eligible: first-degree murder; sexual battery upon a child less than 12 years old; trafficking in cocaine; trafficking in illegal drugs; and the killing of another by distribution of cocaine or opium or derivatives.

There are approximately 4,561 inmates currently eligible for parole consideration and 547 parolees on supervision, as of July 1, 2015. In FY 2014-15, 28 inmates were granted parole, of which 25 were released during the fiscal year.

### Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program (section 947.149, Florida Statutes) which is a discretionary release allowing the Commission to release inmates on supervision who are "terminally ill" or "permanently incapacitated" and who are not a danger to others. The Department is charged with the responsibility of recommending to the Commission cases to be considered for conditional medical release. Upon release, the offender is subject to conditions of supervision set by the Commission. The Commission monitors the offender's progress through periodic medical reviews. The

supervision can be revoked and the offender returned to prison if the Commission determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves. In FY 2014-15, the Commission granted 15 of the 35 inmates recommended by the Department for conditional medical release.

### Conditional Release

In 1988, the Florida Legislature created the Conditional Release Program (section 947.1405, Florida Statutes) and placed it under the administration of the Commission. The program is a non-discretionary release and requires mandatory post prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment at a state or federal correctional institution, or who are designated as a habitual offender, violent habitual offender, violent career criminal or sexual predator.

Inmates who are subject to conditional release and have completed the incarceration portion of their sentence are placed under supervision for the remainder of their sentence. These offenders are subject to strict conditions of supervision set by the Commission. The Commission monitors their progress through supervision reviews, conducts revocation hearings when violations occur, and takes swift and certain response when willful and substantial violations occur, up to and including the return to prison. On July 1, 2015, there were 3,108 offenders on conditional release supervision, and in FY 2014-15 the Commission set terms and conditions for 5,386 offenders.

### Addiction Recovery

The Florida Legislature created the Addiction Recovery Supervision Program (section 944.4731, Florida Statutes) in 2001 and placed it under the Commission's administration. This program requires mandatory post prison supervision for offenders released from a state correctional facility who are convicted of a non-violent crime committed on or after July 1, 2001, and have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense. Upon release, the offender is subject to strict conditions of supervision set by the Commission. The Commission monitors the offender's progress through supervision reviews and conducts revocation hearings when violations occur. If the Commission finds the offender willfully and substantially violated the terms and conditions of supervision, the Commission may return the offender to prison. As of July 1, 2015, there were 317 offenders on addiction recovery supervision and in FY 2014-15 the Commission set terms and conditions for 1,172 offenders.

## Control Release

The Florida Legislature created the Control Release Authority (section 947.146, Florida Statutes) in 1989 with the members of the Commission acting as the release authority. When active, control release is utilized as a prison population management tool to maintain it between 99% and 100% of total capacity. Currently, the Commission is not reviewing the inmate population for discretionary release under this authority as there are sufficient prison beds to house the current prison population. Today, a small number of control releasees remain under supervision. The Commission monitors their progress through supervision reviews and conducts revocation hearings when alleged violations occur.

## Clemency

The Governor and members of the Cabinet sit as the Board of Executive Clemency; the Commission operates as the administrative and investigative arm of the Board. Clemency is a constitutionally authorized process and the forms of clemency include: a full pardon; pardon without firearm authority; pardon for misdemeanor; commutation of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights (RCR) in Florida; restoration of alien status under Florida law; and capital case (death penalty) reviews.

Under the Florida Constitution, when a person is convicted of a felony, they lose the right to vote, sit on a jury, hold public office, and possess a firearm in Florida. The clemency process administered by the Commission provides the means through which an offender may have some or all of their rights restored.

Individuals seeking any form of clemency must start the process by submitting an application and the required court documents to the Office of Executive Clemency (OEC). Detailed information is available online at [www.fcor.state.fl.us/clemencyoverview.shtml](http://www.fcor.state.fl.us/clemencyoverview.shtml).

## Victims' Services

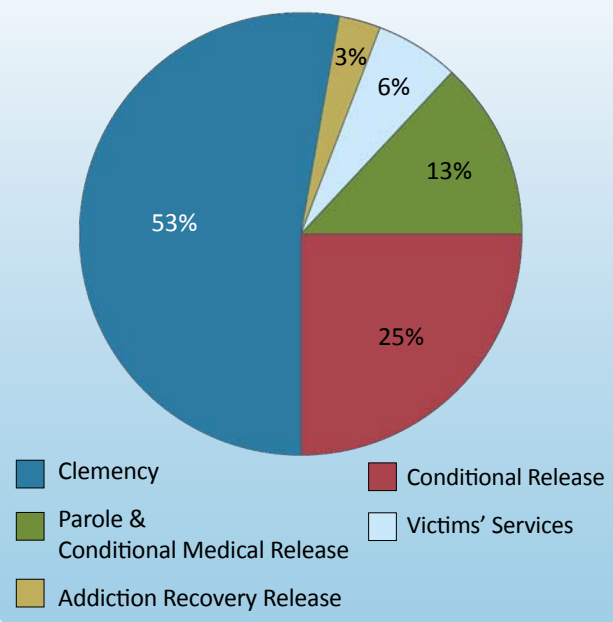
The Victims' Services section provides direct, personal service to crime victims and their families. Staff strive to reduce victimization through education within an environment of compassion, dignity, and respect. The section is proactive in educating victims and informing them of their rights. Central Office staff, in coordination with Field Services staff, attempt to locate all victims to inform them of their right to be present, informed, and heard in the clemency or Commission processes. Victims are located using many resources, including death certificates and obituaries to identify survivors, Florida driver's license information, the Internet, and the CLEAR investigative interface.

Victims are also informed of their right to be notified by the Department of an inmate's movement within the prison system or escape.

Victim input is important at every stage of the clemency, parole and conditional medical release process and is crucial to informed decision-making. Victim participation can impact a variety of decisions including clemency and conditional medical release or aggravating factors when setting a presumptive parole release date. Restitution, special conditions of supervision, and treatment programs for the offender are also impacted. If a victim chooses not to participate in this process, the person may still request to be notified and informed of upcoming proceedings and the Commission's or Clemency Board's actions concerning those proceedings. Victims make the decision as to what extent they wish to participate in the process.

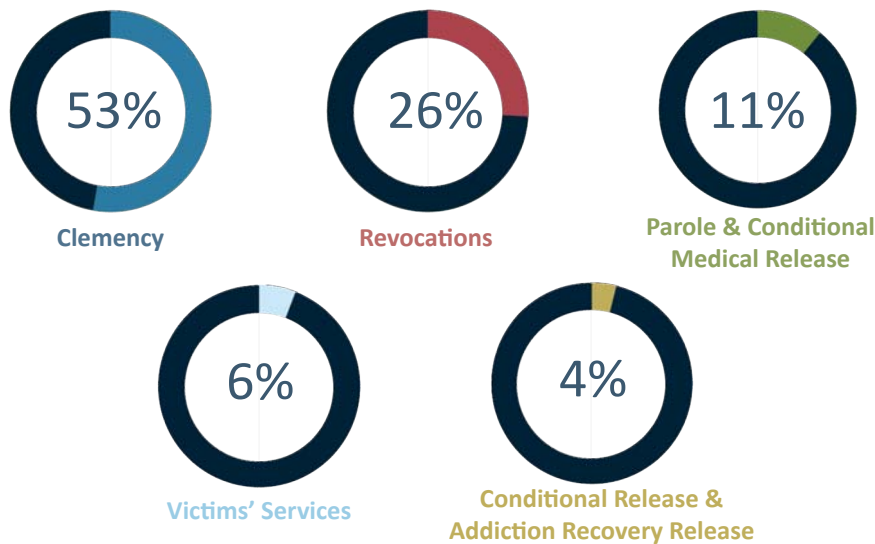
The "Victims of Crime Act" was enacted in 1984 and provides federal funding to assist state, local, and private nonprofit agencies to provide direct services to crime victims. Staff offers assistance to victims and their families by: responding to their emotional needs; providing the necessary support and resources available to help stabilize their lives after victimization; and providing information on the criminal justice system and its operations. This section is proactive in seeking ways to broaden the services that are available to victims.

**WORKLOAD HOURS BY FUNCTION**  
FY 2014-15



## YEAR IN SUMMARY STATISTICS

### WORKLOAD HOURS BY BUDGET ACTIVITY



ACTIVITY	HOURS
Clemency	88,916
Revocations	43,676
Parole & Conditional Medical Release	18,577
Victims' Services	10,248
Conditional Release & Addiction Recovery Release	7,063
<b>TOTAL FY 2014-15</b>	<b>168,480</b>

#### Clemency Services

- 5,327 clemency applications were received.
- 20,258 pending clemency applications.\*
- 6,121 clemency cases were completed.

#### Offender Revocations

- 1,753 revocation determinations were made.
- 99% of revocation determinations were completed within 90 days of final hearing.
- 2,080 warrants were issued.

#### Parole

- 1,300 parole release decisions were made.
- 4,561 inmates were eligible for parole release.\*
- 547 inmates were under parole supervision.\*
- 28 inmates were granted parole.
- 25 inmates were released on parole.

#### Conditional Medical Release (CMR)

- 35 inmates were referred for CMR.
- 15 inmates were granted CMR.
- 100% of offenders placed on CMR successfully completed supervision.

\*As of July 1, 2015

#### Victims' Services

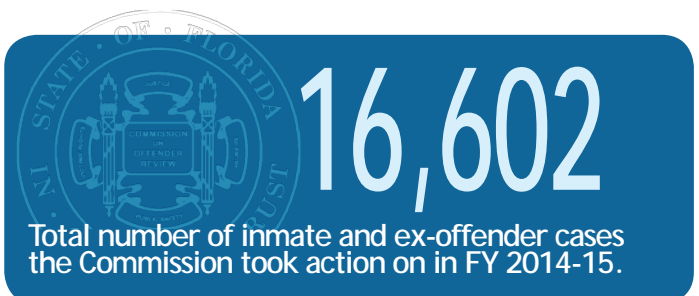
- 21,176 assists to victims were provided by FCOR.

#### Conditional Release

- 5,386 inmates were placed on conditional release supervision.
- 3,108 inmates were under conditional release supervision.\*
- 75% of offenders placed on conditional release successfully completed supervision.

#### Addiction Recovery Release

- 1,172 inmates were placed on addiction recovery release supervision.
- 317 inmates were under addiction recovery release supervision.\*
- 92% of offenders placed on addiction recovery successfully completed supervision.



## FINANCIAL DISCLOSURE

BUDGET CATEGORY	APPROPRIATED BUDGET	ACTUAL EXPENDITURES AS OF JUNE 30, 2015	BALANCE AS OF JUNE 30, 2015
Salaries (GR)	\$ 7,443,721	\$ 7,371,864	\$ 71,857
OPS	\$ 637,153	\$ 631,507	\$ 5,646
Expense	\$ 964,484	\$ 964,484	\$ -
OCO	\$ 108,202	\$ 108,202	\$ -
Contracted Services	\$ 68,000	\$ 64,000	\$ 4,000
Risk/Insurance	\$ 46,861	\$ 46,861	\$ -
Lease/Purchase Equipment	\$ 19,800	\$ 19,800	\$ -
Human Resource	\$ 51,712	\$ 51,712	\$ -
Data Processing	\$ 194,450	\$ 194,450	\$ -
<b>Total</b>	<b>\$ 9,534,383</b>	<b>\$ 9,452,880</b>	<b>\$ 81,503</b>

## PERFORMANCE MEASURES

47

Parolees successfully completed their supervision without revocation within the first two years.

1,338

Number of parole and conditional medical release decisions.\*\*

94%

Of parolees have successfully completed their supervision without revocation within the first three years.

1,753

Number of revocation determinations.

99%

Of cases placed before the Commission/ Clemency Board contained no factual errors.

21,176

Number of victim assists.

99%

Of revocation cases were completed within 90 days of final hearing.

6,121

Number of clemency cases completed.

99%

Of RCR *With a Hearing* cases provided to the Clemency Board contained no factual errors.

7,390

Number of conditional release/addiction recovery cases handled.\*\*

100%

Of RCR *Without a Hearing* cases provided to the Clemency Board contained no factual errors.

\*\* Number includes re-docketed cases.



## DIVISION OF OPERATIONS

*The Division of Operations is the largest unit of the Commission and is comprised of four sections: the Revocations Unit; Victims' Services; Office of the Commission Clerk; and Field Services. Twelve field offices are divided among five regional areas across the state with each region staffed by an Administrator who directs the day-to-day activities of the professionals and support staff assigned to the offices located within the region.*

*Operations is responsible for multiple, diverse functions relating to the administration of post prison supervisory release programs. These supervised release programs include parole, conditional medical release, control release, conditional release, and addiction recovery release supervision. The Division, through its Field Services staff, conducts parole interviews, administrative hearings for alleged violations of supervision, as well as clemency investigations for the Board of Executive Clemency.*

### Operations Accomplishments: FY 2014-15

In partnership with the Florida Department of Corrections, FCOR's Conditional Release work group met with Gadsden Re-Entry Center staff to become involved earlier in establishing program priorities for conditional release eligible inmates rather than waiting until the inmate is within 180 days of release. The goal of this early participation in inmate programming and assessment is the possibility of fewer conditions imposed upon release, fewer technical violations and a reduction in recidivism.

Held three successful out-of-town meetings in Hillsborough, Palm Beach, and Brevard Counties throughout the year, providing greater accessibility to hearings for victims and families. The hearings also broadened our Crime Prevention Initiative program by allowing at-risk youth the opportunity to observe the proceedings and view first hand the negative consequences criminal behavior has on families and the community.

Statewide Field staff updated and created operational procedure directives to ensure accurate and modern processes were documented and available if required.

Continued Operation Justice Owed (OJO) warrant sweep operation with the US Marshals Service Fugitive Task Force to locate and apprehend parole absconders. To date, more than 110 warrants have been cleared; 85 arrests, 25 confirmed deceased.

### Office of the Commission Clerk

The Office of the Commission Clerk receives thousands of cases each year which staff prepare and process for the Commission's review and action. They include conditional release interviews, parole interviews, parole release plan investigations, addiction recovery interviews, conditional medical release recommendations, supervision reviews, requests for modifications of the conditions of supervision, eligibility reviews and special requests from the Department.

### Office of the Commission Clerk Accomplishments: FY 2014-15

Electronically preserved all historical Commission dockets from the previous 30 years, including all control release case dockets.

Continued to refine the Commission Management System (CMS), the agency's paperless docketing mechanism, including scanning and filing all Central Office case files in their entirety.

Established Commission action forms for use upon parole grant and conditional medical release decisions to ensure timely notification to relevant parties.

Reclaimed preparation responsibility of judicial notices for sentencing courts so that they may have an opportunity to provide input upon the scheduling of an inmate's effective or extraordinary interview. Also updated Judicial Notice Procedure Directive 3.01.03 to provide specific direction to the Commission regarding sentencing courts notification procedures per section 947.1745(6) and section 947.146(4), Florida Statutes.

Completed project with the Florida Department of Corrections to electronically flag all violent criminals with conditional release eligible status. Resulted in the identification of 185 conditional release eligible inmates and ensured immediate status identification of newly admitted violent criminals.

Scanned 1,245 historical index orders of 15 years or greater into OnBase imaging system providing accessibility to all Commission staff.

The number of cases docketed in FY 2014-15 included:\*

- Parole - 1,304
- Conditional Medical Release - 37
- Conditional Release - 6,094
- Addiction Recovery Release Supervision - 1,220
- Control Release - 0

*\* Individual cases may be docketed multiple times throughout the year, therefore docketed case totals may be higher than actual case totals.*

## Revocations

Revocations reviews all violation reports, prepares arrest warrants, updates the National Crime Information Center/ Florida Crime Information Center (NCIC/FCIC) databases, responds to requests from law enforcement agencies, coordinates the extradition of violators, and performs functions relating to the docketing and processing of cases for Commission action involving review of supervision and violations of supervision.

### Revocations Accomplishments: FY 2014-15

Completed cross-training in Communications to respond to NCIC/FCIC notifications received on offenders under the agency's jurisdiction who have been arrested.

Created procedure directives for Waivers in Absentia and Out of State Hits and Extraditions.

Coordinated the Commission's workshops at The Attorney General's 30th National Preventing Crime in the Black Community Conference, including panel presentation, 'The Impact of Crime: The Good, The Bad & The Ugly' and a workshop on Restorative Justice focused on the concept of finding opportunities for offenders to take responsibility for their actions and contribute to the needs of the crime victim and surrounding community instead of simply receiving punishment.

- Warrants Issued - 2,214
- Warrants Dismissed - 487
- Cases Reviewed and Prepared for Docket - 1,753\*

*\*Includes parole, conditional medical release, control release, conditional release, and addiction recovery release supervision cases.*

### Victims' Services Accomplishments: FY 2014-15

Awarded Victims of Crime Act (VOCA) federal grant to fund a full-time staff position responsible for assisting victims of offenders who are seeking clemency.

Hosted a panel presentation in observance of National Crime Victims' Rights Week (NCVRW) at the Florida Capitol focused on victims' rights issues and services in Florida's post conviction processes. Moderated by Commission Chair Tena M. Pate, 'A Conversation about Crime Victims' Rights' included panelists State Attorney William "Willie" Meggs, Peyton Tuthill Foundation founder Pat Tuthill, Director of Victim Services & Criminal Justice Programs for the Office of the Attorney General Emery Gainey, and victims' advocate Cecilia McAdams. With guests including lawmakers, victims' rights advocates and public safety stakeholders, topics covered included current victims' issues and possible partnership opportunities.

Developed Victim Offender Dialogue (VOD) Program designed to provide victims of violent crime the opportunity to participate in one face-to-face meeting with their offender in a safe and structured setting. The victim-centered and initiated program allows the Commission to enhance victim assistance by supporting the healing process of victims and allowing offenders to learn about the impact of the crime on victims and to take direct responsibility for their behavior.

A VOD facilitator training session led by Jon Wilson, Director of Just Alternatives, was held and included victim services professionals from the Commission, Florida Department of Corrections, Department of Juvenile Justice, the Executive Office of the Governor, the Office of the State Attorney Second Judicial Circuit, and the Office of the State Attorney Eighth Judicial Circuit.

Coordinated NCVRW event for Commission staff who were invited to attend a Cyber Safety class presented by FDLE's Secure Florida team. Attendees learned how to protect themselves from being the victim of a cyber crime or cyber stalking.

Hosted a viewing of *The Other Way*, a short film about crime victim and advocate Agnes Furey's journey through the restorative justice process followed by a Q&A session.

- Requests for Information by Victims - 2,870\*
- Status Updates Provided to Victims - 5,573\*
- Victims Located - 1,093\*
- Victims Assisted at Parole/Clemency Hearings - 342

*\*Includes parole, conditional medical release, clemency, and conditional release cases.*

## Field Services

Field Services is responsible for performing a variety of functions, including acting as hearing officers when conducting administrative hearings. Regarding the parole release process, Field Services Investigators conduct inmate interviews at the correctional facilities, perform investigations, and make recommendations regarding the establishment of a presumptive parole release date (PPRD) for parole eligible inmates. Duties also include: making recommendations regarding changes to an inmate's PPRD and whether to grant parole; conducting investigations for parole release plans; and locating victims or relatives of victims. Additional duties include conducting full clemency investigations for the Board of Executive Clemency.

### Field Services Statewide Activity Totals: FY 2014-15

- Parole Interviews - 926
- Revocation Interviews - 2,673
- Revocation Hearings - 757
- Total Interviews and Hearings - 4,357

## DIVISION OF ADMINISTRATION

*The Division of Administration serves as a liaison with the Governor's Office of Planning and Budgeting, the Office of Program Policy and Government Accountability, the Auditor General, the Florida Legislature, the Department of Financial Services (DFS), the Department of Management Services (DMS), and the Department of Corrections' Information Technology section. The Division provides administrative support to the Commission's Central Office and 12 field offices. Administration includes Human Resources, Finance and Accounting, Purchasing, Safety, Grants, Contracts, Inventory, Emergency Management and General Services. This Division has fiscal responsibility for the agency including preparation of the agency's Legislative Budget Request, management of the Commission's operating budget, the Long Range Program Plan, and purchasing of all commodities and services for the agency. Additionally, the Division is responsible for preparing data, statistics, and financial information.*

### Administration Accomplishments: FY 2014-15

The Department of Financial Services reported 99-100% prompt payment requirement compliance by the Commission which processed 1,664 invoices.

The Department of Management Services' MFMP Agency Utilization Scorecard reported the Commission with 100% in purchase order and contract utilization, 91% in invoice utilization, 98% in catalog utilization and 95% in receiving goods.

The Department of Management Services reported 98-100% of performance evaluations completed in People First.

The Commission reported 100% completion of Financial Disclosure Reporting to the Commission on Ethics.

The Director of Administration and the Accounting and Budgeting Administrator successfully completed the Florida Certified Contract Manager course.

## OFFICE OF GENERAL COUNSEL

*The Office of the General Counsel is charged with successfully prevailing on litigation filed against the Commission; providing quality legal advice and representation in a prompt manner; and engaging in proactive legal counseling to prevent unnecessary litigation in the future.*

### General Counsel Accomplishments: FY 2014-15

The Office of the General Counsel was actively involved in litigation during FY 2014-15 in both state and federal court, opening 379 new cases.

The office filed 492 court pleadings, motions, responses, briefs, memoranda, and legal correspondence as a result of releasees, parolees, and clemency applicants challenging the Commission's decisions.

Legal staff responded to 348 public records requests.

The attorneys provided 611 legal opinions, advice and support to the Commissioners, Central Office and the five regional offices.

## OFFICE OF LEGISLATIVE AFFAIRS

*The Office of Legislative Affairs is charged with directing and overseeing the Commission's legislative program as the agency's chief legislative advocate. This office interacts with all members and staff of the Florida Legislature; the Office of Program Policy and Accountability and the appropriate Joint Legislative Committees; the Governor's Office of Policy and Budget; the Governor's Office of Legislative Affairs; and the Legislative Affairs Directors of all state agencies, particularly those in the areas of law enforcement and criminal justice.*

### Legislative Affairs Accomplishments: FY 2014-15

The Commission's primary legislative priority in 2015 was the confirmation of Commissioner Richard Davison. Commissioner Davison successfully appeared before the Senate Criminal Justice Committee and the Senate Committee on Ethics and Elections. The Senate voted unanimously in favor of Commissioner Davison's confirmation on April 29th.

The Commission's operating budget for FY 2015-16, as provided in SB2500a, is \$10,019,470 (\$9,958,912 in General Revenue Funding and \$60,558 from Trust Funds); the total represents an increase of \$449,891 over FY 2014-15 funding. In addition to receiving funding for the agency's base budget which included 132 full-time employees (FTEs), the Commission received \$210,577 for Information Technology (IT) services and \$153,537 for the Commission to manage clemency counsel for capital case proceedings.

## OFFICE OF COMMUNICATIONS

*The Office of Communications is charged with overseeing the agency's internal and external communications and public information programs, with the Director acting as the agency's chief spokesperson. This office responds to daily inquiries from local, state, and national media organizations, as well as responding to public information and public records requests. It is also responsible for the production of all publications and informational materials disseminated to legislators, media, key stakeholders and the general public throughout the state and nation.*

### Communications Accomplishments: FY 2014-15

Created comprehensive, strategic plan to notify, educate and connect with key stakeholders regarding the Commission's name change to the Florida Commission on Offender Review.

Designed the new official Commission seal, as well as updated brand and identity standards for all agency collateral, website and communication tools.

Designed and produced Commission publications and reports including: Legislative Budget Request and presentation, Long Range Program Plan, Annual Report, Commission Brochure, Victims' Services Brochure, Commission Media Kit and Virtual Press Kit, and Quarterly Staff Newsletters.

Composed media messaging and content copy for programs including: 2015 National Crime Victims' Rights Week (NCVRW), Crime Prevention Initiative, and Victim Offender Dialogue Program and Facilitator Training.

Prepared presentation and speaking points for internal and external events and engagements including: NCVRW 2015 Panel Presentation, Prosecuting Attorney's Association Conference, Florida Council on Crime and Delinquency Institute, Attorney General's Advocacy after Conviction training, Big Bend Paralegal Association, Canadian Parole Board Training, Wakulla Correctional Institution's National Women's History Month event, FCCD (Florida Council on Crime and Delinquency) Chapter II Annual Distinguished Service Awards Dinner, APAI's (Association of Paroling Authorities International) Annual Training Conference, Commission business meetings, Public Service Recognition Week and Annual Staff Awards Ceremony, and the Attorney General's National Preventing Crime in the Black Community Conference.

Provided media messaging, materials and on-site media relations for: Victim Offender Dialogue Facilitator Training, NCVRW Panel Presentation, weekly parole hearings in Central Office, Quarterly Board of Executive Clemency hearings, Commissioner Davison confirmation and Commissioner reappointments, and Florida Channel's Point of View Interview featuring Commission Chair.

## OFFICE OF EXECUTIVE CLEMENCY

*The Office of Executive Clemency (OEC) reports directly to the Governor and Cabinet who sit as the Clemency Board in the performance of their duties and responsibilities. This office is co-located with the Commission for ease of operation and coordination of functions. OEC was created in 1975 to process applications for executive clemency requiring approval of the Governor and requisite members of the Cabinet. The Coordinator is appointed by the Governor and Cabinet and is responsible for coordinating all clemency meetings, referring applications for investigation and serves as the official custodian of all clemency records.*

In addition to processing requests for Restoration of Civil Rights (RCR), applications for restoration of alien status under Florida law, full pardons, pardon without firearm authority, pardon for misdemeanors, remission of fines, requests for review regarding commutations of sentence and specific authority to own, possess or use firearms, the office also provides verification and certification of RCR and all other forms of clemency requested by law enforcement agencies, state attorneys, public defenders, licensing agencies, and supervisors of elections. During FY 2014-15, staff prepared 4,708 "Gold Seal" letters, which verified the status of clemency requests for inquiring agencies.

The OEC prepares and distributes the agenda for the quarterly Board meetings, as well as the orders and certificates granting clemency, and is responsible for notifying the applicants and their attorneys regarding meeting dates and the status of their cases. Information and applications for clemency are distributed on a daily basis. Office staff responds to questions and assists applicants in completing the requests for RCR, as well as responding to correspondence and phone calls referred from the Governor, Cabinet offices and other government agencies.

The Coordinator works with the Governor and Cabinet members' clemency aides on the interpretation of the Rules of Executive Clemency and stays abreast of new state and federal legislation that may have a direct or indirect impact on the clemency process in Florida. The Coordinator also responds to research inquiries regarding clemency and provides information to persons conducting federal and state surveys on clemency procedures in Florida.

In 2014, the Legislature passed HB 5303 which reassigned the responsibility for appointing capital clemency counsel from the Justice Administrative Commission to the Board of Executive Clemency. The Coordinator of the OEC facilitates and monitors this action.

### RCR Recidivism Report

Rule 18 directs the Office of Executive Clemency, the Commission, and the Department to provide an annual report on the status of individuals whose rights were restored for the previous two calendar years, including recidivism statistics and evaluative data.

The report was provided to the Board by the Commission on July 1, 2015, and is an overview of the processing and granting of RCR cases for calendar years 2013 and 2014, along with data indicating the number of these individuals who have re-offended with a new felony conviction.

### Office of Executive Clemency Accomplishments: FY 2014-15

During FY 2014-15, the OEC coordinated quarterly clemency meetings; September and December 2014, and March and June 2015. Much of the work is prepared prior to and after meetings regarding contacting applicants and informing them of their placement on the agenda and of the results after the meeting. The OEC and Clemency Investigations work jointly to ensure productive meetings.

Clemency's toll-free information number received 13,191 calls in FY 2014-15.

Since its inception on October 6, 2008 and through June 2015, the clemency RCR search web page had the following results:

- Visitors to site - 3,974,058
- Certificate searches - 1,106,369
- RCR certificates located - 126,904
- RCR certificates viewed and available to print - 77,419
- Certificates available online June 2015 - 376,597

The OEC focused efforts on customer service and enhanced assistance to applicants, as well as the Office of Clemency Investigations.

OEC's basic eligibility screening procedures were expanded in FY 2014-15 to include full research capabilities on all eligibility aspects for pending cases during the initial screening process. Benefits include timelier notification of disqualifying issues to applicants and detailed resolution instructions and assistance.

To ensure the dissemination of current and accurate information, the OEC provided daily data updates to the Division of Elections and provided updated instructional material to the Supervisors of Elections across the state. The same information is available online at [www.FLrestoremyrights.com](http://www.FLrestoremyrights.com), the 24/7 resource available to individuals who want to verify the restoration of their voting rights.

## OFFICE OF CLEMENCY INVESTIGATIONS

*The Office of Clemency Investigations is charged with investigating, reviewing, evaluating, and reporting to the Clemency Board in all types of clemency cases, including, but not limited to, the restoration of civil rights, restoration of alien status under Florida law, full pardons, firearm authority, commutations of sentence, remission of fines, and capital punishment cases. Clemency Investigations provides training, resource materials, and support to Field Services staff in all clemency matters.*

### General Clemency Investigations

Clemency Investigations, with the assistance of Field Services staff, provides daily investigative and research support to the Board. Field Services staff conducts confidential investigations on all applications that are referred to the Commission for investigation. The office conducts quality assurance reviews on each of these investigations, and all eligible cases are presented to the Board.

The office also conducts investigations on all Requests for Review for Commutation of Sentence applications, provides customer service to clemency applicants, and assists in the development of clemency data requests.

The type of clemency investigation primarily depends on the severity and nature of the offense and the form of clemency relief being sought. The Rules of Executive Clemency (Rules) provide detailed information regarding the list of offenses that determine the processing category. The depth and scope of each investigation vary by type and each has a different waiting period after completion of sentence.

Restoration of Civil Rights (RCR) investigations are classified as: Without a Hearing and With a Hearing. Without a Hearing investigations are those where offenders, depending on the offense of conviction, are eligible for consideration only after five years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions, if no crimes have been committed and if the applicant has not been arrested for a misdemeanor or felony for the five years prior to the date the application is being reviewed. With a Hearing investigations are those where offenders with more serious offenses are eligible for consideration only after seven years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions.

All With a Hearing investigations, including non-RCR, provide a broad picture of the applicant's history and activities, which assist the Board in making informed decisions. They include, but are not limited to: criminal convictions; history of adjustment to incarceration or supervision; criminal record; traffic record; payment of fines, court costs, public defender fees and victim restitution; history of domestic violence; alcohol and substance abuse history; voter registration information; as well as judicial, state attorney and victim input. The office

conducts quality assurance reviews on each of these investigations and obtains the Commission's advisory recommendation for submission to the Board. Clemency applicants are mailed a copy of their investigative report prior to each scheduled Board meeting.

### Capital Punishment Case Investigations

In capital punishment cases, by Rule, the Governor may direct the Commission to conduct an in-depth investigation. Clemency Investigations is responsible for coordinating the clemency interview of the death row inmate conducted by the Commission. The Capital Punishment Research Specialist researches the case history, including offense(s) of conviction, complete criminal record, institutional record, social and psychological information, co-defendant information, and trial and appellate court information. The Specialist is the point of contact for clemency counsel, manages the agreement, and acts as a liaison between counsel and the Florida Department of Corrections. They also coordinate with Field Services staff to conduct an investigation on the inmate and conduct interviews, if possible, with the trial attorneys who prosecuted and defended the inmate, the presiding judge, and the inmate's family. In addition, the Research Specialist works with the Attorney General's Office to allow victims of record to provide any comments to be included with the final report to the Board. Clemency Investigations compiles this information together with the Commission's findings and conclusions and provides it to the Board to assist in the consideration of a commutation of death sentence to life.

### Office of Clemency Investigations Accomplishments: FY 2014-15

Reduced the number of pending Without a Hearing cases from 956 on July 1, 2014 to 561 on July 1, 2015.

Produced a revised RCR eligibility investigation training manual; provided monthly teleconference training to field offices; established joint monthly training meetings with the OEC; and assisted in conducting on-site investigation training to the field offices.

Coordinated with the OEC to implement a clemency database upgrade to include an improved Notes system, a Quick Search feature, new categories for scanned documents, and greater security enhancements.

## CONTACT INFORMATION

### General Information

Florida Commission on Offender Review  
4070 Esplanade Way  
Tallahassee, FL 32399-2450  
[www.fcor.state.fl.us](http://www.fcor.state.fl.us)

For general inquiries about the Commission  
[publicaffairs@fcor.state.fl.us](mailto:publicaffairs@fcor.state.fl.us) (850) 922-0000

### Clemency

For information regarding clemency applications for restoration of civil rights, full pardons, remission of fines, commutations of sentence and specific authority to own, possess or use firearms, call **toll-free (800) 435-8286**, email [clemencyweb@fcor.state.fl.us](mailto:clemencyweb@fcor.state.fl.us).

### Victims' Services

For notification of inmate hearings and release information contact Victims' Services **toll-free (855) 850-8196** or email [victimquestions@fcor.state.fl.us](mailto:victimquestions@fcor.state.fl.us).

### Inmate Supporters

For information regarding an inmate's parole, conditional medical release, conditional release or addiction recovery supervision or for information about attending a Commission hearing call **toll-free (800) 335-3396**.

To submit a statement of support, email [inmatessupporter@fcor.state.fl.us](mailto:inmatessupporter@fcor.state.fl.us).

### Revocations

For information regarding violations of supervision, warrants or other revocation matters, call **(850) 488-0611** or email [revocations@fcor.state.fl.us](mailto:revocations@fcor.state.fl.us).

### Public Affairs

All press inquiries should be directed to the Communications office at **(850) 921-2816** or [publicaffairs@fcor.state.fl.us](mailto:publicaffairs@fcor.state.fl.us).

All legislative inquiries should be directed to the Legislative Affairs office at **(850) 921-2804**.

### Commissioners

Tena M. Pate .....	(850) 487-1980
Chair	FAX (850) 414-2627
Melinda N. Coonrod .....	(850) 487-1978
Vice Chair	FAX (850) 487-1220
Richard D. Davison .....	(850) 488-0476
Secretary	FAX (850) 414-6902

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### Division of Operations

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Daphne Asbell .....	(850) 487-3259
Victims' Services Supervisor	FAX (850) 921-8712
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Office of the Commission Clerk Supervisor	FAX (850) 414-6031

### Office of Clemency Investigations

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### Office of Communications

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### Office of Executive Clemency

Julia McCall .....	(850) 488-2952
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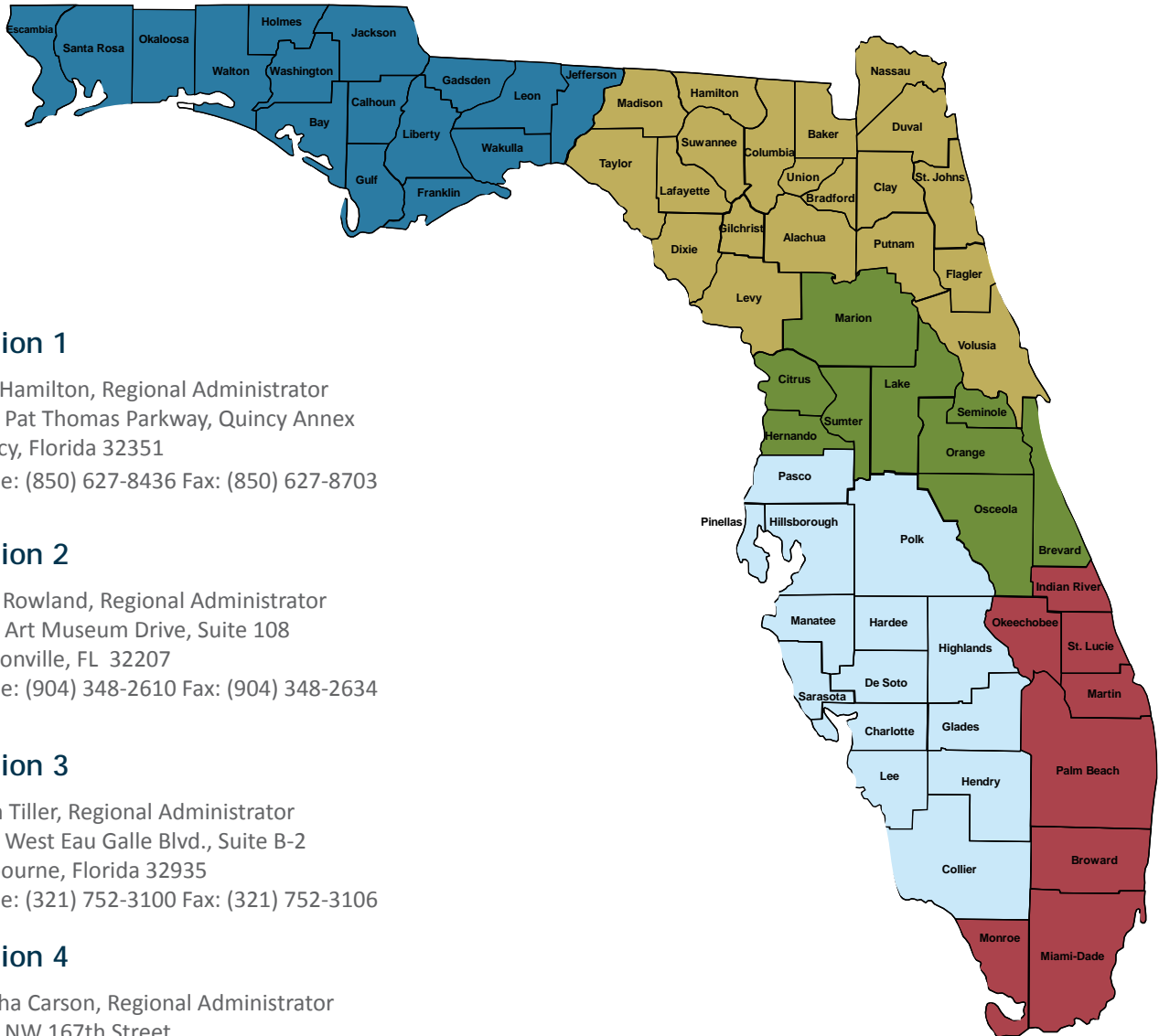
### Office of General Counsel

Sarah Rumph .....	(850) 488-4460
General Counsel	FAX (850) 414-0470

### Office of Legislative Affairs

Peter Murray .....	(850) 921-2804
Director	FAX (850) 921-2827

## FIELD SERVICES DIRECTORY



### ▶ Region 1

Tom Hamilton, Regional Administrator  
2225 Pat Thomas Parkway, Quincy Annex  
Quincy, Florida 32351  
Phone: (850) 627-8436 Fax: (850) 627-8703

### ▶ Region 2

Mills Rowland, Regional Administrator  
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Jacksonville, FL 32207  
Phone: (904) 348-2610 Fax: (904) 348-2634

### ▶ Region 3

Kevin Tiller, Regional Administrator  
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Melbourne, Florida 32935  
Phone: (321) 752-3100 Fax: (321) 752-3106

### ▶ Region 4

Ayesha Carson, Regional Administrator  
3601 NW 167th Street  
Miami, Florida 33056  
Phone: (305) 620-3737 Fax: (305) 628-6815

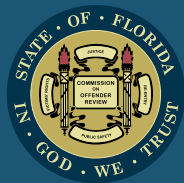
### ▶ Region 5

Helen Williams-Lester, Regional Administrator  
1313 North Tampa Street, Suite 310  
Tampa, Florida 33602  
Phone: (813) 233-2530 Fax: (813) 233-2553

### Field Services

Field Services staff are responsible for carrying out the Commission's duties at a regional level including conducting administrative hearings for alleged violations of supervision; performing clemency investigations for the Board of Executive Clemency; conducting inmate interviews at the correctional facility and making appropriate recommendations; conducting investigations for parole release plans; and locating victims or the relatives of victims.





## FLORIDA COMMISSION ON OFFENDER REVIEW

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Tallahassee, FL 32399-2450  
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[www.fcor.state.fl.us](http://www.fcor.state.fl.us)

**Florida Department of Corrections  
Florida ID Data for August 2016 Releases**

<b>Birth State</b>	<b>Florida ID</b>	<b>Percent of Inmates with Florida ID</b>	<b>No Florida ID, but ID Prepared</b>	<b>Percent of Inmates that are ID Prepared</b>	<b>Percent of Releases with either a Florida ID or are ID Prepared</b>	<b>Total of Inmates Released</b>
FLORIDA	1,226	84.8%	132	9.1%	93.9%	1,446
OTHER	570	69.3%	61	7.4%	76.7%	823
<b>TOTAL</b>	<b>1,796</b>	<b>79.2%</b>	<b>193</b>	<b>8.5%</b>	<b>87.7%</b>	<b>2,269</b>

Note: Excluding Deaths, Emergency Releases, Inmates Released on a Detainer or who are Confirmed Aliens or who are Released to Another State

Date prepared: September 12, 2016

**Tab 4**

# **Reports**

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## Turnout and Party Registration among Criminal Offenders in the 2008 General Election

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Traci Burch

This paper estimates the voter registration, turnout, and party registration in the 2008 general election for men with felony convictions in Florida, Georgia, Michigan, Missouri, and North Carolina. The findings indicate that turnout among felons is much lower than previous research has shown. Ex-felon turnout in 2008 varied by state, averaging 22.2 percent. People captured and convicted for their first offense after the election voted at similarly low rates. Also contrary to the expectations of previous literature, the ex-felon population does not seem overwhelmingly Democratic. In North Carolina and Florida, two states for which the data are available, party registration varies by race. Among registered black male ex-felons, 71.7 percent in North Carolina and 84.2 percent in Florida are registered Democrats. Among whites, however, only 35.3 percent and 36.4 percent of ex-felons are registered Democrats in North Carolina and Florida, respectively.

To many observers, 2008 seemed a banner year for civic engagement in the United States. Thousands of Americans volunteered, donated, and canvassed for candidates in never-before-seen numbers. Images of long lines of citizens waiting to cast ballots, often for the first time, suggested “a huge turnout that ought to be cause for celebration” (King 2008). Right before the election, a poll conducted by CBS and the New York Times showed that 70 percent of adults reported paying “a lot” of attention to the campaign (*The New York Times/CBS News Poll, October 19–22 2008*).

Most encouragingly, this increase in political activity incorporated segments of the population that traditionally have been left out of politics. According to the Census Bureau, voter turnout increased from 47 percent in 2004 to 49 percent in 2008 among people aged 18 to 24, a statistically significant effect (Edwards

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I would like to thank Jennifer Hochschild, Gary King, Sidney Verba, Kay Schlozman, Andrea Campbell, D. Sunshine Hillygus, Vesla Weaver, the members of the American Politics Research Workshop at Harvard University, Barry Burden, and Jamie Druckman for their comments on various drafts of this article. This article was funded by the American Bar Foundation and Northwestern University. Please direct all correspondence to Traci Burch, The American Bar Foundation, 750 N. Lake Shore Drive, 4<sup>th</sup> floor, Chicago, IL 60611; e-mail: [tburch@abfn.org](mailto:tburch@abfn.org).

2009). Voting rates among blacks, Hispanics, and Asians increased by four percentage points between 2004 and 2008 (Edwards 2009). Minority voters account for most of the five-million-vote increase during this time period; two million more blacks, two million more Hispanics, and 600,000 more Asians cast ballots in this election, while the number of non-Hispanic white voters remained unchanged (Edwards 2009).

This surge in votes among young and minority citizens certainly can be attributed to the candidacy of Barack Obama, who targeted and won these two demographics overwhelmingly. In light of the successful mobilization of these groups, one might wonder whether people convicted of crimes, a group disproportionately composed of young minority males, also experienced a bump in voter participation. Moreover, how many people might have been barred from voting because of felon-disfranchisement laws? These questions are particularly pressing given that scholars, journalists, and advocates argue that felon disfranchisement played a role in the presidential election outcome in 2000 (Conn 2005; Manza & Uggen 2004, 2006; Moore 2008).

This article estimates the voter registration, turnout, and where available, party registration in the 2008 general elections for all men who served time for felony convictions<sup>1</sup> under state supervision<sup>2</sup> prior to each election in five states: Florida, Georgia, Michigan, Missouri, and North Carolina. Ex-felon turnout in 2008 is compared with ex-felon turnout in 2000 and 2004 in order to show the over-time trend in ex-felon turnout. Turnout among men who were convicted of their first state felony after the 2008 election also is presented as a proxy for turnout among people currently serving sentences. The study population includes felons who served or will serve time in prison, on probation, or parole in state custody. According to the Bureau of Justice Statistics, states account for 93 percent of all prison admissions and 99 percent of all probation admissions, making states an appropriate site for studying the phenomenon of felon voting (Glaze & Bonczar 2009; Sabol et al. 2009).

This article represents the first attempt to estimate participation among this group on a large scale using real data from departments of corrections to validate the registration and turnout of felons. These data combine millions of voter registration and

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<sup>1</sup> According to the Bureau of Justice Statistics, a felony is “an offense, as murder or burglary, of graver character than those called misdemeanors, especially those commonly punished in the U.S. by imprisonment for more than a year” (Bureau of Justice Statistics. 2010. “All Terms and Definitions.” Available online. at <http://bjs.ojp.usdoj.gov/index.cfm?ty=tda>. Accessed 21 June 2010).

<sup>2</sup> Only state courts and federal courts try felony cases. This analysis excludes defendants convicted under federal jurisdiction, which accounts for less than 1 per cent of probation admissions and less than 7 percent of prison admissions.

history files with departments of corrections data from Florida, Georgia, Michigan, Missouri, and North Carolina. In these states, felons are allowed to register and vote after serving their sentences; in Florida, a limited number of ex-felons were allowed to vote for the first time in this presidential election. For all of these states, new data on the number of eligible ex-felons who registered and voted are presented. All of the states in this study prevent voting among some or all felons still serving sentences. To get a sense of how these offenders barred from the election would have voted, registration and turnout among people captured and convicted for their first offense *after* the election are presented. Calculating registration and turnout rates for this counterfactual group helps overcome many of the problems of inference that plague previous research on felon disfranchisement.

The findings indicate that, despite heightened attention to felon disfranchisement and the excitement of the 2008 election, turnout among felons is much lower than previous research predicts and is certainly lower than that of similar individuals with low socioeconomic status from the general population. Ex-felon turnout in 2008 varied by state, averaging 22.2 percent. Turnout among ex-felons increased in all the states between 2004 and 2008; turnout increased 10 percentage points in Michigan, seven percentage points in Missouri and North Carolina, and about half a percentage point in Georgia; all of Florida's ex-felon voters are new. This gap in turnout between ex-felons and people from the general population does not appear to be caused by conviction and disfranchisement; people captured and convicted for their first offense after the election voted at similarly low rates, despite the fact that they had never been convicted of a state felony at the time of the election. However, even at such low rates of participation, imposing ex-felon disfranchisement laws still would have prevented thousands of people from voting in these states. These turnout numbers, while low relative to those of the general population, represent growth from 2004, especially for black male ex-felons.

Contrary to the expectations of previous literature, the ex-felon population does not seem overwhelmingly Democratic; the pattern of participation among ex-felons looks much like the nationwide trend reported by the Census Bureau. Most of the surge in turnout from 2004 occurred among black ex-felons; in all states except Michigan, turnout increased dramatically among black males, but remained somewhat flat for white males. In North Carolina and Florida, two states for which the data are available, party registration also varies by race. Among registered black male ex-felons, 71.7 percent in North Carolina and 84.2 percent in Florida are registered Democrats. Among whites, however, only 35.3 percent

and 36.4 percent of ex-felons are registered Democrats in North Carolina and Florida, respectively.

These results seem obvious at first glance. However, the findings seriously contradict scholarly and popular thinking about how disfranchisement laws affect the electorate. Manza and Uggen (2004) estimate that in the absence of disfranchisement laws, 35 percent of felons nationwide would have voted in the 2004 general election. The results presented here demonstrate that many fewer people with criminal convictions voted in 2008 and in previous years. Moreover, turnout among this group is low prior to conviction, casting further doubt on the 35 percent figure. The findings presented in this article show racial diversity in party preferences even among this group, which is arguably the worst-off in American society, suggesting that a significant number of white felons do not view the Democratic Party as the party of the downtrodden, as many suggest (Piven & Cloward 2000). This new evidence calls into question the widespread belief that “ex-felon votes would have helped Al Gore carry Florida and thus the election in 2000” (Manza & Uggen 2004).

Apart from these immediate electoral implications, the results provide a window into the participatory habits of felons, the worst-off group in American society, a group traditionally excluded by law and circumstance from full political, social, and economic membership. That the majority of this group, even in this highly salient electoral context, did not go to the polls suggests the limits of democratic inclusion in the United States. Increasingly, poverty and other social ills coincide with criminality so that in many communities in the United States, high proportions of adults have been convicted and punished for felony offenses. People with lower socioeconomic status are not a proxy for people with felony convictions. However, understanding the political behavior of offenders becomes important for understanding the participatory habits of people with low socioeconomic status generally, particularly racial and ethnic minorities, because a growing percentage of these groups have been convicted of criminal acts (Western et al. 2004).

## **Literature Review and Theory**

Since 1970, the number of people convicted and punished for crimes in the United States has skyrocketed. By the end of 2006, more than 7.2 million people were being supervised in jail, in prison, on probation, or on parole at all levels of government (Glaze & Bonczar 2009; West & Sabol 2008). About 2.3 million of these individuals are incarcerated (West & Sabol 2008). People with

criminal backgrounds make up an ever-increasing proportion of the population, particularly among those of low socioeconomic status: "Nine out of ten prison inmates are male, most are under the age of 40, African Americans are seven times more likely than whites to be in prison, and nearly all prisoners lack any education beyond high school" (Western et al. 2004: 1). For high school dropouts, incarceration is fast becoming "a pervasive event" in the life cycle: 32.4 percent of young black male high school dropouts aged 22–30 were in prison or jail; for comparable whites, the figure is 6.7 percent (Western et al. 2004: 7).

Much of the research on the political effects of increasing conviction and supervision rates has focused on explaining the origins and impact of felon disfranchisement laws. Currently, 48 states retain some restriction on the voting rights of felons and/or misdemeanants who are serving sentences; 12 states bar some or all offenders who have finished serving their time from the ballot box, at times for life. Manza and Uggen (2004) estimate five million offenders and ex-offenders were disfranchised during the 2004 general election. Fellner and Mauer estimated that, as of 1998, 13 percent of all adult black men were disfranchised nationwide; in several states, including Florida and Alabama, more than a quarter of black men were disfranchised (Fellner & Mauer 1998). In many states, a growing percentage of Latinos are disfranchised. As of 2003, 6 percent of the Latino voting age population was disfranchised in Washington and Nebraska and 5 percent of the Latino voting age population was disfranchised in Arizona and Florida (Demeo & Ochoa 2003).

Clearly, felony disfranchisement laws affect a considerable share of the population, especially the black male population. However, despite the growth in disfranchisement rates and conviction rates more generally, very few studies attempt to estimate the participation rates and candidate preferences of ex-felons directly, perhaps because of the methodological and theoretical difficulties of such a task. Most cross-sectional surveys do not ask questions about criminal history. Panel studies that can track incarceration and other incidents often suffer from attrition or selection bias. However, even if survey organizations did ask about experiences with criminal justice, most would find current and former felons incredibly difficult to reach. A final problem is conceptual: determining the impact of convictions and disfranchisement on voting depends on making counterfactual estimates, which requires finding an appropriate control or comparison group against which to compare felons.

The existing research on ex-felon voter participation and the effect of disfranchisement laws is limited by these problems. In an extensive consideration of this question, Manza and Uggen (2004) find that disfranchisement laws prevented hundreds of thousands

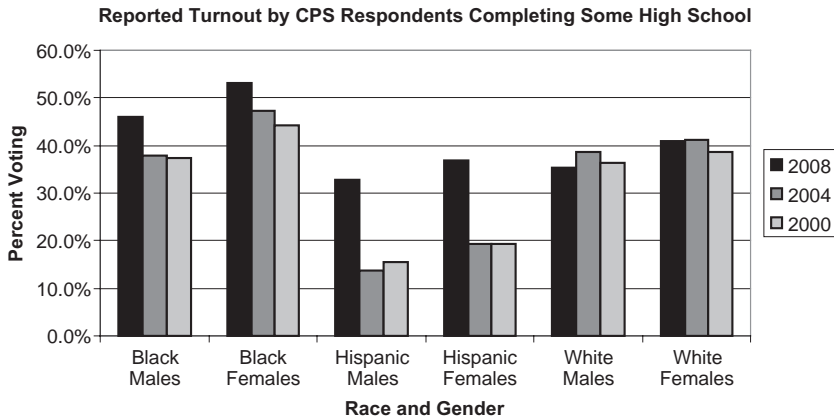


of felons from voting in 2000 and 2004 and may have changed the outcomes of one presidential and seven senate elections. They estimate that, in the absence of disfranchisement laws, people convicted of felonies would vote at rates of 35 and 24 percent for presidential and mid-term elections, rates that are comparable to those of people with characteristics similar to ex-felons who have not been convicted of crimes (Uggen & Manza 2002).<sup>3</sup> Moreover, they estimate 70 to 80 percent of ex-felons nationally would support Democratic candidates. These results are based on estimates of turnout and vote choice of respondents to the Current Population Survey and American National Election Studies rather than actual offenders. Uggen and Manza (2002) assume explicitly that in the absence of disfranchisement laws, “the political behavior of disfranchised felons would approximate that of nonfelons matched to them in terms of age, race, gender, education, income, and marital status.” Subsequent tests of their model on a sample of youth in Minnesota shows no difference in participation between people with and without convictions once “sociodemographic factors” are taken into account (Manza & Uggen 2004: 499). The implication of this argument is that being convicted of a crime affects behavior only to the extent that a person is disfranchised legally.

Other studies conclude that voter registration and turnout among ex-felons is virtually nonexistent. In a cross-state analysis, Grose and Yoshinaka (2002) find consistent evidence that disfranchisement affects turnout in the South. When extended to the entire nation, however, Miles (2004) finds no correlation between disfranchisement regime and voter turnout across states. He ascribes the lack of a treatment effect to the fact that most offenders do not vote even when they have the right to do so because “the same demographic and socioeconomic factors that correlate with participation in criminal activity, and by implication with disfranchisement, also correlate with the decision to forgo voting” (Miles 2004: 115). By this logic, the relationship between disfranchisement and participation is spurious and disappears when demographic factors such as poverty and race are taken into account. In line with these findings, Burch estimates that about 15 percent of ex-felons in Georgia and Michigan and 10 percent of ex-felons in North Carolina and Missouri would have voted in the 2000 general election (Burch 2007a). Similarly, Haselswerdt (2009) finds single-digit turnout in 2004 among 660 recently released ex-prisoners in Erie County, PA. However, Burch shows that turnout among prisoners,

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<sup>3</sup> Uggen and Manza do observe that “although nonfelon voters resemble felons in many respects, we cannot be certain that the experience of criminal conviction itself may not suppress, (or conversely, mobilize), political participation” (2002: 796).



**Figure 1.** This graph shows reported voter turnout in the 2000, 2004, and 2008 general election among select racial and gender groups who completed some high school without earning a diploma, as reported by the U.S. Census Bureau.

especially those still serving sentences, is low relative to that of probationers (2007b). Thus, Haselswerdt's findings may underestimate ex-felon turnout overall.

The literature on ex-felon voter participation provides a murky picture of the turnout rates of ex-felons who can vote and the effect of disfranchisement laws on ex-felons who cannot. On the one hand, both Miles and Haselswerdt suggest that turnout rates would be closer to zero. On the other, Manza and Uggen estimate a national turnout rate of one-third of ex-felons based on 2004 Current Population Study (CPS) data (Manza & Uggen 2006). By extension, Manza and Uggen might argue that the turnout rates among ex-felons in the most recent election would approximate those of disadvantaged respondents to the 2008 CPS as well. As shown in Figure 1, these rates are extremely high even among respondents who did not obtain high school diplomas. Nearly 46 percent of black men and 53 percent of black women who completed some high school reported voting in 2008, both representing an increase of 6 percentage points over 2004. Thirty-five percent of white men and 41 percent of white females with less than a high school diploma reported voting in 2008; both figures represent a decrease from 2004.

A more nuanced analysis of felon voting patterns would take into account the unique characteristics of people who get convicted of crimes as well as the special burdens criminal convictions further place on their ability to participate in politics. To be sure, persons convicted of crimes often face many disadvantages that would have

lowered their turnout relative to the rest of the population even if they had not been convicted. For instance, it is no secret that people convicted of crimes are worse off relative to the rest of the population in ways that are difficult to measure in a survey. For instance, in a national sample of state prisoners, about 70 percent of state inmates and 40 percent of state probationers did *not* have a high school diploma—in comparison, only 18 percent of the general population lacked high school diplomas (Harlow 2003). Age is another factor that affects participation; because they tend to be young, people convicted of crimes already would be less likely to participate in politics than the average citizen. The Bureau of Justice Statistics estimates that almost 60 percent of U.S. inmates are under age 35 (West & Sabol 2008). People convicted of crimes also face other problems that would affect their likelihood of participating in politics. Because of their lower socioeconomic status and involvement with crime, it could be the case that mortality rates are higher among offenders as well. Langan and Levin (2002) find that among prisoners, the mortality rate was 1.46 times higher than that of the general population. Psychological and emotional disturbances are more common among offenders (Ditton 1999). Sexual abuse is high among these populations; 16 percent of male and 57 percent of female prisoners report having been victimized sexually prior to their entry into prison (Ditton 1999). Drug and alcohol dependence is high among people who are convicted of crimes; one-third of federal and more than half of state prisoners reported committing their crimes while under the influence of alcohol or drugs (Mumola 1999). Twenty-one percent of state and 16 percent of federal prisoners showed signs of past alcohol abuse, while 57 percent of state and 40 percent of federal inmates had used drugs in the month prior to committing their offense (Mumola 1999). These types of physical and mental disabilities often render political activity difficult, even impossible.

In addition to these factors, persons convicted of crimes may differ from the general population in other ways. They may be engaged in drug abuse or other criminal activities that make them unwilling or unable to provide their personal information to government agencies, including boards of elections (Mumola 1999). Likewise, they may be avoiding further contact with law enforcement officials for fear of arrest. Finally, people who commit crimes may be less connected to their communities, families, peers, and government (Fleisher & Decker 2001; Sampson 1988; Sampson & Groves 1989; Sampson et al. 2002). These networks reinforce the norm in favor of political participation and the norm against criminal behavior.

It is unclear whether and how the experience of conviction and punishment would affect political behavior. For many individuals, a

criminal conviction serves as the wake-up call that provides an opportunity for rehabilitation and training (Sourcebook of Criminal Justice Statistics ["Table 6.73"] 2003; Mumola & Karburg 2006). However, the economic and social burdens associated with criminal convictions severely restrict the ability of offenders to garner resources such as time, money, and civic skills that would help them participate in politics after they serve their time (Verba et al. 1995). The unemployment rate among ex-offenders is much higher than that of the general population, often as the result of employment discrimination (Holzer et al. 2004; Pager & Quillian 2005). Federal educational and housing assistance, as well as cash assistance such as TANF and SSI, can be denied to people convicted of drug offenses (Travis 2002; Uggen et al. 2006; Western et al. 2004a). Socially, it is well documented that people are more likely to get involved in politics when they are mobilized by friends or political parties, and people are more likely to be mobilized when they take part in community and social activities (Rosenstone & Hansen 1993; Verba & Nie 1972; Verba et al. 1995). Criminal offenders tend to be less residentially stable; moreover, for incarcerated individuals, already-fragile social networks "are made tenuous by the distance between home and prison" (Abu-Jamal 1995: 12; Fleisher & Decker 2001).

Still, even in light of these findings, the predictions of both Miles and of Haselswerdt seem to underestimate the rate at which felons would vote. Miles's analyses at the state level accurately gauge the absence of effects big enough to change electoral outcomes; however, cross-state analyses may be too blunt to pick up smaller differences in the turnout of felons across states. Likewise, Haselswerdt's analysis is based on a small sample of parolees and thus reflects the turnout patterns of those ex-felons who are least likely to vote. Even though the turnout is low, it is still likely that tens of thousands of persons with felony convictions voted in this and in previous elections.

Even if one accepts the claim that some people with felony convictions vote, it is not altogether clear for whom convicted offenders vote when given the chance. Most criminal offenders are males of low socioeconomic status (Harlow 2003). Is this group more likely to vote Democratic? Most research today says yes; poor men vote their class interests, so lower-class voters are more likely to support Democratic candidates (Bartels 2005; Brewer & Stonecash 2001; Campbell et al. 1960; Erikson 1995; Piven & Cloward 2000; Stonecash 2000; Tucker et al. 1986). However, as Kristof (2004) has pointed out, "One of the Republican Party's major successes over the last few decades has been to persuade many of the working poor to vote for tax breaks for billionaires." Many other observers often lament the propensity of white lower-class

voters to vote seemingly against their own class interests in favor of Republicans (DeNardo 1980; Frank 2004; Hillygus & Shields 2005; Nagel & McNulty 1996).

Black men across classes consistently support the Democratic Party and therefore it is expected that black ex-felons would overwhelmingly support Democratic candidates (Dawson 1994). For whites, however, the answer to this question is still unsettled in the literature and remains quite controversial, as noted above. Bartels finds consistent support for the Democratic Party among lower-class whites throughout the last three decades (Bartels 2005). Other empirical evidence suggests lower rates of support for the Democratic Party among white male offenders. Manza and Uggen find that people who have been incarcerated or arrested are more likely to describe themselves as Independents and less likely to describe themselves as Democrats (Manza & Uggen 2006: 124). People with criminal backgrounds were also more likely to support Jesse Ventura rather than major party candidates in Minnesota's 1998 gubernatorial election (Manza & Uggen 2006: 124). Anecdotal evidence such as that found in Frank (2004) also calls into question the idea that lower-class whites vote Democratic.

## Research Design

Measuring the participation of people convicted of crimes is difficult, as noted above, because data on the criminal history of individuals have not been included regularly in studies that measure participation. Moreover, determining the effects of disfranchisement is even more problematic because it involves estimating a particularly difficult counterfactual scenario.

To estimate the turnout rates of ex-felons and thus the effect of ex-felon disfranchisement laws, the ideal analysis would measure the extent to which each offender undertakes different political activities now and then compare that figure with what that same person would have done *if the conviction or its various consequences had never taken place*. Although it may be possible to measure the participation of people once they have been convicted, it is impossible to observe that same individual's participation in the counterfactual condition. Thus, it is not possible to test the effects of conviction on any particular individual directly (Holland 1986). Using a control subject who is similar to what the unobserved person would be if he had not been convicted is the best substitute for approximating the level of participation in the counterfactual condition (Holland 1986). However, people who have been convicted of crimes often are very different from people who have never been convicted in ways that cannot be measured, complicating the task of finding a

control or comparison group against which to measure disfranchised ex-felons.<sup>4</sup>

Although no surveys or data sources measure the effects of convictions on individuals directly, state governments collect very detailed data on convicted offenders and on one form of political activity, voting. As a result, it is possible to combine these records and use them to directly measure at least one form of participation for offenders with different criminal justice experiences.<sup>5</sup> Because these data also contain some demographic information, one can also separate the effects of an offender's background and disadvantages from the effects of the conviction.

Having data on the personal characteristics and voter participation of offenders makes identifying and measuring their voting behavior possible. Even more importantly, these data enable potentially confounding factors such as age, race, gender, crime severity, and education to be taken into account. These data allow the voter participation of ex-offenders, many of whom are allowed to vote after completing their sentences, to be measured. Constructing appropriate counterfactual groups against which to compare offenders barred from voting is more difficult. For instance, the CPS turnout rates discussed previously provide one estimate of the likely participation among offenders. Manza and Uggen use this comparison group to estimate felon participation in the counterfactual case at the national level (Uggen & Manza 2002; Manza & Uggen 2004, 2006). However, analyses that use this control group to estimate the effect of convictions, like those of Manza and Uggen, are biased because they cannot account for the differences between people with and without convictions that may affect participation.

Instead, looking at turnout rates among persons convicted of their first felony after the 2008 general election best accounts for baseline differences between the general population and offenders. At the time of the election, these offenders had not yet been convicted or taken into custody; thus, their turnout patterns cannot be

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<sup>4</sup> Convicted felons are but a subset of the universe of people who commit crimes, indicating that there is some mechanism that assigns some people who commit crimes to be captured, punished, and convicted, while others are not. We cannot know, or fully account for that selection mechanism, thus it is "unmeasured." If this selection mechanism is random, then it is ignorable. However, numerous studies show that there are biases in criminal behavior, arrests, and convictions that make some people who commit crimes more likely to be convicted than others (Thomson & Zingraff 1981; Klepper et al. 1983; Humphrey & Fogarty 1987; Bridges & Crutchfield 1988; Gordon et al. 1988; Albonetti 1997; Spohn et al. 1998; Brock et al. 2000; Steffensmeier & Demuth 2000; Bushway & Piehl 2001; Lundman & Kaufman 2003; Rodriguez 2003; Weinstein 2003; Smith & Durose 2006).

<sup>5</sup> However, vote validation is a complex process and depends on the quality of voting records and the procedure by which records are linked. For a discussion on the difficulties of joining voters to administrative records on registration and turnout, see Presser et al. (1990).

attributed to the experience or consequences of justice supervision. Rather, the gap between these offenders and the general population, if any, represents the influence of those unmeasured factors that eventually led this group to be convicted of crimes. Conceptually, this group represents people who would have been punished and disfranchised during this election had they been captured and convicted just a few months earlier.

Estimating candidate preferences among offenders is difficult without survey evidence. To get a sense of vote choice, party registration among offenders in states with closed primaries can be used. Although party registration differs from partisan identification and vote choice, it is the best information available on the preferences of offenders (Finkel & Scarrow 1985).

## Hypotheses

To summarize the argument, being criminally convicted can affect an individual's desire and ability to participate in politics. Given the fact that persons convicted of crimes already lack the economic and educational resources of other citizens and suffer from substance abuse, mental health issues, and social isolation at higher rates than nonoffenders of similar social background even before their convictions, these individuals should demonstrate lower levels of political activity than similar citizens who have not been convicted of crimes. Likewise, the experience of being convicted and punished for crimes should prevent participation of offenders because convictions impose barriers that tend to decrease the likelihood of participating in politics even further. To restate:

*H1: Voter registration and turnout in the 2008 general election among people convicted of felonies should be lower than that of CPS respondents of the same race, gender, and educational attainment. Because people convicted of felonies experience substance abuse, mental health issues, and other problems at higher rates even before their convictions, the registration and turnout of pre-conviction offenders should be lower than similarly-situated CPS respondents as well.*

With respect to vote choice, although there is no way of knowing the true candidate preferences of offenders for this analysis, it is possible to make some plausible assumptions about vote choice based on the available evidence. Criminal offenders do not vote at the same rates as people with similar backgrounds who have not been convicted of crimes. However, it is possible that criminal offenders would have the same preferences as nonoffenders who share their demographic characteristics. There is a consistent finding that in general, nonvoters tend to have the same preferences as voters, such that registration laws have little effect on the

policy preferences of the electorate (Rosenstone & Wolfinger 1978). Applying this logic to disfranchised offenders, then, one should expect the candidate preferences of offenders to mirror those of other people with the same race, gender, and educational level.

*H2: The party preferences of ex-felons as a group in each state should depend on the racial makeup of the ex-felon population. Black ex-felons should support the Democratic Party in overwhelming numbers, but only a minority of white ex-felons should be registered Democrats, depending on the state.*

## Data

One of the most exciting facets of this study is that it explores the political participation of real offenders using records maintained by the departments of corrections in the states selected for the analysis: Florida, Georgia, Michigan, Missouri, and North Carolina. In each state, the department of corrections maintains highly detailed data on all offenders convicted of felonies and misdemeanors who are sentenced to state supervision in prison or in the community through probation or parole. People convicted of felonies in federal court who served sentences under federal authorities and people convicted of misdemeanors or infractions in municipal court who served time in county jail are not included in the analysis.<sup>6</sup> In all states in this analysis, all offenders accused of state felonies are tried, convicted, and punished by state authorities, such that the files represent a complete list of people who have or are being supervised for felony convictions by that state.<sup>7</sup> People with misdemeanor convictions who were supervised by local authorities are absent from the data, as are people convicted under federal law. As a result, these findings estimate turnout only among

<sup>6</sup> In 2008, federal courts commenced 2,437 cases against criminal defendants in North Carolina, 2002 cases in Missouri, 1,392 in Michigan, 5,336 in Florida, and 2,271 in Georgia (Administrative Office of the United States Courts. 2008. "Table E-2, Persons Under Supervision." Available online at <http://www.uscourts.gov/uscourts/Statistics/FederalJudicialCaseloadStatistics/2008/tables/E02Mar08.pdf>. Accessed on 21 June 2010). Although I do not have comparable data on the number of felony cases commenced by state authorities, similar data on admissions to supervision show that in 2006, more than 90,000 people were admitted to state prison or probation in Michigan, Missouri, and Georgia; more than 80,000 in North Carolina, and nearly 300,000 in Florida (*Sourcebook on Criminal Justice Statistics*, "Table 6.3.2006," Available online at <http://www.albany.edu/sourcebook/pdf/t632006.pdf>. Accessed on 21 June 2010. *Sourcebook on Criminal Justice Statistics*, "Table 6.0009.2008." Available online at <http://www.albany.edu/sourcebook/pdf/t600092008.pdf>. Accessed on 21 June 2010).

<sup>7</sup> In Florida, only offenders whose rights were restored automatically are considered. Eligibility is determined based on offense data codes provided by the Department of Corrections. Any offender convicted of an offense ineligible for automatic restoration was excluded from the data.



citizens convicted by state authorities, and cannot be generalized to those citizens who are convicted under federal or local authorities.

### **Matching Procedure**

The offender data are joined to voter registration and history data containing information on all registered voters in each state. These files are updated regularly by each state's respective secretary of state and contain the last name, first name, and birth date for all voters. To create the datasets used for the analysis of offenders, the names of individuals from the state offender files were linked electronically to those found in the voter files in a multi-step process. First, for all states, the last name, first name, birth date, and gender were used to match as many offenders as possible. In instances in which voters' last name, first name, date of birth, and gender produced duplicate identifiers, subsequent inactive entries were deleted. A second round of matching was conducted using only the last name, first name, and date of birth for those offenders who remained unmatched after the first round. The voter registration files were obtained at several points in the fall and winter of 2009 in order to avoid problems with post-election purging. Departments of corrections files were obtained in the spring of 2009 in order to include offenders convicted after the November 2008 election in the study.<sup>8</sup> Data for comparison estimates rely on data obtained in 2004 and 2006.

### **Caveats**

As with any analysis, the reader must be aware of certain issues with respect to the conclusions one can draw from the use of these data. The first set of problems reflects the difficulty of drawing conclusions from the relevant data's not being in the file. The fact that an offender is not in the voter registration files does not necessarily mean he has never participated in politics at all. For instance, voting is only one form of political participation; it could be the case that unmatched offenders participate in politics in other ways such as protesting or volunteering for campaigns. Second, it is necessary to take care in the inferences one can make about offenders who are not in the voter file. First, if a person's voter registration or offender records contain typographical errors in the fields used for matching, the procedure for combining the files inaccurately categorizes that person as not being on the voter

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<sup>8</sup> The latest sentencing date available for Florida is January 14, 2009; for North Carolina, June 16, 2009; for Michigan, March 3, 2009; for Georgia, September 19, 2009; and for Missouri, March 13, 2009.

registration list. Second, not being on the voter registration list does not mean that a person has *never* registered to vote in his or her lifetime. It does mean that the person was not registered and did not vote in the 2008 election cycle. For the 2000 and 2004 election cycles, absence from the voter registration list has a different meaning. Because Georgia, Missouri, and Michigan delete removed voters, it could be the case that ex-felons who voted in 2000 or 2004 were subsequently removed from the voter rolls if they were re-convicted of another felony offense after the election. For this reason, turnout estimates for all states for those two elections exclude people who were reconvicted of new felony offenses after the respective election.<sup>9</sup> Third, the fact that women often change their names after marriage or divorce means that the procedure for linking the records underestimates the extent to which they register to vote. To help alleviate this concern, the analysis excludes female felons from the analyses in this article. Because the vast majority of offenders are men, one still can draw relevant conclusions about the overall effects of disfranchisement policies on individuals, and later on politics, from this analysis.

A final problem with these data reflects the difficulty of determining the voting-eligible population among current and former offenders. Including ineligible offenders (such as those who have died or moved out of the state) among the population of eligible voters deflates the participation rate of offenders. To address this concern, registration rates are calculated using all offenders in the sample and again by weighting the pool of potential voters by Centers for Disease Control estimates of mortality for people of different races and ages (Arias 2005) and by Current Population Study estimates of out-of-state migration expectancy based on the age of last release.<sup>10</sup>

### State Selection

The states selected for analysis here were chosen because of electoral competitiveness, data quality, and regional comparability. These states were studied merely to give a sense of ex-felon turnout in different contexts, not with an eye toward controlling for state-level characteristics that would make comparisons across states possible. One cannot extrapolate turnout in these five states to turnout

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<sup>9</sup> There is some evidence from North Carolina that excluding these post-election recidivists from the 2000 and 2004 counts biases registration and turnout upward (Burch 2007b).

<sup>10</sup> The weights use the likelihood of moving out of state in the remaining lifetime for people released prior to 2003 and the likelihood of moving out of state within 5 years of release for people released after 2003. U.S. Bureau of the Census (2009a, 2009b).

in the entire nation, nor should turnout figures be compared across states. Please see the appendix for information on the political, demographic, and legal characteristics of each state.

## Methods

This analysis counts the raw registration, vote totals, and party registration for two groups of offenders: men who experienced their first conviction and sentence after the 2008 election<sup>11</sup> and men who finished serving their sentences before the 2008 election. The probability of voting among ex-offenders and pre-conviction offenders is estimated using multivariate analyses in order to determine whether variation across the two groups in racial composition, age, punishment type, and education (where available) can account for the differences between the pre- and post-conviction groups, if any. Knowing voter registration and turnout among the pre-conviction group gives a sense of what would have happened if these offenders had been convicted and disfranchised during the election; they provide estimates of the counterfactual turnout rates among current and former offenders barred from voting during this election cycle. Voter turnout in the 2008 general election for CPS respondents who report completing some high school without earning a diploma also will be referenced for comparison following the example of Manza and Uggen (2004).<sup>12</sup>

The analysis is decomposed into three steps. In the first, the participation rates of offenders before they experience a conviction are tabulated in order to provide a lower bound on what participation would have been without these interventions. This group best serves as a proxy for how people currently serving felony convictions might have voted had they not been convicted. Next, voter turnout among offenders who have completed their sentences is presented. Finally, multivariate estimates of voter turnout are presented for each state, along with the predicted probabilities of voting among pre- and post-conviction offenders with certain characteristics. The purpose of this regression is to account for demographic differences between pre- and post-conviction

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<sup>11</sup> Some people enter and exit supervision more than once. In the data, a person with a felony conviction who spent 1998–1999 and 2003–2005 on probation is considered an ex-felon in 2000 and 2008, but not in 2004 while they were serving an active sentence.

<sup>12</sup> As shown in Figure 1, these rates are extremely high even among respondents who did not obtain high school diplomas. Nearly 46 percent of black men and 53 percent of black women who completed some high school reported voting in 2008, both representing an increase of 6 percentage points over 2004. Thirty-five percent of white men and 41 percent of white females with less than a high school diploma reported voting in 2008; both figures represent a decrease from 2004.

offenders that might explain differences in the turnout rates of the two groups. However, this regression cannot account for differences in life circumstances between pre- and post-conviction felons. The probability of voting is calculated for male felony offenders who were eligible to vote in the 2008 general election based on models that account for race, age, whether the sentence was served before or after the election, whether the offender had served or would serve time in prison, and where available, educational attainment. The dependent variable, *Vote 2008*, is a dichotomous variable where “1” indicates a vote in the 2008 presidential election. The analysis includes both ex-offenders and pre-conviction offenders; *Pre-conviction* is the dummy indicator for offenders who were captured and convicted after the election. Race is entered as dummy variables for *White* and *Black*, with Hispanics and other races represented as the baseline condition. *Age* is in years and includes offenders between the ages of 18 and 65. *Prisoner* is dichotomous and indicates whether an offender had served or will serve a prison sentence. Finally, offender education is available only for Missouri and Georgia; for these states, *Education* is a 0 1 variable that indicates whether an offender completed high school or its equivalent. Age, race, and educational attainment have been shown in previous research to be important determinants of voting (Campbell et al. 1960, Verba & Nie 1972; Verba et al. 1995). Similarly, voter turnout among prisoners also is lower (Burch 2007a). Because voting, the dependent variable, is dichotomous, these models are estimated using logistic regression. The predicted probabilities of voting for offenders with several characteristics are simulated using the means and standard deviations estimated from these models.

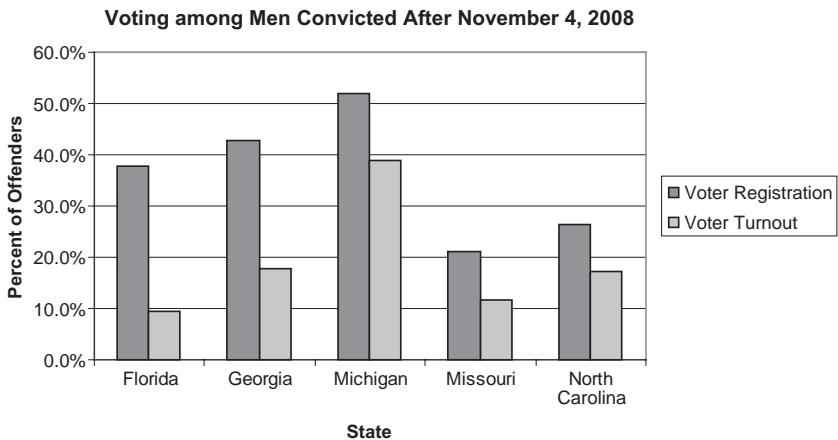
## Results

The results indicate that many ex-felons voted in the 2008 general election. As Table 1 shows, 22 percent of ex-felons voted in Georgia, 19.4 percent voted in Missouri, and 24.2 percent voted in North Carolina. In Michigan, where felony probationers were never disfranchised, nearly 35 percent of ex-felons voted in the general election. However, in Florida, only 11.1 percent of eligible ex-felons voted in the general election. This low turnout rate is likely due to the fact that this is the first presidential election in which some of Florida’s ex-felons could vote. Among offenders who served time for their first offense after the election, turnout surprisingly was lower than that of ex-felons. As Figure 2 shows, in Florida, 9.4 percent of people convicted of crimes after the election voted; in Georgia, 16.7 percent; in Missouri, 11.7 percent; and in

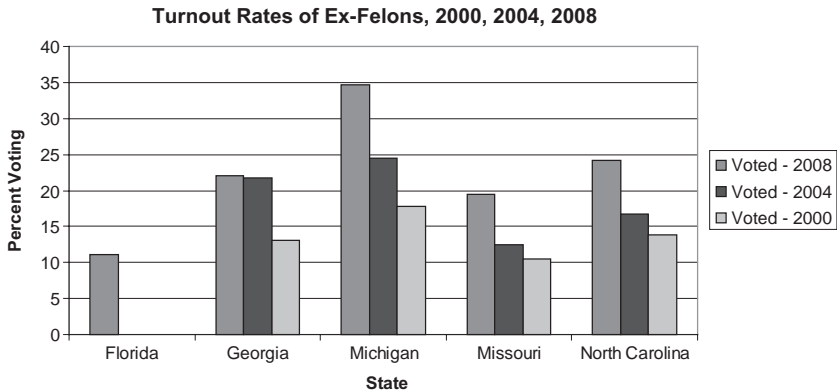
**Table 1.** Participation Rates among Male Ex-felons

	FL	GA	MI	MO	NC
Voter Registration	0.237	0.345	0.589	0.351	0.355
Voter Turnout	0.111	0.227	0.347	0.194	0.242
Voter Turnout (Weighted for Death Rates & Mobility)	.134	.257	.401	.222	.275
Black	0.149	0.253	0.319	0.212	0.264
White	0.099	0.205	0.37	0.188	0.222
Hispanic (Based on Surname)	0.072	0.081	0.31	0.074	0.107
Age 18-30	0.089	0.182	0.384	0.178	0.2
Age 31-44	0.109	0.233	0.382	0.194	0.25
Age 45-59	0.115	0.256	0.336	0.199	0.262
Age 60 +	0.119	0.204	0.237	0.187	0.232
Less than High School		0.198		0.145	
High School Diploma		0.267		0.251	
Ex-Prisoners	0.070	0.212	0.313	0.108	0.241
Ex-Probationers	0.122	0.227	0.389	0.229	0.246
Party Registration					
Democratic	0.514				0.563
Republican	0.279				0.228
Other	0.207				0.209
Ex-Felon N (unweighted)	301,460	402,797	203,341	192,449	244,300
Ex-Felon N (weighted)	250,693	355,377	175,933	168,061	214,935
First timers convicted after election	3,099	10,773	8,841	4,332	24,403

NOTE: Data were calculated by matching department of corrections data to voter registration and history data from each state.



**Figure 2.** This graph shows the percent of persons registered to vote and turning out to vote in each state before they were taken into custody and convicted of crimes after the election. Data were calculated by matching department of corrections data to voter registration and history data from each state.



**Figure 3.** This graph shows the percent of ex-felons turning out to vote in each state. Data were calculated by matching department of corrections data to voter registration and history data from each state.

North Carolina, 17.3 percent. Again, Michigan is exceptional; 38.9 percent of offenders in Michigan voted before they served time.

When compared with turnout in past presidential elections, it is clear that turnout in the 2008 election represents a substantial increase in political participation among ex-felons from previous elections, as depicted in Figure 3. Since the 2000 general election, when voter turnout was roughly similar in the four states where ex-felons could vote, ex-felon voter turnout has increased 68 percent in Georgia, 95 percent in Michigan, 88 percent in Missouri, and 75 percent in North Carolina. Despite this substantial growth, voting among offenders still remains low relative to that of similar people who do not have criminal backgrounds. As expected, the turnout in the 2008 general election of both ex-felons and those offenders who began serving time after the election is lower than that of CPS respondents who had attended high school without earning a diploma reported earlier in this article.

Among ex-felons, personal characteristics influence voter turnout much as they do among the broader electorate. As shown in Table 1, older ex-felons were more likely to vote than were their younger counterparts. Also, as expected, ex-felons in all states who had served time in prison at some point before the election were less likely to vote than were ex-probationers who had never served time in prison. Ex-felons with a high school diploma were 33 percent more likely to vote in Georgia and 72 percent more likely to vote in Missouri, the two states where data on the educational attainment of ex-felons are available. The most interesting pattern, however, develops with respect to race. In four of five states, black male ex-felons were more likely to vote than whites, as shown in

Figure 4. This pattern results from a surge in black turnout between 2004 and 2008 as Figure 5 displays; in previous years, racial differences in turnout were mixed; in North Carolina and Missouri, white ex-felons were more likely to vote than black ex-felons, while in Georgia and Michigan, the opposite was true.

Because of correlations among several of the factors discussed previously, simple bivariate data might not provide an accurate comparison between pre- and post-conviction felons. For instance, blacks were more likely to vote in this election than whites,

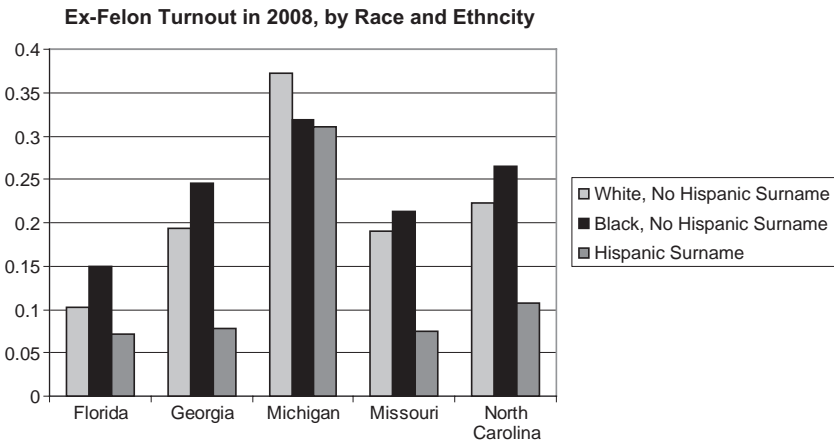


Figure 4. This graph shows the percent of ex-felons turning out to vote in each state, by race. Data were calculated by matching department of corrections data to voter registration and history data from each state.

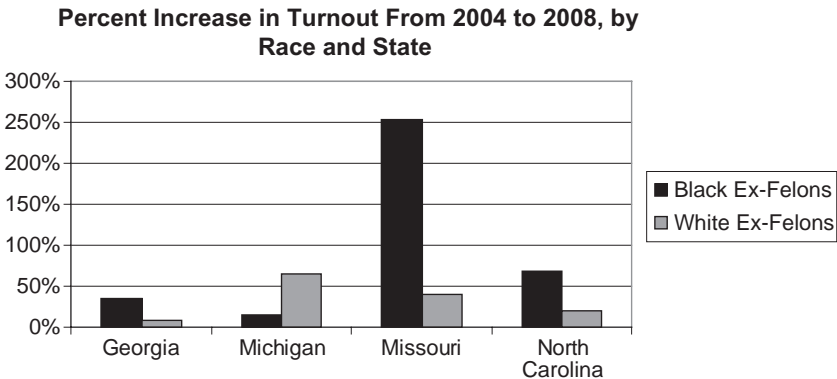


Figure 5. This graph shows the change in the turnout rates of ex-felons between 2004 and 2008 in each state. Data were calculated by matching department of corrections data to voter registration and history data from each state.

**Table 2.** Predicted Probability of Voting in 2008 and First Differences for Felony Offenders

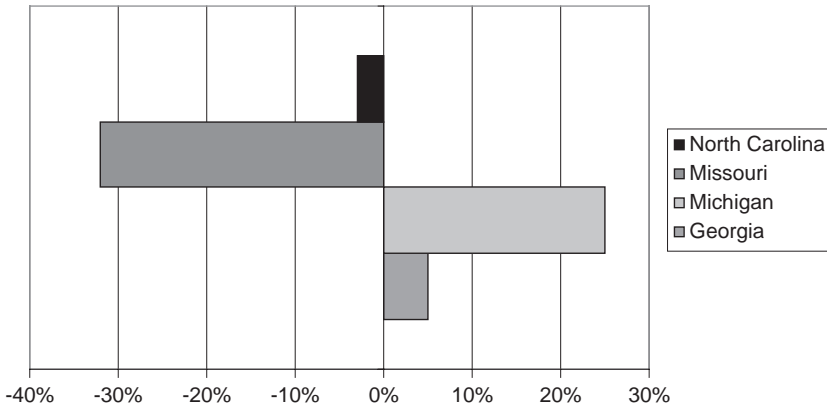
	FL	GA	MI	MO	NC
<b>Male probationers, age 35</b>	.156	.256	.359	.256	.267
Black post-conviction					
... Black pre-conviction (first difference)	0	-.039	+.010	-.096	-.064
White post-conviction	.096	.208	.416	.210	.221
... White pre-conviction (first difference)	0	-.026	+.010	-.081	-.055
<b>Less than high school:</b>					
Black post-conviction	n/a	.223	n/a	.204	n/a
... Black pre-conviction (first difference)	n/a	-.032	n/a	-.102	n/a
White post-conviction	n/a	.180	n/a	.173	n/a
... White pre-conviction (first difference)	n/a	-.028	n/a	-.088	n/a

probationers more than prisoners, and the higher educated more than the less educated; thus the effect of the timing of the conviction could reflect differences in racial composition, sentence type, or educational attainment across the groups. Similarly, people convicted of their first offense after the election may be younger than people who served their sentences before the election. However, multivariate analyses confirm the patterns found in the simple tabulations; demographic differences in the sample do not account for the difference in turnout between pre- and post-conviction felons. The coefficient on pre-conviction is significant and in the expected direction. Age, race, imprisonment, and education are significant in the models, indicating that each still has a direct effect on turnout even after controlling for the other factors. These estimates can be found in the appendix. Logit coefficients are not easily interpreted so it is easier to discuss the probability of voting among offenders using the simulated scenarios in Table 2 (King et al. 2000: 348). According to the analysis, the probability of voting among black men convicted after the general election declines by 6 percentage points in North Carolina, 4 percentage points in Georgia, and 10 percentage points in Missouri, even after accounting for differences in age, race, and incarceration history. However, there is no significant difference between people who served time before and after the election in Michigan and Florida. Among whites, the probability of voting declines by 6 percentage points in North Carolina, 3 percentage points in Georgia, and 8 percentage points in Missouri. Again, there is no significant difference between pre- and post-conviction whites in Florida and Michigan.

Once race is considered, it becomes clear that black ex-felons account for most of the turnout increase between the 2004 and 2008 presidential election in Georgia, Missouri, and North Carolina. To reiterate the evidence from Figure 4, turnout among black and white male ex-felons increased in all states from 2004 to 2008. However, as shown in Figure 5, in Georgia, Missouri, and North



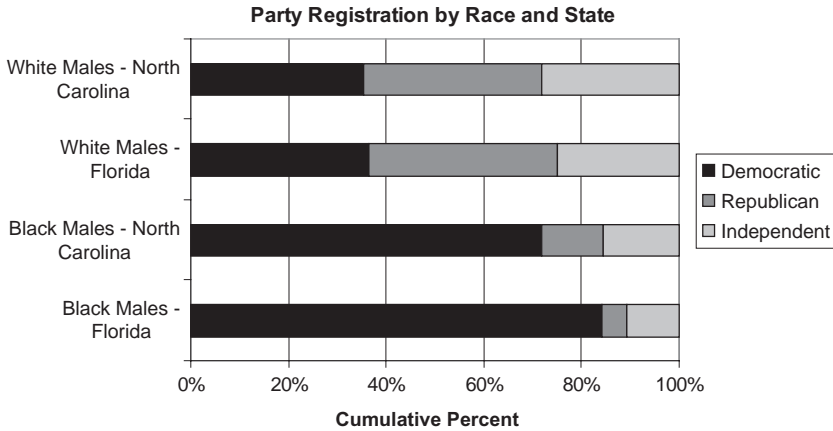
**Percent Difference in Turnout Between White and Black Ex-Felons, 2000 General Election**



**Figure 6.** This graph shows the percent difference in turnout rates for the 2000 general election between black and white ex-felons in each state. Data were calculated by matching department of corrections data to voter registration and history data from each state.

Carolina, black ex-felon participation increased much more than white ex-felon participation in those years. Again, Michigan is exceptional; white ex-felon participation increased and surpassed that of blacks between 2004 and 2008. By comparison, turnout showed no consistent pattern by race prior to 2008. As shown in Figure 6, blacks were more likely to turn out in 2000 in Michigan and Georgia, while whites were more likely to vote in North Carolina and Missouri.

Party registration among ex-felons also shows surprising patterns. Table 1 shows that 51.4 percent of registered ex-felons in Florida registered as Democrats, compared with 27.9 percent as Republicans and 20.7 percent unaffiliated with the two major parties. One should note, however, that party registration is available only for the small subset of Florida ex-felons whose voting rights were automatically restored. In North Carolina, 56.3 percent of registered ex-felons signed up as Democrats, compared with 22.8 percent as Republicans and 20.9 percent unaffiliated or Independent. This pattern, as hypothesized, varies by race and thus reflects the racial composition of the offender population as shown in Figure 7. Black ex-felons overwhelmingly support the Democratic Party; 72 percent of black ex-felons in North Carolina and 84 percent of black ex-felons in Florida are registered Democrats. By contrast, white ex-felons in both states are divided almost evenly among the Democrats, Republicans, and unaffiliated categories, although slightly more white ex-felons support the Republican



**Figure 7.** This graph depicts the party registration rates of black and white male ex-felons in North Carolina and Florida. Data were calculated by matching department of corrections data to voter registration and history data from each state.

Party than the Democratic Party. This distribution closely mirrors the general breakdown of registration by party and race in those particular states. In Florida, 83 percent of blacks were registered with the Democratic Party in 2008, while only 35 percent of whites were (Florida Secretary of State 2008). Similarly, in North Carolina, ex-felon party registration by race closely mirrors that of the general population (author's own analysis; see Burch 2010).

## Discussion

These findings help adjudicate the controversy in the literature over offender voter turnout and vote choice. As expected, many people with criminal backgrounds participate in politics both before and after they serve time. Thus, claims such as that of Miles and Haselswerdt that disfranchisement laws only affect people who would not have voted anyway are too harsh. Had Florida, Missouri, North Carolina, Michigan, or Georgia prevented ex-felon voting, thousands of people would not have cast ballots in this past election. However, the data also show that expecting people with criminal backgrounds to vote at the same rates as everyone else after controlling for socioeconomic status, race, and other factors is overly optimistic. Voter turnout among offenders before and after their convictions falls far short of the turnout demonstrated by similarly disadvantaged citizens who have not had a criminal conviction.

More interestingly, these data show that turnout and party registration diverged sharply from previous expectations about the political behavior of offenders. The most important claim here is that race mattered in the 2008 election in ways that it had not previously. As with the broader electorate, turnout among eligible offenders increased since 2004. However, also like the broader electorate, that turnout increase occurred primarily among racial minorities. Black offenders turned out at much higher rates than white offenders even after controlling for age, education, and incarceration history. Prior to 2008's election, turnout showed no consistent pattern with respect to race; in North Carolina and Missouri, white ex-felons were more likely to vote than black ex-felons. This pattern reversed in 2008. Thus, the expectation that ex-felons would respond uniformly to the increased excitement and engagement of the 2008 election was misplaced.

Race also matters with respect to party registration. White ex-felons and black ex-felons diverged sharply in their support of the two major political parties. While, as expected, overwhelming numbers of black ex-felons were registered Democrats, two-thirds of white ex-felons registered as something other than Democratic. These patterns are similar to those found among low-income male voters on national surveys (Burch 2007a). Primarily, this finding points out that the potential effects of disfranchisement laws are not limited to Democratic supporters. Because low socioeconomic status (SES) whites were more likely to support Republican candidates in most recent elections, the answer to the question of which party is most affected by disfranchisement laws is, "it depends." A complete answer to that question would take into account the racial makeup of the disfranchised population and the politics of the time under consideration. For instance, in light of these findings, it makes little sense to argue that Wyoming's disfranchisement of ex-felons particularly hurt the Democratic Party in that state. Likewise, though Democrats held an 11-point advantage in party registration in Florida in 2008, the evidence suggests that Florida's electorate leaned more Republican in earlier years. For instance, the partisan affiliation of Florida's Latinos shifted over the past decade; while a majority of registered Hispanics were Republicans in 2006, by 2008 Hispanic Democrats outnumbered Hispanic Republicans by nearly 70,000 people (Pew Hispanic Center 2008). These findings suggest the need to reexamine the widespread belief<sup>13</sup> that Vice President

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<sup>13</sup> Manza and Uggen (2004) state unequivocally that Gore would have won Florida had ex-felons been allowed to vote in 2000.

Gore would have defeated President Bush in 2000 had ex-felons been allowed to vote in that state.<sup>14</sup>

One curious result is that people who served time after the election vote less than ex-felons. One might think that the experience of conviction and punishment would suppress political participation by depleting the resources, efficacy, and social ties that foster participation, so individuals who had not yet experienced those effects would tend to vote more than those who had. That still may be the case. The pre-conviction group most closely approximates current felons, as noted at several points throughout this discussion. Pre-conviction felons and current felons may face a different set of life circumstances than ex-felons. For many people who are about to serve time for crimes, the time before they are caught and convicted is particularly difficult: they may be hiding from authorities or engaged in severe substance abuse, for instance, as suggested by Mumola (1999). In contrast, some ex-felons may have been able to turn their lives around and may be in better mental and emotional health than people about to enter the criminal justice system. Forty percent of state prisoners received treatment for substance abuse while in prison (Mumola & Karburg 2006). Ten percent received psychotropic drugs and 12 percent received therapy or counseling for mental health conditions while in state correctional facilities (Sourcebook of Criminal Statistics 2003).

Another possibility is that the negative consequences offenders experience because of convictions could *increase* their political activity. Hansen, for instance, argues that groups will increase their participation in politics under threat, such as when important resources are at stake (Hansen 1985). Punishment that is perceived to be harsh or unfair, for instance, could hasten the “transformation of convicts into political militants” (Davis 2003: 69). Moreover, through contact with other offenders, a person may develop new habits of participation or even a revolutionary consciousness. Malcolm X, after learning of the teachings of the Nation of Islam, wrote that “It was right there in prison that I made up my mind to devote the rest of my life to telling the white man about himself—or die” (X 1965: 186).

A third possible explanation for lower turnout among pre-conviction offenders is that this sample is contaminated with people who were actually ex-felons convicted by other state or federal authorities. Each offender classified as a “pre-conviction” felon is one for whom the first supervision by the state department

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<sup>14</sup> Upon further analysis, assuming that ex-felons supported Vice President Gore at rates similar to General Society Survey (GSS) respondents with at most a high school diploma, Bush would have defeated Gore by averages of 4,295 and 7,048 votes, assuming turnout rates of 10 and 15 percent, respectively. Neither higher levels of turnout generally nor higher levels of turnout for blacks alone resulted in a Gore advantage (Burch 2010).

of corrections for a felony took place after the 2008 election. If the turnout difference were in fact due to the inadvertent inclusion of ex-felons in the pre-conviction sample, then 16 percent of pre-conviction felons in Florida, 19 percent of pre-conviction felons in Georgia, 40 percent of pre-conviction felons in Missouri, and 29 percent of pre-conviction felons in North Carolina would actually be nonvoters with felony convictions in other jurisdictions, assuming a turnout rate among those ex-felons of zero. No data are available to evaluate the possibility that these individuals were convicted by other authorities directly, although the evidence suggests that the likelihood that people have felony convictions under other authorities is small. Sixty percent of pre-conviction ex-felons are between the ages of 18 and 24, suggesting that they are early in their adult criminal life. The percentage of felons convicted in federal courts accounts for only 6 percent of all felony convictions nationally. Furthermore, in the states for which data are available, most people convicted after the election were born in their state of conviction. More than three quarters of Georgia pre-conviction felons, and two-thirds of North Carolina pre-conviction felons were born in their respective states, suggesting that they had not moved to North Carolina after being convicted of a felony somewhere else.

Persons convicted after the election are interesting not just because they provide a close approximation to the turnout rates of felons if they had not been serving sentences at the time of the election, but also because their behavior provides a response to an important counterargument. Some might argue that this article underestimates the intent or desire of eligible offenders to vote. Many researchers can recall stories of offenders who do not vote because they believe they cannot. In fact, eligible offenders may be misinformed by government authorities (Ewald 2005). The explanatory force of such “de facto disfranchisement” claims diminishes, however, in the face of evidence that most felons did not vote before their convictions even after accounting for race, age, and other factors. Intimidation, fraud, or misinformation based on convictions cannot explain nonvoting among people who had not yet been captured, convicted, or punished at the time of the election. Instead, this evidence suggests that most people convicted of felonies are, at best, nonvoters or peripheral voters (Campbell et al. 1960).

Even with full information, turnout might still be low. When Florida restored the civil rights of hundreds of thousands of ex-offenders, the Department of Corrections, Clemency Board, and Board of Elections teamed up to contact those eligible offenders to tell them that their rights had been restored automatically. These bureaus also held community events and ran advertisements to alert eligible ex-felons of the change in laws. Moreover, since

2006, the Department of Corrections in Florida has advised eligible ex-felons about the restoration of their rights as they exit supervision. Undoubtedly, the state found it difficult to reach ex-felons released before the change in the law (Moore 2008). However, turnout remains low even among those ex-offenders released after 2006, suggesting that lack of information is not the primary cause of nonvoting among ex-felons because this group was told explicitly about the automatic restoration of their rights.

## Conclusion

This article argues that, on average, 22 percent of eligible ex-felons voted in states without ex-felon disfranchisement laws. This figure shows that a sizeable number of people would have been kept from voting had these states prevented ex-felon voting. However, this analysis suggests that this very disadvantaged group is even less likely to participate than previously indicated using the CPS or other data sources. Participation rates among eligible offenders, even during a time in which the broader society is highly mobilized, lag far behind those of even disadvantaged people who have not been convicted of crimes. That turnout is so low, even during this favorable climate, suggests that full democratic participation remains a remote prospect for the United States. However, these results raise many questions.

The results indicate the need for more research into the political behavior of people on the margins of society. An increasing number of people suffer from housing instability, food insecurity, joblessness, and isolation; these factors seem to lead to criminality as well as to nonvoting as this research suggests. These people are difficult to reach by traditional survey methods because they often do not have permanent residences or telephones.

Reasonable people disagree as to whether offenders should be encouraged to participate in politics on equal footing with law-abiding citizens. Liberal democratic theory brands an individual who breaks the law “a rebel and a traitor to the homeland” who deserves to be expelled from the community (Rousseau 1762/1987). These normative judgments, however, are separate from the empirical understanding of how laws can potentially affect political participation. Achieving a deeper understanding of how being convicted, punished, and disfranchised for committing a crime affects political behavior is essential to comprehending voting patterns among disadvantaged citizens generally because so many disadvantaged citizens experience these phenomena. Likewise, future research should also explore how variation in laws and other conditions at the state level can influence those voting patterns.

## Appendices

**Appendix Table A1.** Political and Demographic Characteristics of Sample States

	FL	GA	MI	MO	NC
% for McCain (08)	52	41	50	49	48
% for Bush (04)	52.1	58	48	53	56
% for Bush (00)	48.8	55	46	50	56
Party of governor	R	R	D	D	D
Party of legislature	R	R	R	R	D
% Black	15.3	29.6	14.1	11.3	21.3
% Minority	23.7	37.7	20.4	16.0	29.5
Region	South	South	Midwest	Midwest	South
% Citizen	89.7	93.7%	96.7%	97.9%	95.2%
Total population	18,328,340	9,685,744	10,003,422	5,911,605	9,222,414
Poverty rate	12.6	14.7	13.5	13.6	14.7
Median income	\$45,495	\$46,832	\$47,182	\$42,841	\$42,625

**Appendix Table A2.** Characteristics of Criminal Justice in the Sample States

	FL	GA	MI	MO	NC
Incarceration rate (per 100 K)	535	563	499	506	361
Probation rate (per 100 K)	1,863	6,144	2,392	1,256	1,612
Total correctional population <sup>a</sup> (2004)	462,435	562,763	278,808	125,613	181,435
Total supervised per 100 K <sup>a</sup> (2004)	3,197	3,042	3,527	2,595	2,589
Index crime rate (per 100 K)	4,812	4,394	3,602	4,243	4,553
Arrests (2005)	1,055,052	216,627	344,114	229,077	446,154
State Department of Corrections					
Prison	98,219	54,256	50,233	29,857	37,970
Probation	272,977	422,790	182,650	54,963	110,419
Parole	4,790	22,958	18,486	19,063	3,236
Expenditures	\$2.298B	\$968.5M	\$1.705B	\$575.2M	\$1.039B
% Black of Incarcerated	46.50%	62%	53%	40.3%	58%
Legal					
Felony cases/year	158,079	78,019	63,474	93,226	101,509
Truth in Sentencing <sup>b</sup>	85%	85%	85%	85%	85%
Sentencing Guidelines			✓	✓	✓
Habitual Offender Laws	✓	✓	✓	✓	✓

<sup>a</sup>Includes offenders supervised by local and state authorities.

<sup>b</sup>Offenders must serve 85 percent of their sentence; meet federal standards.

**Table A3.** Estimates of Voter Turnout in the 2008 General Election by State

	NC	GA	GA	MO	MO	FL	MI
Constant	-1.963*** (0.04)	-3.104*** (0.06)	-3.342*** (0.07)	-2.455*** (0.11)	-2.598*** (0.21)	-3.28989*** (0.06)	-0.25859*** (0.03)
White	0.337*** (0.03)	0.827*** (0.06)	0.862*** (0.06)	0.909*** (0.11)	1.014 (0.20)	0.633637*** (0.05)	0.179748*** (0.02)
Black	0.588*** (0.03)	1.196*** (0.06)	1.243*** (0.06)	1.169*** (0.11)	1.218 (0.20)	1.189291*** (0.05)	-0.06115** (0.02)
Pre-conviction	-0.356*** (0.02)	-0.323 (0.10)	-0.304** (0.10)	-0.590*** (0.05)	-0.819*** (0.07)	-0.00147 (0.07)	0.042175 (0.03)
Prisoner	-0.066 (0.01)	-0.213*** (0.01)	-0.165*** (0.01)	-0.947*** (0.02)	-0.923*** (0.02)	-0.71348*** (0.02)	-0.1691*** (0.01)
Age	0.010*** (0.00)	0.020*** (0.00)	0.021*** (0.00)	0.006*** (0.00)	0.000 (0.00)	0.011684*** (0.00)	-0.00738*** (0.00)
Education			0.082*** (0.01)		0.598*** (0.02)		
N	263,434	391,968	361,634	185,515	90,894	284,326	191,658

NOTES: These models were estimated using logistic regression for binary dependent variables for each state. Sample limited to offenders aged 18 to 65. Unstandardized regression coefficients are reported. Standard errors in parentheses, \*significant at 5%; \*\*significant at 1%; \*\*\*significant at .1%.

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## Governing the restoration of civil rights for ex-felons: an evaluation of the Executive Clemency Board in Florida

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In Florida, when someone is adjudicated guilty of a felony crime, they lose the right to vote. The only way to regain these rights is to go through the process of rights restoration. The civil rights restoration hearings in Florida have the potential to serve as a formal ceremony in which individuals are acknowledged for their recovery from crime and readmitted into the political community. Data from the Governor's office, observations of the Executive Clemency Board, and interviews with ex-offenders who have experience with the restoration process, were evaluated to determine the impact these hearings have for ex-offenders' reintegration. Results suggest that the low success rate, cumbersome process, and lengthy amount of time required may all serve to further alienate the many applicants who are rejected, impeding their reintegration into the community. Recommendations to either simplify the process of rights restoration or to remove ex-felon disenfranchisement policies are given.

**Keywords:** ex-felons; disenfranchisement; reintegration; rights restoration; voting; clemency

### Introduction

Florida governor, Jeb Bush, stated that the restoration of civil rights is, 'an exhausting, emotionally draining process that can also be uplifting when people have changed their lives and turned things around' (Pfankuch, 2001). In Florida, those convicted of a felony offense must go through the rights restoration process in order to vote, run for an elected office, or serve on a jury. The rights restoration process serves as one of the final steps in the process of restoring liberties forfeited by a criminal conviction.

Maruna (2011) argues that unlike the punishment process that involves well-orchestrated and elaborate proceedings, the reintegration process involves very few of these types of events. Ceremonies or formal moments recognizing ex-offender reintegration have been noted as important events that can symbolize the process of moving toward full civic membership. Scholars have noted the potential benefits of these types of ceremonies. Trice and Roman (1970) argue that *delabeling*, or *deviant decertification* ceremonies signify an important point in which an offender

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has overcome his/her criminal life. A formal ceremony, in which the individuals are acknowledged for their recovery from crime and readmitted into the political community, has the potential to aid the reintegration process. [Uggen and Manza \(2005, p. 78\)](#) argue that ‘some variant of these restoration processes may hold promise for reducing the stigma associated with a felony conviction ... while helping convicted felons to move on with their lives.’

It seems likely that the manner in which these ceremonies are carried out will influence the degree to which they are effective. If these ceremonies are not conducted in a just or reasonable manner, the benefits may largely be lost. Braithwaite and Mugford (1994, p. 142) suggest that when these ceremonies follow the ‘disapproval-degradation-exclusion’ framework or are applied in an unjust or inequitable way, they fail to benefit the former offender. Erikson (1964, p. 16) argues that it is important to have some type of ceremony stating that one is:

ushered into the deviant position by a decisive and often dramatic ceremony, yet is retired from it with hardly a word of public notice. And as a result, the deviant often returns home with no proper license to resume a normal life in the community.

### **Rights restoration**

Once somebody has truly paid their debt to society, we should recognize it. We should welcome them back into society and give them that second chance. Who doesn’t deserve a second chance? (Florida Governor Charlie Crist cited in King, 2008)

In the state of Florida, when someone is adjudicated guilty of a felony, they lose their right to vote, serve on a jury, or run for elected office. The only way they may regain these rights is through the process of rights restoration. In the past, all ex-felons were required to go before the Executive Clemency Board (ECB) at one of their quarterly meetings in Tallahassee. On 5 April 2007, Governor Charlie Crist revised the rights restoration process by changing the rules of eligibility to allow former offenders to get their rights restored without a formal Board hearing. Those who were convicted of a nonviolent felony became eligible for ‘automatic’ rights restoration. This process requires the Florida Department of Corrections (DOC) to send the names of nonviolent first-time felons to the Florida Parole Commission (FPC) to assess their case for eligibility. The DOC estimates that they send about 4000 names per month to the FPC. The DOC estimated that this consists of approximately 2000 inmates being released into the community, and 2000 former offenders terminating their supervision (probation or parole).

The FPC reports that 150,000 nonviolent individuals have had their rights restored through this revised process, yet estimates still suggest that hundreds of thousands of individuals remain disenfranchised (estimates range from 600,000 to 1.2 million). Florida is one of eight states that restrict voting rights for offenders after the completion of their criminal justice sentence (including incarceration, probation, and parole). Despite the rule change in 2007, Florida is still considered among the top states when it comes to disenfranchising criminal offenders; a March 2011 decision by the new administration of Governor Rick Scott to repeal the 2007 rule change has essentially returned the state to its earlier more restrictive rules.

Under the 2007 clemency rules, when an individual is convicted of a felony crime the DOC notifies the Florida Division of Elections and that individual endures

the loss of voting rights, the right to serve on a jury, and the ability to hold an elected office. Ex-felons become eligible for the restoration of their civil rights upon completion of their sentence and all forms of supervision. At level 1, the lowest level of offenses (nonviolent felonies), the DOC automatically sends a list to the Parole and Probation Commission (see Figure 1). The FPC investigates all of these submissions to make sure that three requirements are met: (1) completion of all sentences imposed and all conditions of supervision have expired; (2) there are no outstanding detainers or pending criminal charges; and (3) all restitution paid pursuant to a court order or civil judgment is paid (OPPAGA, 2009). The Florida American Civil Liberties Union (ACLU) has argued that the last requirement has a considerable impact on those seeking rights restoration (as it may take many years to pay off restitution payments). Furthermore, the Florida ACLU and others have equated this requirement to Reconstruction-era poll taxes (ACLU of Florida, 2009). If the FPC approves the individual then it sends its information to the ECB for the governor, chief financial officer (CFO), commissioner of agriculture (CoA), and the attorney general (AG) for an ‘automatic’ approval signature. If the FPC denies the ‘automatic’ applicant, the ex-convict applicant is required to apply for rights restoration.

For more serious level 2 and level 3 offenses, the process becomes exponentially more difficult. For level 2 offenders, consisting of violent and habitual

	Eligibility	Procedure
Level 1	No violent offenses	Rights are restored without a hearing.
	And Not declared: a habitual violent felony offender, a 3-time violent felony offender, violent career criminal, prison releasee reoffender, or sexual predator.	Ex-offenders in Level 1 are not required to apply for rights restoration.
Level 2	Convicted of offenses more severe than Level 1 offenses, except murder and sex offenses.	Rights may be restored without a hearing after a mid-level investigation.
	And Not declared to be a sexual predator.	If civil rights are not restored without a hearing, then the case can be considered at a hearing after a full investigation, if the applicant notifies the Office of Executive Clemency that a hearing is desired.
	Or 15 years arrest and crime free.	
Level 3	Convicted of homicide or sex offense and those not approved in Level 1 or 2.	Full investigation and hearing.

Source: Rules of Executive Clemency 2007.

Figure 1. Restoration of civil rights process by different level.

offenders (see Figure 1), an in-depth review by the Parole and Probation Commission is required and then sent to the ECB which looks over the case files and either approves or denies rights restoration. The level 3 offenders, consisting of sex offenders, homicide offenders, and those denied at lower levels, are required to go before the ECB in Tallahassee at one of its quarterly hearings to have their cases heard. Any offense can be considered at a higher level based on the governor's discretion. If denied rights restoration at a hearing, which is a common occurrence, the ex-felon must wait two years before reapplying.

Rights restoration in Florida is a unique and complex process that is largely void of transparency. Unlike criminal justice processes that are open to the public (public hearings, public court records, public dispositions, etc.), the rights restoration process in Florida remains mostly hidden from public scrutiny. This examination employs several strategies to better understand this process, including an evaluation of records from the ECB, observation of the hearings, and interviews with ex-felons. These data sources are evaluated to: (1) determine the predictors of rights restoration, (2) evaluate the experience of going through the rights restoration process, and (3) assess the mistakes that occur during this process.

### **ECB data**

The ECB has the authority to restore the civil rights of an individual who has forfeited them by receiving a felony conviction. The Constitution of Florida allows for the governor and his cabinet to use their discretion in granting clemency. Because the governor and his cabinet have the sovereign prerogatives typical in a clemency process, their decision-making takes place outside of the normal checks and balances of the criminal justice system (Sarat & Hussain, 2007). The applicant for clemency has neither entitlement to due process, nor is the governor required to give a reason for denying their petition. The particular operations of rights restoration through executive clemency raise the question of whether or not this system favors certain groups or types of applicants over others. In order to answer this question, we use records from the public hearings of the ECB over the past six years to evaluate predictors of rights restoration. In addition, observations of four ECB hearings, along with interviews with ex-felons who have experienced this process, were conducted to advance our understanding of these proceedings.

One of the challenges to research on rights restoration is that records are held confidential. In order to analyze data on the rights restoration process, we were limited to the only part of the process that is open to the public, the meeting agenda. It is important to note that not all ex-felons are required to go through the process of a formal hearing, and these requirements have changed from one governor to the next and even in the middle of a governor's term. To give a better understanding of the process of rights restoration, we evaluated the meeting agendas over six years: 2004 through 2009. The timeframe of six years was chosen to allow for an analysis of changes in trends and to make a comparison between Governors Bush (three years) and Crist (three years). In addition, this time period encompassed two presidential elections and varying political climates. These six years of data collected from the ECB were then used to evaluate the predictors of having one's rights restored.

The meeting agendas were formally requested through the FPC in accordance with Florida's Sunshine Laws. The information contained on the agenda included



the type of petition, individual's legal name, favorable or unfavorable recommendation by the FPC, and whether the applicant attended. The agendas sent to us contained the Coordinator of the Office of Executive Clemency, Janet Keels, personal notes that marked the disposition and any other relevant notes including whether a victim was present or a victim statement was read. Over the six years, the ECB held 23 meetings. It met four times a year (March, June, September, and December), except in 2008, when the Board only met three times (February, June, October). The ECB would not state a reason for why the board only met three times in 2008, but it is likely that scheduling conflicts were the primary concern.

In order to gather background information on the ex-offenders, we used a commercial criminal records search engine. For a monthly fee, the search engine allowed criminal records to be located using offender names. The database also allowed searches to be limited to ex-offenders who had Florida criminal records by selecting Florida as a search parameter. This methodology has several limitations, but still was able to illuminate patterns among ex-offenders' characteristics that made them more likely to have their rights restored.

Ironies abound in this methodological approach, ironies which deserve some elaboration. Even after ex-offenders have their rights restored, in many cases their criminal records will continue to be readily available on the Internet for a minimal fee. The use of criminal background checks has dramatically increased, and more states are now making them available online ([Blumstein & Nakamura, 2009](#)). A survey conducted by SEARCH (2001) revealed that 13 of the 37 reporting states allowed individuals to purchase criminal records over the Internet. Florida is one of these states that provides criminal histories containing everything in the file (that has been entered into the computer). The accuracy of these records has been questioned (SEARCH, 2005) and often records are incomplete or contain inaccurate information.

Along with possible inaccuracies with this data, there was also a significant amount of missing data. More common for women than men, some of the missing cases can be attributed to legal name changes preventing the names on the agenda to be connected to the name on the criminal records. This is one clear limitation of this methodology. The date of the criminal offense may also complicate locating a criminal record. Some of the electronic county records in the state of Florida only go back as far as 1997, whereas others go back much further. Thus, if an offense occurred before the start of records in the database for a particular county then the individual may not be in the database. In many cases, older records have been entered into these databases, but certain offenses such as sex offenses and homicides may be more likely to be represented in the database than lesser offenses.

Another issue of concern is the problem of duplicate names. In some cases, when common names were entered into the database, several records came up for different people with felony convictions. The information was omitted when this happened, and there was no way to be sure which ex-felon was the one who was petitioning for clemency.

Each meeting agenda provided by the Office of Executive Clemency indicated the disposition of the applicant's petition. After each name, a handwritten note indicated if the petition was granted, denied, continued, or taken under advisement. Applicants who had 'granted' next to their name were compared to those whose petitions were denied. In the rare case where applicants' cases were either continued or taken under advisement, they were excluded from this analysis.

Key factors that may influence the disposition of the case, were indicated on the agendas. These included the applicant's attendance at the hearing, the Parole Board's recommendation for the case, and whether the victims spoke or provided a statement for the hearing. On the FPC's website under 'Frequently Asked Questions' about clemency, question 6 asked: 'If my case is scheduled for a clemency hearing, do I have to attend the hearing?' The question is answered: 'No, it is not a requirement for any individual to attend the clemency hearing, although in rare cases, the governor or any board member may request that an individual appear to answer specific questions about his or her case' (FPC, 2004). Although attendance was not required, it is hypothesized that those who attend will have a greater likelihood of having their rights restored. Those who indicated that they would attend prior to the hearing were noted on the agendas by the placement of an asterisk after their name. Individuals who failed to attend and were given asterisks or those who attended and were not marked on the agenda, were corrected on the copies received from the Office of the ECB. In the rare cases where applicants were not in attendance, but arrangements had been made for someone to represent them (attorney, family member, or friend) they were included in the attendance group indicating their representation. Those who were represented at the hearing were compared to those who were not represented.

The FPC evaluates all level 3 applicants cases prior to the hearing. This investigation often consists of interviews with the ex-felon, family member, employers, victim(s), and other people in contact with the applicant. The FPC is required to provide the ECB with a copy of this report and give the applicant either a favorable or unfavorable recommendation. The governor and his cabinet are not constrained by this recommendation and have full autonomy to overrule the recommendation of the FPC. It is hypothesized that those who received favorable recommendations are more likely to have their rights restored than those who received unfavorable recommendations. On the agenda, those who received favorable recommendations were grouped together and presented their cases prior to the group with unfavorable recommendations. Those who received favorable recommendations from the FPC were then compared to those who received unfavorable recommendations.

The Commission's Victims Coordinator notifies victims of upcoming hearings that involve offenders, including applicants for restitution of civil rights. The Victim Services office is responsible for locating victims and to 'offer guidance and compassion through the process of providing the Commission input on matters brought before it' (FPC, 2004). Victims are informed of the hearing date and given the opportunity to provide a written statement or to appear in person to speak either for or against the applicant's petition. As noted earlier, the FPC usually attempts to contact the victim(s) prior to determining their recommendation to the board as well. Although victims did not speak in many cases, it is hypothesized that in those cases where a victim was either present or had a statement read to the Board that this would impact whether the applicant's rights are restored or not. The agenda contained handwritten notes indicating whether the victim(s) spoke or had someone speak on their behalf. The cases where a victim or victim statement was indicated were compared to cases without victim(s) involvement at the hearing.

Demographic variables were used to evaluate if certain groups were more likely to have their rights restored than others. Criminal background checks were used to provide the applicant's gender, race, and age. Gender was a dichotomous measure and was indicated on the criminal records. The applicant's race was also indicated

on the criminal record. Although one would expect that Florida would have a large Hispanic group, historically, racial/ethnic classifications failed to accurately report Hispanics. Race was therefore treated as a dichotomous variable where Whites were compared to nonWhites. Taking the birth date given on the criminal record and subtracting it from the date of the applicant's hearing determined the applicant's age. Age was a continuous variable measured in years and the age of the applicant was represented at the time of their hearing.

A criminal records search was used to determine what offenses the applicant had committed. The categories were determined using the Florida Department of Law Enforcement (FDLE) classification system and reduced to represent the major categories of crimes. Included were homicides, sex offenses, robberies, assaults (including other violent offenses), thefts (property crimes), drug offenses, and other offenses. Homicides included murder, manslaughter, vehicular manslaughter, and DUI manslaughter. Any offense designated by the state and included by the state's registry as a sex offense was included in the sex offense category. Any type of robbery (armed robbery, strong arm, etc.) was included in the robbery category. The assault category consisted of aggravated assaults and aggravated stalking. The category of thefts included burglary, larceny, forgery, and motor vehicle thefts. All drug offenses were placed into the drug offender category. Finally, those offenses that did not fit into one of these categories were placed into the other category (arson, felony DUI, carrying a concealed firearm, bribery, eluding, trespassing, cruelty to animals, child abuse, etc.). For those applicants who had multiple offenses only the most severe (higher FDLE) offense was selected. Because this is a categorical variable, seven dummy variables were used in the analysis and drug offenders were excluded and used as the reference group.

## **Results**

The ECB meets in the basement of the Capital building in Tallahassee, four times a year, to hear petitions for commutation of sentences, pardons, restoration of firearm authority, and the restoration of civil rights. Applications for the restoration of civil rights made up the majority of the agenda and the Board heard 56 rights restoration cases on average for meetings from 2004 through 2009. During this time period, the board considered 1344 cases for restoration of civil rights, 437 (33%) of which were granted, 846 (63%) denied, and 61 (4%) continued or taken under advisement.<sup>1</sup> These numbers varied considerably from hearing to hearing, between governors, and even within a governor's term. From 2004 through 2006, while Jeb Bush was Governor, he restored 381 (44%) applicants' civil rights and denied 491 during the ECB meetings. From 2007 through 2009, Governor Crist restored 56 (14%) applicants for restoration of civil rights while denying 355 applicants during the ECB meetings.<sup>2</sup> It is important to note that in April 2007, Governor Crist amended the Rules of Executive Clemency to allow for a larger number of nonviolent offenders to have their rights restored without a hearing.<sup>3</sup> Table 1 shows the changes in civil rights restoration over time.

Descriptive statistics for the dependent and independent variables in the analysis are summarized in Table 2. Due to issues of missing data (discussed previously), only 884 cases were included in the analysis. Among these, about one-third (32%) had their rights restored. The majority of the applicants were male (84%) and White

Table 1. Restoration of civil rights at the ECB by hearing date: 2004–2009.

Year of hearing	Date of hearing	ECB applicant sample ( <i>N</i> = 1283)		
		Number restored	Restored (%)	Total applicants
2004	18 March	25	44	57
	17 June	28	51	55
	23 September	27	64	42
	9 December	29	66	44
2005	3 March	23	53	43
	23 June	30	53	57
	8 September	33	57	58
	6 December	49	39	127
2006	2 March	66	47	141
	15 June	26	25	104
	21 September	27	28	95
	7 December	18	37	49
2007 <sup>a</sup>	1 March	23	43	53
	14 June	0	0	29
	20 September	5	11	45
	6 December	1	3	34
2008	28 February	7	25	28
	5 June	3	16	19
	21 October	3	6	51
2009	12 March	4	9	45
	11 June	2	7	28
	24 September	4	10	40
	10 December	4	10	39

Source: ECB data 2004–2009.

<sup>a</sup>Change in ECB rules.

Table 2. Descriptive statistics for variables used in rights restoration model.

Variables	ECB applicant sample ( <i>N</i> = 884)	
	Mean	S.D.
Dependent variable		
Disposition (restored = 1)	.32	.47
Demographic variables		
Gender (male = 1)	.84	.37
Race (White = 1)	.66	.47
Age at hearing	47.09	13.09
Factors		
Parole rec. (favorable = 1)	.28	.45
Attendance (attended = 1)	.22	.44
Victim statement (yes = 1)	.03	.18
Offense type		
Homicide	.14	.35
Sex offense	.34	.47
Robbery	.07	.26
Assault	.23	.42
Theft	.04	.21
Drug offense	.08	.27
Other	.09	.29

Source: ECB data 2004–2009.

(66%). The average age at the hearing was 47-years-old. Only about one-fourth of the applicants received a favorable recommendation (28%) and less than one-fourth were represented at the hearings (22%). Victims were only represented in three percent of the cases. The largest group of applicants was sex offenders (34%). Other violent offenses made up nearly half of the applicants with homicides (14%), assaults (23%), and robberies (7%). The rest of the offenses consisted of property thefts (4%), drug offenses (8%), and other (9%).

### Statistical model

The results from the logistic regression model indicated that those who were predicted to have their rights restored received favorable recommendations, attended the hearings, and did not have victim representation. Compared to unfavorable recommendations, those with favorable recommendations were 46 times more likely to have their rights restored while controlling for other factors. Those who attended the ECB hearing were nearly 10 times more likely to have their rights restored as compared to those who did not attend. Those who had victim statements or testimony during their hearing were 100 times less likely to have their rights restored compared to those who did not have victims present while controlling for other factors. Further, there was only one case where a victim's statement was given and the applicant's rights were restored. These results indicated that the recommendation of the FPC, attending the hearing, and whether a victim is represented are very strong predictors of the likelihood of rights restoration (Table 3).

Among the demographic variables, age was the only significant predictor of rights restoration. Those who were younger at the time of their hearing were more likely to have their rights restored. This relationship likely represents a difference in number

Table 3. Logistic regression analysis predicting restoration of civil rights.

Variables	ECB applicant sample ( $N=884$ )	
	Beta (SE)	Odds ratio exp(b)
Demographic variables		
Gender (male = 1)	-.54 (.30)	.59
Race (White = 1)	-.39 (.25)	.68
Age at hearing	-.02 (.01)	.98*
Factors		
Parole rec. (favorable = 1)	3.83 (.27)	46.00**
Attendance (attended = 1)	2.25 (.27)	9.51**
Victim statement (yes = 1)	-4.37 (1.29)	.01**
Offense type (compared to drug offenses)		
Homicide	-1.55 (.53)	.19**
Sex offense	-1.91 (.51)	.16**
Robbery	-.29 (.59)	1.02
Assault	-.32 (.47)	.86
Theft	.13 (.65)	1.37
Other	-.08 (.50)	.93
Intercept	-.49 (.64)	
$\chi^2$	598.65**	
Pseudo $R^2$	.69	

\* $p \leq .05$ , \*\* $p \leq .01$ .

Source: ECB data 2004–2009.

of offenses, severity of offense, and length of sentence that unfortunately could not be measured. These limitations are further addressed in the discussion section.

For the offense type, only homicides and sex offenses were significant in predicting the denial of rights restoration compared to drug offenses. Those applicants convicted of homicide were 5.26 and sex offenders were 6.25 times less likely to have their rights restored than drug offenders while controlling for other factors. All other offenses were not significantly different than drug offenders.

In sum, the actions of the ECB appear to present something of a paradox. On the one hand, appeals for the restoration of rights are nominally treated as a matter for very personal and individual assessment of each ex-offender. Indeed, the fact the rights restoration goes through the *clemency* Board explicitly, evokes the traditional notion of a sovereign prerogative to provide mercy – albeit in a decidedly unsystematic way – to the individual facing state sanction. In practice, however, the decisions of the ECB appear relatively uninfluenced by the figure of the individual petitioner standing before the Board – except in the basic sense in which petitioners who are physically standing before the Board improved their chances considerably over those who chose not to attend hearings in person. Otherwise, parole reports and victim attendance played a far more critical role in the proceedings, suggesting the relative unimportance of the petitioners' own presentation. To gain a better sense of how the process is experienced in practice, we observed the proceedings of the ECB and conducted a number of interviews with ex-offenders.

### **Observations and interviews**

The ECB convenes four times a year and offers an opportunity for ex-offenders to speak before the governor and his cabinet to ask for the restoration of their civil rights. The Florida Parole and Probation Commission provides the governor, AG, CFO, and CoA with their recommendations. Victims are notified and sometimes speak at these hearings or have statements read. To supplement the quantitative assessment of this process, we provide a detailed account of these hearings.

The senior author attended the four hearings during 2009 (12 March, 11 June, 24 September, and 10 December). During these hearings, an electronic recording device was used to record parts of the hearing. In addition, notes were taken on the interactions between the governor, his cabinet, petitioners, victims, and staff members present at the hearings. As part of a larger project, interviews were conducted with ex-felons unable to vote. Several of these ex-offenders were observed at the hearings and later interviewed. We use their stories to supplement the quantitative data presented.

### ***It is about time and place***

During the 24 September 2009, Executive Clemency Hearing, Alex Sink (CFO) asked Frederick Dunphy (the chair of the FPC) how long it took for applicants to obtain a hearing of their cases. This question was asked after an applicant had described a frustrating seven-year process to reach the hearings. Dunphy explained that because of the backlog and underfunding, it was not unusual for the process to take over five years. The exchange between Sink and Dunphy prompted numerous ex-felon applicants to express similar frustrations with the system during their hearings. Rising to take their turns to speak, they repeated stories of waiting for

five, six, and even seven years. Conversations with the ACLU and ex-felons revealed that even level 1 offenders were required to wait several years. The Florida ACLU cites these extended waiting periods as one of the reasons for the 'automatic' restoration label to be inaccurate (ACLU of Florida, 2009).

The length of time it takes for an applicant to secure a scheduled interview means that many life events can intervene in the meantime. Observations of the ECB hearings suggested that the governor and cabinet officials expressed little sympathy for those experiencing these adverse life events. This seemed especially true in those instances of ex-offenders describing economic 'hard times.' Those who had recently been laid off and were dealing with the hardships of the economic downturn seemed much less likely to garner support from the board than those who had recent positive economic events.

Indeed, it would be fair to say that unpredictable life circumstances at the equally unpredictable point of evaluation (anywhere from three to seven years after the initial application) may be a critical factor in the governor's decision. The FPC often conducts interviews with recent employers, friends, and other references, not at the time of the petitioner's application, but instead many years later. For many, this delayed process may place them in much different circumstances than when they originally applied for their rights restoration.

If applicants have their application denied the ex-offender must wait for two years before reapplying. An applicant at the 10 December 2009, hearing pleaded with Governor Crist to continue his case, indicating that he had some material he wanted to bring in, but he was not ready to present. The governor, showing a reluctance to continue the case at the applicant's request, patiently waited for him to use his time to argue for himself. The room fell quite silent, as the applicant fumbled through an improvised statement and concluded with a plea for a continuance. The governor said he would take the case 'under advisement.' The applicant, clearly not understanding the governor's comment, asked what he meant. In response, the governor explained that he would look over the case later to evaluate it and see if he should schedule a new hearing. This dialog may seem trivial, but under the current rules, if a petition is denied the applicant must wait two years from the date of the hearing before reapplying for rights restoration. Thus, if the governor denies the case, the applicant must wait two years to reapply and then endure another three to seven years before having another hearing. In many cases the governor would deny a petition, but stated that he 'encourage[s] you to reapply.' It is very likely that by the time the applicant has another hearing scheduled that the governorship would change more than once before their petition is heard. As knowledge of the amount of time this process requires becomes better known, many ex-offenders may be discouraged from ever applying.

If 'time' works against ex-offenders, the problem of 'place' does as well. Specifically, ex-offenders must meet the challenge of being physically present in Tallahassee at the board hearing. During the March 2009 meeting, a glance around the room sparked an observation on the curious demographic makeup of the assembled group. With the exception of one black family and what appeared to be an aide, the entire room was filled with Whites. Even more surprising was that there were only two Hispanic families (one of which was there to give a victim's statement). Data from 2004 to 2009 showed that 28% of White applicants attended, while only 21% of nonWhites attended the hearing. Over the 23 hearings from 2004 to 2009 only 64 nonWhites were heard before the governor, representing an

average of less than three applicants per hearing and about one-fourth of the total applicants who attended.

While observing the hearings the governor would simply say, 'denied' right after the name was read if they were not in attendance. This process was repeated many times during the hearings. In the cases where a victim was present and the applicant was not, the governor would let the family members know that they did not have to testify unless they wanted to, making it clear that he was going to deny the applicant. In several cases, the coordinator would read a name indicating that the person was not present, and before someone in the audience would have a chance to speak up announcing their presence, the governor would deny the application. The governor would then retract his statement and call the applicant forward to have the case considered.

### *Victim rights*

Miller (2000) noted, in her historical analysis of clemency in Florida, that during 'the pardon application, the applicant's explanation of the crime predominates; and whereas a criminal trial began with and focused on the victim's story, a pardon application began with that of the defendant' (p. 138). Nevertheless, these hearings differ from trials in that anything applicants could do to focus attention on their current life status rather than the circumstances of the crime seemed to enhance their likelihood of having their petition granted. This included bringing certificates and diplomas to show the Board or providing references to keep the discussion focused on their current status. When a victim was present or a victim's statement was read, this dramatically changed the direction and tone of the hearing.

Gottschalk (2006) argues that the more punitive approach to criminal justice in the USA is partially a product of the victim's rights movement. In Florida, it is required that victims be notified of any hearing, including civil rights restoration, and victims are permitted to speak out against their perpetrator at any of these hearings. As the data presented earlier suggest, the presence of a victim or a victim's statement was the greatest impediment to success for civil rights restoration. Regardless of how well applicants presented their cases, a victim's presence trumped all their efforts. The only exception to this would be if the victim had forgiven the applicant's offense, but even in these cases, denial was common. In one case, the victims were obviously struggling to cope with their loss and stated that they were conflicted, because as Christians they wanted to forgive the applicant, but because he had hurt them they wanted him to suffer. This applicant was denied.

During the December 2009 meeting, an applicant did not attend the meeting, but the victim advocate notified the governor that he had a statement from the victim's family. The advocate stated,

The deceased victim's brother wanted to come today, but wasn't able to because of a job situation, but he just wanted me to convey to you that he believes, that he does want to believe that if the applicant is on the right path than he does not want to stand in his way of receiving his rights. (ECB Meeting 10 December 2009)

The governor asked the advocate, 'Is this involving the second degree murder?' The victim advocate replied saying, 'Yes, sir, that is correct.' The governor waited a few minutes to open the file in front of him. The governor looked to the cabinet



members and said, 'Are there any questions?' [Silence] Then I am going to deny the application' (ECB Meeting 10 December 2009). In this case, the governor was reluctant to restore the applicant's rights even with the consent of the victim's family, their presence seeming to trump even their own words.

A middle-aged woman who had worked as a paralegal prior to her incarceration pled for her civil rights back in order to continue work as a paralegal and be a notary (a right dependant on the restoration of civil rights). She was well spoken during her hearing and had several lawyers speak as character witnesses. Next, the victim's family was permitted to speak and soon the details of the offense were revealed. The applicant had shot and killed her husband. Many of the husband's family members had traveled from Tennessee and North Carolina to speak out against her application. The first family member to speak was the youngest child of the victim who spoke against his former stepmother detailing how he had suffered growing up without a father. The victim's brother and sister spoke next, but the most persuasive speech came last from the victim's oldest son. Now a Marine, he spoke about his time in Iraq and how he had witnessed the first women voting in Fallujah. He stated that he knew what the right to vote means and how he saw the sacrifices made for it. He finished his statement by saying that someone who creates such pain and misery does not deserve those hard-earned rights. The governor quickly denied the application and thanked the family members for making the trip.

During the March 2009 meeting, after hearing a victim talk about the loss of a loved one and the hardship of having to travel to the hearing, Alex Sink suggested to the governor that they bar the applicant from ever reapplying.<sup>4</sup> The governor looked over to Bill McCollum, the AG, and asked if this was permitted. McCollum said that the governor could take this action (permanently barring the applicant from reapplying), but it probably would not be wise and that the next governor would be able to let them reapply. After a short discussion, the governor agreed that this was not a good idea. This situation further illustrates some of the questions surrounding the rules on due process. Because the governor does not have to restore anyone's rights, it creates a system in which individuals could be permanently deprived of having their case even heard. Further, this situation speaks to the fundamental assumptions about whether people are able to change. Sink's position exemplifies the view that some offenders will never be worthy of redemption and, therefore, should never be returned to full citizenship.

### ***Errors***

In an Operational Audit by the Auditor General of Florida of a sample of 203 rights restoration cases, 13 cases were found in which the FPC had restored individuals' rights through the automatic restoration process in error – producing an error rate of 6% (State of Florida Auditor General, 2009). The primary focus of the report was investigating false positives. It is also likely that many of those who were denied or delayed restoration may have occurred in error as well. The focus of the audit identified six individuals who still owed restitution and three with outstanding warrants that should not have been eligible for restoration of civil rights. Further, they identified four individuals who were evaluated at the inappropriate level. Three individuals should have gone through a level 2 investigation and one

individual (convicted of sexual battery) should have had a level 3 investigation requiring a hearing before the ECB.

The ECB discussed these errors on 24 September 2009. The report published just days before the ECB hearing had criticized the performance of the FPC severely. Sink (CFO) suggested that they revoke the restoration of civil rights for those individuals awarded in error. McCollum (AG) and Governor Crist agreed that they should do an investigation into these cases in order to determine if revocation is necessary. Both Sink and Governor Crist challenged Frederick Dunphy (Commissioner of the FPC) to explain these errors. Dunphy argued that his agency has operated as best it could despite significant funding cuts to the agency. Indeed, the audit revealed 33,000 cases that had been ignored for three years, and a queue of over 60,000 applicants to be evaluated (not to mention the additional 60,000 prisoners released each year in Florida). ‘We don’t have adequate funding and staffing,’ Dunphy said. ‘I would say for the amount of cases we did that our agency has done a tremendous job in processing all those cases. Yes, we did have a handful of mistakes, but the process is very cumbersome and complex’ (Bousquet, 2009, p. 1). Dunphy’s full-time dedicated staff for evaluating these cases was cut from thirteen to six in 2008. For the fiscal year 2008–2009, the FPC requested \$1.8 million to fund the increased caseload. In the midst of budget crises, the Florida Legislature denied this request and a special request in September 2008 for 20 additional staff members was rejected by the Governor’s Office. In January 2009, however, the governor vetoed the state legislature’s plan to cut an additional \$300,000 from the FPC’s budget.

One particular case is worthy of discussing to better illuminate some of the problems with the rights restoration process. The restoration process, as detailed before is ‘cumbersome and complex’ (to use the words of the commissioner of the FPC). To demonstrate a failure of this system, we will discuss the case of a 57-year-old welder from Georgia. The senior author first met this man at the ECB meeting on 11 June 2009, and he agreed to meet later in Jacksonville to discuss his situation. We will refer to him as Earl.

In 1988, Earl was drunk at a party and got into a fight with another man. In his angered state he pulled out a gun (he had kept in his truck) and shot the man. Earl later turned himself into the police and was convicted of voluntary manslaughter. Earl spent 15 years incarcerated at the Georgia DOC.

Seven years ago, Earl moved 30 miles south into the state of Florida. When Earl was released from prison in Georgia, he received a notice that his civil rights had been restored indicated by a certificate he has managed to keep all these years. In Georgia (unlike Florida), once felons have completed their sentences (including parole and probation), their civil rights, including the right to vote are restored. Upon his move to Florida, a representative from legal aid, unaware of the rules, filled out a clemency application on his behalf knowing that he was a felon. Unaware of this action, Earl took his certificate to the voter registration office and was issued a card. Earl felt that it was his civic duty to vote and had voted in every election for the past seven years including the presidential election in November 2008.

Earl received a letter from the clemency office in December 2008. The letter informed him that the governor had agreed to hear his case for the restoration of civil rights. He did not really understand the letter, investigation, and interviews, which he thought were unnecessary because he had already had his rights restored and had the certificate from the governor of Georgia to prove it. Earl figured that

he better go to the appointment and clear things up with the FPC. Earl went into the clemency office where the parole examiner was ready to evaluate him to determine if he would give a favorable recommendation to the governor. Because Earl committed a level 3 offense, which is reserved for homicide and sex offenses; the Parole and Probation Commission had to conduct an investigation of his life, including interviews with him, his family, and the victim's family. Earl went to the office that day and tried his best to explain his situation. He showed the Commission his saved rights restoration certificate, and explained that he was a registered voter and that he had been proudly exercising this right. Earl pulled out his voter registration card to show the officer that there was no problem. The parole examiner told him that he was not allowed to vote and demanded that Earl hand over his voter registration card. Earl did not understand what was going on, and refused to give up his registration card. He soon learned that following the investigation, he had received an unfavorable recommendation. He was notified that the agenda for the March meeting was filed and his case was placed on the agenda for the June meeting. Earl received a phone call asking if he would be able to make it to Tallahassee for his hearing. When Earl replied that he did not think he could find the money or the time to make the three hour drive to Tallahassee, the lady on the phone informed Earl that if he failed to appear he would likely not have his rights restored (given the earlier analysis, a likely statement). With that information, Earl was able to borrow \$50 from his daughter to buy gas for the drive. Unfortunately, Earl who had been doing well for himself had recently been laid off as his employer was downsizing.

The first time the senior author met Earl, he stood in front of the governor, CFO, AG, and CoA. Earl, a black man of medium build, had short gray hair and glasses. He stood at the podium and spoke softly and nervously, his southern accent was difficult to follow, and his soft voice made it even harder to understand him. After a minute of testimony, the senior author realized that he would not likely have his rights restored. His speech was scattered, and he fixated on the hardships he had endured. He claimed that his rights had been legally restored by the state of Georgia, but that point was lost in the rest of his statement, which focused on the loss of his job. The governor simply said, 'denied' as Earl walked away with his head down. Earl had traveled over three hours to Tallahassee, waited through two hours of cases, and after ten minutes of talking the governor simply said, 'denied.'

Earl walked outside of the chambers of the meeting room where the senior author greeted him and asked if he would be interested in talking about his situation. Several weeks later at the agreed upon interview, Earl brought copies of the report from the FPC, his voter's registration card, and his certificate of rights restoration from Georgia. After the interview, the senior author re-examined the Rules of Executive Clemency (2007) and discussed his case with members of the Florida ACLU along with a lawyer from the Brennan Center for Justice. Both of these contacts explained that they should have honored his restoration by another state. The senior author emailed the Office of Executive Clemency to further clarify the policy on out-of-state civil rights restoration.<sup>5</sup> Janet Keels promptly responded to the email by stating, 'Yes, out of state restoration is honored by the State of Florida.'<sup>6</sup> The senior author responded to the email and asked about Earl's case. Keels responded that she had asked Stephen Hebert, Director of Clemency Administration, to review his case. Two weeks later Janet Keels sent an email addressing the situation:

I checked with the Florida Parole Commission Director of Clemency Administration, Mr. Stephen Hebert. He contacted the Parole Examiner who did the investigation on [Earl]. Unfortunately, the Examiner did advise [Earl] that he could not vote until Florida restored his civil rights. The Supervisor has been advised and will address this issue with the Examiner and other staff. I don't know why he said this because all the Examiners should know that this is not a correct statement. I'm not sure who told [Earl] he had to request restoration through Florida in the first place. If a person with an out-of-state conviction only wants to be able to vote, the policy is to check to see if the state where the conviction occurred may have already restored voting rights. Of course, sometimes the person wants restoration for employment or licensing purposes which the out of state restoration may not address. [Earl] can take a copy of his Georgia restoration to the Supervisor of Elections and should have no problem registering to vote. We are very sorry that this occurred.<sup>7</sup>

The mistakes made by the legal aid worker, parole examiner, and governor all illuminate a situation where complex rules make the restoration process more difficult. In this case, it was the supervisor of elections who issued Earl his voter registration card who understood the rules surrounding ex-felons and rights restoration. This is not always the case for many ex-felons who often further face embarrassment of being denied the ability to vote when they have the legal right.

A 46-year-old lawn worker was convicted in North Carolina and should have had his rights restored in the state of North Carolina following the completion of his probation for writing bad checks. When he moved to Florida and went to vote, he was told that he was not allowed to vote. He said,

Yeah I went to register to vote and I was turned down 'cause I was honest on my application. It's like well what's the point of even living in this United States if I can't share the same simple right that everyone else has here.

This is not a unique case; in 2008, the ACLU conducted a telephone survey with members in all 67 county supervisors of election offices. They found that employees in these offices did not know the correct rules for misdemeanor offenders, those on parole and probation, out-of-state convictions, and those on pretrial detention (ACLU of Florida, 2009). In addition, they found that election employees required unnecessary documentation, gave misinformation about waiting periods, and failed to inform ex-felons of restitution preconditions. The ACLU concluded that many of the changes implemented after 2005, that were intended to better ensure that voter lists are purged correctly, have failed as a result of the complexity of a system where alarmingly high numbers of county supervisors of elections remain unaware of the rules surrounding former offenders and the right to vote (ACLU of Florida, 2009).

Another case worthy of some detailed description here is a 41-year-old realtor who seemed a likely candidate for rights restoration. He explained to the senior author that he had never stolen anything and tried hard to live a good life. When he was young, he killed his best friend and severely injured his girlfriend in a drunk driving accident. It was hard even 20 years after the accident for him to talk about what happened. He said that he had blacked out and did not remember getting into the car. He spent five years in prison and since his release has not consumed alcohol and always drives under the speed limit. Despite his incarceration, he had been successful as a realtor and wanted to get more involved in politics. During the ECB hearing, the governor denied his case without providing a rationale for his decision.

During my interview with this petitioner, I learned why he had received an unfavorable recommendation, likely one of the main reasons for his case being denied.

At the interview after many years with a lady in Tampa for the Parole Commission, her name was ... and she was real nice to me and then I never saw her again. Then I get a letter in the mail several months later after that final interview with her and it said 'unfavorable' due to that I owed money or something. Some kind of fine or restitution. I don't know anything. What I saw was there was some kind of restitution but to nobody. All it was, was some fines that I had put into liens after my two years of probation was up many years ago back in 1999. And it said 'I couldn't own property' unless I satisfied these liens. And what it was, was over depositions that my lawyer took for the, you know for the trial back in the '80s and these people never even went to court. (41-year-old realtor)

It took him seven years to go through the application process and actually have a hearing. He had traveled seven hours to Tallahassee 20 years after the accident (the only crime he had committed) only to be rejected because the records showed he owed money, but it was not clear whom he needed to pay. Others at the ECB hearings were also frustrated with the parole examiner's accusations that they owed money. In several cases, people would offer to settle debts, but did not know whom they needed to pay bringing into question the validity of the examiner's reports.

### Discussion

As predicted, the parole recommendation, attendance, and victim representation were all significant and large predictors of rights restoration. Victim representation had the largest impact on rights restoration, and in only one case did someone have their rights restored when a victim was represented. The victim's representation at these hearings deserves further discussion, since in those cases where a victim was present the likelihood of the applicant being successful in the restitution of their civil rights was close to zero while controlling for other factors. Therefore, the presence of a victim can even trump a favorable recommendation and attendance.

Victim impact statements have become a controversial issue in their use during the sentencing process for capital cases. Most of the arguments that oppose their use argue that the victim impact statement 'invites prejudice and judgments based on emotion rather than reason' (Myers & Greene, 2004, p. 492). As described in the observations of these hearings, the victim statements are typically very emotional and often focus on the events of the crime rather than the offender's progress. Further evidence of the impact of a victim's presence is that in six out of the 42 cases when a victim was represented, the applicant received favorable recommendations, yet in five of those cases they were denied.

While controlling for other factors in the model, those applicants who attended were nearly 10 times more likely to have their rights restored as compared to those who did not attend. This is an important finding given that the Office of Executive Clemency clearly states that attendance is not required on their website (FPC, 2004). Further, this may have a differential impact on those who do not have the financial resources to travel to Tallahassee to be present on a Thursday morning. The logistics and costs for someone who lives in Miami, Key West, or Fort Meyers may make them far less likely to make the trip. Although this analysis had no economic indicators, it can be deduced that those who are able to attend the hearings

have greater financial or social resources to make such a trip in the middle of a workweek.

The recommendation by the FPC had a large impact on the likelihood of having ones rights restored. This was not surprising, but one issue of concern is that the Commission does not have to give a reason for its recommendation. Petitioners are not allowed to see these reports passed between the FPC and the ECB. Clemency hearings have traditionally been up to the discretion of the governor and the parole board and not subject to the same kind of due process restrictions as other judicial processes (Miller, 2000). In many cases where applicants appeared at the hearing, they did so in an effort to correct mistakes reported by the FPC. Mistakes included listing that restitution was still owed (when the applicant had receipts to prove payment), mistaken identity claiming applicants had other offenses they can prove they did not commit, and a misunderstanding of the rules of executive clemency. The hearing for many, serves as a last chance to correct poor investigative work by the FPC. Those unable to attend who received unfavorable recommendations based on false information have no mechanism of correcting these types of errors. Further, because the FPC does not publicly give any type of metric or calculation for its decision, the recommendation may be more a product of an individual parole officer's discretion rather than a systematic process.

The only demographic variable that significantly impacted rights restoration was age. The younger the applicants, the more likely they were to have their rights restored. This can partially be attributed to the inability to control for the seriousness of the offense. The model was able to control for type of offense, but was unable to measure key variables such as length of sentence or time served. Because these measures were not included, it is likely that those who were older at the time of their hearing spent more time incarcerated or on parole, which could indicate a more serious offense (or greater number of offenses). This is a clear limitation of the data and future research should attempt to take these factors into consideration.

Neither race nor gender was significant in predicting the likelihood of rights restoration. This finding was surprising given that many contend that ex-felon disenfranchisement may be a way to suppress minority votes. Indeed, minorities are disproportionately impacted by the loss of civil rights due to higher arrest, conviction, and incarceration rates than Whites, but it appears that when controlling for the other factors in the model, race had no impact on the likelihood of rights restoration. One further point of inquiry is whether Whites were more likely to apply for a hearing than blacks. These findings may have systematically excluded those without the resources to apply for rights restoration. Future research should attempt to explore whether race has an impact on the likelihood of applying for rights restoration.

One of the great limitations of these data is in the methodology of the criminal record search. Although the nature of these data did not lend many other options, the large amount of missing data needs to be further addressed. One consequence of these missing data is that it may have systematically excluded certain groups of offenders. There were 132 applicants that showed no criminal record when entered into the database. It is likely that these names returned without a criminal record because the applicants changed their name, committed the offense outside of Florida, or committed the offense prior to the jurisdiction making the record available online. Consequences of these omissions are that women (with 11% no

record found missing) were excluded more often compared to men (with 9% no record found missing).

Another consequence is that more serious offenses such as homicides and sex offenders were more likely to be included in the database regardless of offense date, whereas lesser offenses that occurred long ago were less likely to show a record. This may partially explain the relationship between age and disposition due to the omission of older applicants with lesser offenses committed during their youth. These data did not provide the extent of the applicant's criminal record, which may also explain why older applicants are less successful. Those with many convictions over a long period of time may be older at the time of the hearing.

Braithwaite and Mugford (1994) suggest that the benefits of a redemption ceremony are lost when the system is perceived to be unjust and inequitable. It would be difficult to argue that the Florida's system is equitable, just, or efficient when even those officials in charge acknowledge the many problems in funding and errors that persist. Hull (2006, p. 42) argues, 'The clemency process should first be purged of its numerous gratuitous and onerous hurdles, and pardon seekers should be provided with considerably more assistance than they are receiving even in the states that recently modified their procedures.' Although the Florida ACLU and the Florida Rights Restoration Coalition have worked with the Governor's Office to increase awareness for ex-felons about the restoration process, many ex-offenders are unable to receive the assistance necessary to navigate this difficult procedure.

Further, compounding this problem is that when this process of rights restoration is perceived to be unfair it can negatively affect an individual's perception of the legitimacy of law. [Tyler \(2006\)](#) argues that legitimacy, defined as the just view of legal procedures and enforcement of the law, is the most important factor in determining 'why people obey the law.' Uggen and Manza (2005, p. 79) note that the small scale of successful restorations may negate the benefits of this ceremony indicating, 'too few individuals are restored civil rights and the process is generally alienating rather than inclusive.' To this point, the majority of individuals who are rejected may face more challenges in their recovery process dealing with additional alienation after a failed attempt for recognition of their inclusion in the community. In addition, several scholars have argued that the inability of former offenders to participate in civic practices such as voting may present an additional obstacle to successful community reintegration (see [Behan, 2011](#); [Hull, 2006](#); [Manza & Uggen, 2006](#); [Miller & Spillane, 2012](#)). The irony that persists is that those individuals likely to be denied are those most likely to lack the social and economic resources to attend the clemency hearings and may be less integrated in the first place. Therefore, this process may have the inverse effect as a deviant decertification ceremony in that those who are not yet as well integrated are further alienated putting them at increased risk of recidivating.

### **Policy recommendations**

The most immediate need is for ex-felon assistance in navigating the process of rights restoration. As noted by the FPC, the process is 'cumbersome and complex,' and unfortunately, many of those directly involved with the process do not understand these rules. Knowledge of the Rules of Executive Clemency need to be better understood by the parole examiners, election supervisors, the Governor's Office, and members of the ECB in order to prevent errors. In addition, resources need to

be made available for ex-felons attempting to understand this process. Increased information and support are needed for out-of-state ex-felons, and clarifications of these rules need to be made. Furthermore, the underfunded and lengthy process of restoration needs to be further evaluated to assess if the lack of support and low success rate poses a significant threat to reintegration. All four interviewees, rejected at the ECB hearings were angry and frustrated with the system. It is likely that this further alienation and rejection can be harmful for reintegration.

The presence of a victim was the largest predictor for applicants having their petition denied. Further evaluation of the role of the victim at these hearings is warranted. Hearings involving a victim dramatically changed the focus of the hearing from the positive changes in the applicant's life to the pain caused to the victim. Unfortunately, this process does not seem therapeutic to either party, but only creates a situation that appears disintegrative for the applicant, amounting to a kind of erasure of their own narratives of recovery or integration.

Attendance at the ECB played a very large role in whether applicants were able to get their rights restored. The geographic location of Tallahassee creates logistical problems for applicants traveling from various parts of the state. In order to create a more equitable process for all Floridians, this study suggests that hearings be conducted in various geographic regions. This could be accomplished by either a rotation of the ECB hearings or by establishing satellite facilities in which applicants could communicate with the ECB via video conferencing technology. Additional locations in Orlando and Miami would ease the travel burden many applicants face and allow them to present their cases to the governor. At a minimum, advocates for ex-offenders must clearly convey to applicants the potential impact of a failure to attend a hearing in person, particularly in light of state-produced information that appears to imply that attendance is not an important factor.

All these problems could be remedied by either a simplification of the process or the removal of disenfranchisement for those in completion of their criminal justice sentence. It is with this assessment that this study recommends altering the current policy of disenfranchisement and increase practices of inclusion. The low success rate, cumbersome process, and lengthy amount of time required are likely to impede the reintegration process rather than aid it. It should be noted that all of these problems are likely to be exacerbated by the recent decision to repeal the 2007 extension of automatic restoration for many offenders. The political, philosophical, or legal merits of disenfranchising ex-felons should be carefully weighed against this range of negative impacts.

## Notes

1. The governor has the option of taking a case 'under advisement' allowing him to make a decision later on if he wishes. A 'continued' case will appear on the next meeting's agenda. Those cases that were continued were only counted on the agenda that a disposition was reached and since cases taken under advisement do not have public dispositions they were omitted from analysis.
2. It is important to note that the authors acknowledge that time is a complicated factor in this analysis. As discussed later in this paper, the amount of time an application takes to move through the process is lengthy. The authors also acknowledge that there may be seasonal as well as yearly differences in the likelihood of rights restoration, but we were unable to assess these factors in a quantitative analysis, but address them later in the paper.



3. The model was initially run with a control variable representing the Crist years compared to the Bush years. Although this measure was significant it did not substantially alter any of the other findings. Due to the complexity of using a time variable in this manner, it was excluded from the final model.
4. It is helpful to put into context the political climate in which these hearings were held. Governor Crist (Republican) was then planning a run for the US Senate in 2010, and eventually campaigned for the office as an independent. Bill McCollum (Republican) and Alex Sink (Democrat) were both seeking their parties' nomination to run for the governorship in 2010. Sink eventually became the Democratic nominee. McCollum lost the Republican gubernatorial nomination to Rick Scott, who eventually won the election. Gov. Scott, as noted above, moved quickly to repeal the 2007 changes to Florida's rights restoration laws.
5. The email sent on 31 August 2009 stated: 'I was wondering if you know where I can find information about out of state felons who have moved to Florida. I have found conflicting information and I was hoping I could find out whether if another state grants civil rights restoration if it is honored by the State of Florida (i.e. if someone committed a crime in Georgia and received restoration of their civil rights in Georgia and then later moved to Florida becoming a legal resident would that person still have to apply for rights restoration in Florida or would the restoration by Georgia be honored?)'
6. Janet Keels, email message to senior author. 1 September 2009.
7. Janet Keels, email message to senior author. 17 September 2009.

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**Rules of Executive Clemency  
Should Allow Level-1 Offenders to  
Have Their Civil Rights  
Automatically Restored Upon  
Completion of Their Sentences**

A Report of the  
Florida Advisory Committee to the  
U.S. Commission on Civil Rights

June 2014

## **State Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgements**

The Florida Advisory Committee acknowledges the members of its voting rights sub-committee, Frank S. Shaw, III, *Chairman*, Gilbert Colon, and Alan Williams, for their work in developing the research design for the study and directing the project to completion. The data collection and writing of the report were the principal assignments of Peter Minarik, Regional Director of the Southern Region, with contributing assistance from Simone Brown.

## Letter of Transmittal

### Florida Advisory Committee to the U.S. Commission on Civil Rights

The Florida Advisory Committee submits this report on voting rights as part of its responsibility to study and report on civil rights issues in Florida. This report is a re-examination of Clemency Rules for ex-felons in the State of Florida. It builds upon the Committee's 2009 report on the same issue. This report was adopted by a vote of 9 to 0 at a public meeting of the Florida Advisory Committee held in Miami, FL, on September 17, 2013.

It is the considered opinion of the Florida Advisory Committee that former Governors Jeb Bush (R) and Charlie Crist (R) acted correctly to modify the rules for executive clemency. The Florida Advisory Committee continues to hold that position, absent the introduction of a compelling government interest or purpose; and believes doing so will allow for deserving persons who have made full and proper restitution to again have the privilege to vote and participate in the democratic processes as well as assist such persons to successfully integrate back into society.

Elena Flom, Ed.D.  
*Chair*  
Florida Advisory Committee

#### Florida Advisory Committee to the U.S. Commission on Civil Rights \*\*

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\*\* Clint Cline, J. Robert McClure III, Elizabeth Rodriguez, and Alan Williams were members of the Committee during the 2011-2012 charter period when the voting rights project was conducted.

**TABLE OF CONTENTS**

I. Voting Rights for Ex-Felons in Florida .....3

II. Ex-Felon Disenfranchisement in Florida and Other States.....6

    A. Ex-Felon disenfranchisement in Florida extends back more than  
        150 years .....6

    B. 39 states allow ex-felons the right to vote .....7

    C. Eleven states – including Florida – have lifetime voting bans; an  
        estimated 1 million persons are affected in Florida .....8

III. Executive Clemency Process Reformed by Governor Bush in 2004 and  
Further Revised by Governor Crist in 2008 to Grant Automatic Clemency .....9

IV. In 2011, Newly Elected Cabinet Revokes Revised 2008 Rules of  
Executive Clemency and Again Requires All Ex-Felons to Have a Formal  
Hearing before the Clemency Board.....12

V. FINDINGS AND RECOMMENDATIONS.....15

    A. Findings.....15

    B. Recommendations.....16

## I. VOTING RIGHTS FOR EX-FELONS IN FLORIDA

Addressing voting rights issues has been a central mission for the U. S. Commission on Civil Rights and its state advisory committees since its establishment in 1957. In the 1960s the work of the Commission was instrumental in passage of the Voting Rights Act of 1965. In 2001, the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential election.<sup>1</sup>

In keeping with the Commission's historical attention to voting rights, in 2008 the Florida Advisory Committee examined the issue of voting rights with respect to an adverse impact on males and African Americans as a result of the state's Constitutional ban on the right of ex-felons to vote. In 2009, the Committee released a report, *Ex-Felon Voting Rights in Florida: Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders is the Right Policy*.<sup>2</sup>

Florida is one of only eleven states with lifetime voting bans for ex-felons. The other ten states with lifetime voting bans for ex-felons are: Alabama, Arizona, Delaware, Iowa, Kentucky, Mississippi, Nevada, Tennessee, Virginia, and Wyoming.<sup>3</sup> All eleven states, however, have some procedure in place whereby a former felon can have his/her voting rights restored. In Florida, that process is through executive clemency. Executive clemency is a formal act of the Cabinet that absolves the individual from all or any part of the punishment that the law imposes, including the restoration of civil and voting rights.

Despite the possibility of clemency in states with lifetime bans, the effect on voting rights as a result of the lifetime disenfranchisement statutes is significant.<sup>4</sup> According to the National Commission on Federal Election Reform, one-third of the people presently denied the right to vote because of a felony conviction have completed their sentences.<sup>5</sup>

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<sup>1</sup> U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (Washington, DC: Government Printing Office, June 2001).

<sup>2</sup> Florida Advisory Committee to the U.S. Commission on Civil Rights, *Ex-Felon Voting Rights in Florida: Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders is the Right Policy* (2009) (hereafter cited as *Ex-Felon Voting Rights Report*).

<sup>3</sup> The listing of states that permanently ban ex-felons from voting is open to interpretation. For example, the Florida Advisory Committee lists eleven states with permanent bans on ex-felon from voting, but its listing does not include Nebraska which has a permanent ban for treason.

<sup>4</sup> For purposes of this report and as used herein the term "disenfranchisement" means the revocation of the right to vote by a person.

<sup>5</sup> John Mark Hansen, Task Force on the Federal Election System, *Disfranchisement of Felons*, 1 (July 2001), in *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to accompany the Report of the National Commission on Election Reform* (Aug. 2001).

Concerned that without successful re-entry back into society ex-offenders are likely to become re-offenders, in 2005 former Governor Jeb Bush issued an executive order creating the Governor's Ex-Offender Task Force to study the effectiveness of Florida in facilitating the re-entry of ex-offenders back into the community. The former Governor stated that "without successful re-entry...recidivism is likely to occur, to the great detriment of public safety, Florida's communities, families, taxpayers, and individual ex-offenders."<sup>6</sup> The task force noted that Florida has the third largest prison population in America, with more than 30,000 people in the state being released from prison each year.<sup>7</sup>

Following upon the work of Governor Bush's Task Force, in 2007 with the concurrence of a majority of the Governor's Cabinet, former Governor Charlie Crist issued revised Rules of Executive Clemency.<sup>8</sup> The 2007 revised rules automatically restored civil rights and voting rights to most felons upon release from prison. Under the 2007 Rules of Executive Clemency, immediately upon completion of their sentences, ex-offenders were automatically reviewed by the Parole Commission to determine their eligibility for restoration of civil rights without a hearing.

For those individuals given Level-1 status by the Parole Commission, an executive order was automatically issued that granted the restoration of their civil rights signed by the Clemency Board without the need for a formal hearing. Ex-felons given Level-1 status included non-violent offenders who had no outstanding detainers, pending criminal charges and did not owe restitution pursuant to a court order.

Under the 2007 Rules of Executive Clemency, individuals granted Level-2 status also received a restoration of civil and voting rights without a hearing before the Clemency Board. However, Level-2 offenders had to undergo an investigation by the Parole Commission. Level-2 status was given to offenders who had committed severe offenses.<sup>9</sup> Level-3 offenders were required to petition for a hearing before the Clemency Board to have their civil rights restored.<sup>10</sup> Level-3 offenders were persons who had been convicted of certain serious offenses, such as murder or a sex offense.

The Florida Advisory Committee noted in its 2009 report that the revisions to the Rules of Executive Clemency that automatically granted restoration of civil rights to Level-1 ex-offenders were a significant policy change. In its report, the Committee noted the following:

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<sup>6</sup> State of Florida, Office of the Governor, Exec. Order No. 05-28.

<sup>7</sup> State of Florida, *Governor's Ex-Offender Task Force, Final Report to the Governor*, Letter of Chair Vicki Lopez Lukis to Governor Jeb Bush, Nov. 30, 2006 (hereafter cited as *Ex-Offender Task Force Final Report*).

<sup>8</sup> State of Florida, Parole Commission, *Annual Report: 2006-2007*, December 2007.

<sup>9</sup> *Ibid.* p. 10.

<sup>10</sup> *Ibid.* p. 5(e).



Nearly 200,000 persons in the State of Florida lost their right to vote between 1995 and 2005 because of the state's Constitutional ban. Over the same period of time, only about 6,500 ex-felons each year on average had their civil rights restored by the Clemency Board, and a total of one million persons in the state are likely disenfranchised from voting at the present time.

The state's Constitutional ban prohibiting persons convicted of a felony from voting has a disproportionate impact on voting rights for minorities and males living in the state as minorities comprise nearly half of the inmate population and less than a quarter of the state's population.<sup>11</sup>

The Florida Advisory Committee supported the revised Rules of Executive Clemency. Further, the Florida Advisory Committee recommended that as future studies show the automatic restoration of civil rights policy for ex-felons to enhance the civil rights of citizens and promote the general welfare, that succeeding Governors endorse and retain these revisions to the Rules of Executive Clemency.<sup>12</sup>

In addition, the Florida Advisory Committee recommended that the Parole Commission immediately put in place data collection systems that will allow future studies to be conducted on the impact of this policy change. The Committee further recommended that data be collected so that in the future the effect of the policy change on minority and male voter participation will be able to be studied.<sup>13</sup>

In March 2011 Governor Rick Scott (R) with the consent of a majority of the Florida Cabinet, amended the previous clemency rules to what was essentially in place prior to Governor Bush. The new procedures require the Clemency Board to review all ex-felon cases individually and decide further action.<sup>14</sup> Furthermore, additional documentation is now required to receive clemency. Ex-felons must now submit an application and any accompanying documents to the Clemency Board regardless of the level of offense.<sup>15</sup> At the time of this change, there were 98,963 cases pending an automatic restoration of civil rights.<sup>16</sup>

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<sup>11</sup> *Ex-Felon Voting Rights Report*, p. 21.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> See 2011 Amended Fla. R. Exec. Clem. (amended Mar. 9, 2011) available at [https://fpc.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://fpc.state.fl.us/docs/clemency/clemency_rules.pdf).

<sup>15</sup> *Ibid.* p. 9.

<sup>16</sup> State of Florida, *Parole Commission Proviso Report: The Processing of Clemency Cases for FY 2010-2011*, October 2011 (hereafter cited as *Parole Commission Proviso Report*).

## **II. EX-FELON DISENFRANCHISEMENT IN FLORIDA AND OTHER STATES**

### **A. Ex-Felon disenfranchisement in Florida extends back more than 150 years**

Historically, Florida's policy of criminal disenfranchisement dates back more than 150 years. Florida's earliest Constitution, adopted in 1838, authorized the General Assembly to enact criminal disenfranchisement laws, and in 1845 Florida's General Assembly passed such a law:

Be it further enacted, that every person who shall become a candidate for any of the foregoing offices shall possess the same qualification as that prescribed for a voter ... [a]nd no person who shall hereafter be convicted of bribery, perjury, or other infamous crime, shall be entitled to the right of suffrage.<sup>17</sup>

Following the Civil War, the First Reconstruction Act of 1867 mandated that to re-enter the Union former Confederate states had to adopt new constitutions guaranteeing male suffrage without regard to race. In 1868 Florida convened a second post-war constitutional convention to amend its first post-war constitution, which denied suffrage to African Americans. Section 4 of the 1868 state Constitution continued to contain the disenfranchisement provision for ex-felons:

No person under guardianship, non compos mentis, or insane, shall be qualified to vote in any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights.<sup>18</sup>

In 1968, the State of Florida adopted a revised state Constitution. The revised Constitution continued to contain an ex-felon voting prohibition. Specifically, the state Constitution provides that no person convicted of a felony will be allowed to vote or hold office until there has been a restoration of the individual's civil rights:

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.<sup>19</sup>

The disenfranchisement provision of Article VI of the Florida Constitution has come under scrutiny in recent years, in part because of its disparate impact on males and minorities. In its 2009 report, the Florida Advisory Committee estimated that 200,000 former offenders in Florida

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<sup>17</sup> *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1218 n.6 (11<sup>th</sup> Cir. 2005) (quoting 1845 Fla. Laws. Ch. 38, art. 2 § 3).

<sup>18</sup> FLA. CONST. of 1868, art. XIV, § 2.

<sup>19</sup> FLA. CONST. art. IV, § 4(a). Under the Florida Constitution, the authority to restore civil rights is reserved to the Clemency Board, composed of the Governor and the three members of the Cabinet: Attorney General, Finance Commissioner, and Commissioner of Agriculture. Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposes.

were disenfranchised from the right to vote in the 10-year period between 1995 and 2005.<sup>20</sup> Moreover, 600,000 to 1.2 million persons, or from about 3 to 6 percent of the voting population, is estimated to be disenfranchised from voting.<sup>21</sup>

**Table 1: Restrictions on Voting Rights for Ex-Felons in States without Lifetime Bans<sup>22</sup>**

No Prohibitions On Voting	Incarcerated Individuals Can Not Vote	Incarcerated Individuals and Persons on Parole Can Not Vote	Ex-Felons Prohibited from Voting Until Sentence is Fully Complete	Prohibited From Voting for Treason
Maine Vermont	Hawaii Illinois Indiana Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon Pennsylvania Rhode Island Utah	California Colorado Connecticut New York	Alaska Arkansas Georgia Idaho Kansas Louisiana Maryland Minnesota Missouri <sup>1</sup> New Jersey New Mexico North Carolina Oklahoma South Carolina South Dakota Texas Washington West Virginia Wisconsin	Nebraska <sup>2</sup>

Source: Florida Advisory Committee.

Note 1: In Missouri, persons convicted of either felony or misdemeanor offenses connected with the exercise of the right of suffrage are permanently disqualified from voting.

Note 2: In Nebraska, persons convicted of treason are permanently disqualified from voting.

## **B. 39 states allow ex-felons the right to vote**

In 39 of the 50 states ex-felons may vote, but there is wide variance among the states on this allowance. In two states, Maine and Vermont, incarcerated felons may vote. In Nebraska, a convicted felon's right to vote is restored automatically two years after completion of sentence, including period of parole and probation, for all convictions except treason.

<sup>20</sup> *Ex-Felon Voting Rights Report*, p. 12.

<sup>21</sup> *Ibid.*, p. 14.

<sup>22</sup> See Appendix 1 for statutory sources.

The most common restriction on ex-felon voting rights is withholding the right to vote until the individual is released from prison, and in some of these cases until parole and/or all other terms of the sentence have been completed. Thirty-six (36) states have such provisions.

In 13 states, former felons are allowed to vote as soon as they are released from prison. In four states, California, Colorado, Connecticut, and New York, ex-felons may vote after they are no longer incarcerated but only after they have completed all terms of their parole. In 19 states there is a similar restriction, extending until all terms of the sentence including parole have been completed, e.g., restitution, community service.<sup>23</sup>

**Table 2: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans<sup>24</sup>**

Board of Parole/Probation Restores Voting Rights	Executive and/or Legislative Pardon Restores Voting Rights	County Board of Elections Restores Voting Rights
Alabama <sup>1</sup> Tennessee <sup>1</sup> Wyoming <sup>2</sup>	Arizona Florida Iowa Kentucky Mississippi Nevada Virginia	Delaware <sup>1</sup>

Source: Florida Advisory Committee.

Note 1: In Alabama, Delaware, and Tennessee there is a permanent ban on voting for certain offenses.

Note 2: In Wyoming, the Board of Parole may restore voting rights only for first-offenders. Second time offenders must receive an executive pardon.

### **C. Eleven states – including Florida – have lifetime voting bans; an estimated 1 million persons are affected in Florida**

Eleven states, including Florida, have lifetime voting bans on ex-felons. In all eleven of these states, however, it is possible for a person to obtain a form of clemency and have voting rights restored. The process of clemency varies among the states.

In Mississippi ex-felons are banned for life from voting, but under the state's Constitution may have their voting rights restored by a vote of two-thirds of both legislative houses. (See Table 2.) In seven other states with lifetime bans on ex-felon voting rights the clemency process is an executive decision. In four of these states, Iowa, Kentucky, Tennessee, and Virginia, the Governor has sole power to grant clemency. In Alabama, Arizona, and Nevada, executive clemency is under the authority of the state's correctional system. (See Table 2.)

<sup>23</sup> Table 1.

<sup>24</sup> See Appendix 2 for statutory sources.

Florida is unique among the eleven states with lifetime bans for ex-felons in that its clemency procedure resides with the State's cabinet. In Florida, for an individual convicted of a felony to again obtain the right to vote along with the restoration of other civil rights, executive clemency must be granted.<sup>25</sup> The Clemency Board is composed of the Governor and the three members of the Florida Cabinet: the Attorney General, Chief Financial Officer, and Commissioner of Agriculture.<sup>26</sup> The Clemency Board meets four times a year to vote on clemency applications.<sup>27</sup>

### **III. EXECUTIVE CLEMENCY PROCESS REFORMED BY GOVERNOR BUSH IN 2004 AND FURTHER REVISED BY GOVERNOR CRIST IN 2008 TO GRANT AUTOMATIC CLEMENCY**

Prior to the implementation of the revised Rules of Executive Clemency in 2009, the rate of clemency was inconsistent and varied considerably depending upon the Cabinet. Two decades ago the number of persons in Florida granted clemency started to decline; but in recent years an upward movement has been observed. In 1986, almost 15,000 persons had their civil rights restored.<sup>28</sup> In the 4-year period from 1994 to 1998, the number of individuals receiving clemency remained at historically low levels, and only 6,669 persons had their civil rights restored during this period—an annual average of about 1,300 persons.<sup>29</sup> That number started to increase substantially in the next few years, and between 1999 and 2005 the Executive Clemency Board restored the civil rights of nearly 75,000 individuals—an average of about 15,000 per year.<sup>30</sup>

In 2004 former Governor Jeb Bush and the cabinet adopted changes to the Rules of Executive Clemency that made it easier for felons in Florida to get their civil rights restored. Those rules allowed felons who had been arrest-free for 5 years to obtain restoration of civil rights without a hearing, unless they were convicted of certain violent crimes or owed restitution. In addition, felons who remain arrest-free for 15 years or more could have their rights restored without a hearing, regardless of their crime, unless they owed the victim compensation.<sup>31</sup>

The task force began its work by studying the challenge to make re-entry successful. It noted that Florida has the third largest prison population in America, and over 30,000 people in the state

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<sup>25</sup> FLA CONST. art. IV, § 8(a); Fla. Stat. §§ 940.01, -05.

<sup>26</sup> See State of Florida, Florida Parole Commission, <https://fpc.state.fl.us/clemency.shtml> (last visited June 28, 2012).

<sup>27</sup> Fla. Rules of Exec. Clem. (2011), §12(A).

<sup>28</sup> “Barred for Life: The Process For Restoring Civil Rights of Felons in Florida Works Perfectly – If Not Restoring Their Rights is the Goal,” Miami New Times, Jan. 16, 2003, p. 17.

<sup>29</sup> State of Florida, Parole Commission, *Annual Report: 2006-2007*, December 2007, p. 9.

<sup>30</sup> *Ibid.*

<sup>31</sup> Fla. R. Exec. Clem., (2007), §10(B).

return home from prison each year.<sup>32</sup> The continual growth of imprisonment in the state has created an unprecedented challenge for the state and for the local communities.

Almost 90 percent of the people now in Florida's prisons will one day be released. Within three years of release, over a quarter of those people will go back to prison for a new crime. This rate of recidivism is unacceptably high and unacceptably expensive. For each new crime, there is a new victim, and new costs to Florida communities.<sup>33</sup>

The task force called for this trend to be reversed, commenting that focusing only on custody and control does not reduce recidivism. Such a focus protects the public safety by segregating people who have committed crimes from the public, but those are not the only public safety concerns. In order to prevent recidivism, it is essential that after release ex-offenders be reconnected to positive and productive activities in their communities to reduce recidivism and facilitate successful re-entry to civilian life.<sup>34</sup>

The task force also specifically identified the loss of civil rights as an issue of concern to assist with a positive and productive return to society. The task force reported that hundreds of thousands in Florida have lost their civil rights, which has an impact on their range of employment opportunities, as well as voting, jury service, and seeking public office.<sup>35</sup>

**Table 3 Number of Level-1 Persons Granted Automatic Clemency in 2009 and 2010**

	2009	2010	Total
<b>Persons granted automatic Clemency</b>	<b>24,375</b>	<b>5,582</b>	<b>29,957</b>
<b>Persons granted clemency</b>	<b>162</b>	<b>45</b>	<b>207</b>
<b>Totals</b>	<b>24,537</b>	<b>5,627</b>	<b>30,164*</b>

Source: Florida Parole Commission Proviso Report

\*A factual total of 30,672 Florida felons were granted their civil rights by the Board of Executive Clemency for calendar years 2009 and 2010. This number includes restoration of alien status under Florida law.

In 2007, with the concurrence of a majority of the Governor's Cabinet, the Clemency Board revised the Rules of Executive Clemency. Under the 2007 revised Rules, civil rights and voting rights were automatically restored to most felons upon release from prison. As part of the revised process, most ex-felons no longer had to formally file a petition for the restoration of their civil rights nor was it necessary to have an individual hearing before the Clemency Board.<sup>36</sup>

<sup>32</sup> *Ex-Offender Task Force Final Report*.

<sup>33</sup> *Ibid.* p. 1.

<sup>34</sup> *Ibid.* p. 20.

<sup>35</sup> *Ibid.* p. 21.

<sup>36</sup> *Parole Commission Proviso Report*, p. 6.

Under the 2007 revised Rules, nearly 25,000 ex-felons were automatically granted clemency in 2009. This is four times the number of persons receiving clemency in that year than the average number of clemencies on an annual basis since the mid-1990s. The number of automatic clemencies declined markedly in 2010, however, to only about 5,500 (See Table 3.)

The revised Rules only grant automatic clemency to non-violent ex-offenders. Persons who have been convicted of certain crimes, including the following, were not eligible under the revised Rules of Executive Clemency to have their civil rights and voting rights automatically restored.<sup>37</sup>

- Murder, attempted murder, manslaughter
- DUI manslaughter
- sexual battery, attempted sexual battery
- lewd or lascivious battery
- sexual performance by a child
- aggravated child abuse
- failure to register as a sexual predator
- computer pornography, buying or selling of minors
- trafficking in illegal substances
- kidnapping, attempted kidnapping
- aggravated battery
- aggravated assault
- poisoning of food or water
- armed robbery, home invasion
- abuse of a dead human body
- first degree burglary
- arson or attempted arson
- aggravated stalking
- aircraft piracy
- facilitating terrorism
- treason

In addition to violent offenders not receiving automatic clemency, other stipulations under the revised Rules of Executive Clemency precluded ex-felons from having their rights automatically restored. A person shall have his/her civil rights status under Florida Law immediately restored by automatic approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, if the following requirements are met:

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<sup>37</sup> For a complete list of crimes ineligible for restoration of civil rights, see Fla. Rules of Exec. Clem. (2011), § 9(A)(4).

- (1) The person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to imprisonment, parole, probation, community control, control release, and conditional release.
- (2) The person has no outstanding detainers or pending criminal charges.
- (3) The person has paid all restitution pursuant to a court order or civil judgment and obligation pursuant to Chapter 960, Florida Statutes.
- (4) The person has not been declared to be: (a) an habitual violent felon offender, (b) a three-time felony offender, (c) violent career criminal, (d) prison release re-offender, or (e) sexual predator.<sup>38</sup>

#### **IV. IN 2011, NEWLY ELECTED CABINET REVOKES REVISED 2008 RULES OF EXECUTIVE CLEMENCY AND AGAIN REQUIRES ALL EX-FELONS TO HAVE A FORMAL HEARING BEFORE THE CLEMENCY BOARD**

In 2011 the newly elected Cabinet amended the previous clemency rules to say that the Clemency Board must review all ex-felon cases individually and decide further action. This act was based on the idea that “it is appropriate to grant the restoration of civil rights only to individuals who have demonstrated over a period of time that they are committed to living a crime-free life.”<sup>39</sup> The waiting period that naturally happens as the board reviews every individual case presents an opportunity for ex-felons to demonstrate their commitment to a crime-free life.

Under the previous Governor, depending on an ex-felon’s level of offense, he or she was granted automatic clemency upon his/her release from prison. Others had to apply for their restoration of their rights. For example, a Level-1 offender, a person convicted of burglary, was automatically processed and given his or her rights back upon release.

Another updated provision put in place is additional paper work as part of each individual case. Ex-felons must now submit accompanying documents in support of their application, regardless of the level of offense. Level-1 offenders, who previously would have been granted automatic clemency, must also abide by these new rules. As the new procedures have created more

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<sup>38</sup> Ibid.

<sup>39</sup> State of Florida, Parole Commission, *Restoration of Civil Rights (RCR) Cases Granted 2009 and 2010, 2011*, available at <https://fpc.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf> (hereafter cited as *Parole Commission Clemency Report*).



paperwork to be submitted and reviewed, the waiting list for ex-felons to regain their voting rights has increased.<sup>40</sup>

After all documents have been submitted, there are two ways a felon can go about getting their case reviewed; with a hearing or without a hearing. Offenders whose crimes are serious enough to require a hearing (Level-2 and Level-3 offenders) must wait seven years, during which they cannot have any convictions with the law, before they are eligible to apply for restoration of rights. Applicants whose offenses do not require a hearing (Level-1 offenders) must wait five years, during which they must maintain a crime free status, in order to be eligible to apply.<sup>41</sup> These requirements are considerably different from what the previous Governor implemented. Level-1 offenders, as stated above, were granted automatic clemency. Level-2 offenders were subject to a more in-depth investigation without a hearing for a 30 day review process and upon approval the offenders were granted clemency. It was only Level-3 offenders, those who committed serious offenses like manslaughter or sexual battery, who were subjected to a hearing which included an in-depth field investigation requiring a personal interview and an Advisory Commission recommendation.<sup>42</sup>

**Table 4: Clemency Cases Received, Closed, and Pending for Fiscal Years 2007, 2008, 2009, 2010, and 2011**

All Clemency Cases	Jul 1, 2006 - Jun 30, 2007	Jul 1, 2007 - Jun 30, 2008	Jul 1, 2008 - Jun 30, 2009	Jul 1, 2009 - Jun 30, 2010	Jul 1, 2010 - Jun 30, 2011
<b>Cases Received</b>	18,174	137,647	68,008	69,931	38,886
<b>Cases Closed</b>	56,009	171,948	76,069	38,355	30,565
<b>Cases Pending (as of June 30)</b>	87,722	70,766	62,924	88,096	95,425

Source: Florida Parole Commission Annual Reports 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011.

The recent press release for the new executive clemency order states: “The Restoration of Civil Rights can be a significant part of the rehabilitation of criminal offenders and can assist them in reentry into society. It is important that this form of clemency be granted in a deliberate, thoughtful manner that prioritizes public safety and creates incentives to avoid criminal activity.”<sup>43</sup>

<sup>40</sup> Lane Wright, “Ex-felons Must Wait 5 Years, Then Ask for Right to Vote,” Sunshine State News, Mar. 10, 2011. available at <http://www.sunshinestatenews.com/story/ex-felons-must-wait-5-years-then-ask-for-right-to-vote> (reporting a backlog of more than 100,000 applications).

<sup>41</sup> State of Florida, Office of the Governor, Press Release, *Governor Scott and Florida Cabinet Discuss Amended Rules of Executive Clemency* (March 9, 2011), available at [http://floridaclemencyattorney.com/wp-content/uploads/2011/09/clemency\\_press\\_release.pdf](http://floridaclemencyattorney.com/wp-content/uploads/2011/09/clemency_press_release.pdf) (hereafter cited as *Governor Scott Press Release*).

<sup>42</sup> *Parole Commission Clemency Report*.

<sup>43</sup> *Governor Scott Press Release*.

A troubling part of the 2011 revised clemency process is the increasingly anachronistic nature of the state's ex-felon statute. When originally enacted, mandating the Governor and the Cabinet to act on all clemency petitions was not an onerous burden, as the state's population was small.

In 1850, just five years after the state's initial Constitution was adopted, the state's population was only about 87,000 persons. According to the 1870 census, conducted two years after the state ratified its revised Constitution to allow it to re-enter the Union, the state had a population of approximately 188,000 persons. The 2010 census showed Florida's population to be more than 18 million.

This 100-fold increase in the state's population in the last 150 years has inadvertently worked to disenfranchise large numbers of ex-felons because of limits on the ability of the Clemency Board to hear and act on petitions. The process under which ex-felons must operate to have their rights restored necessarily induces a backlog of applicants given the increase in the state's population.

In the context of the backlog of clemency cases in the system,<sup>44</sup> in 2004, former Governor Jeb Bush (R) adopted changes that made it easier for ex-felons to have their rights restored. The revised process required the Department of Corrections to automatically submit an inmate's name to the Parole Commission for eligibility review for restoration of civil rights without a hearing upon release.<sup>45</sup> The 2004 rule allowed ex-felons who had been crime-free for five years to obtain automatic restoration of civil rights. In addition, any ex-felon arrest-free for fifteen years or more would have their rights restored without a hearing regardless of their crime.

In 2007, Governor Charlie Crist (R) and the Cabinet went further to expedite the process to restore ex-felons their civil rights. Under the 2007 Revised Rules of Clemency, the state implemented a process of granting automatic clemency for citizens who committed low-level offenses.<sup>46</sup> The process proved faster, and more efficient. (See Table 4.)

The first fiscal year after the 2007 Revised Rules of Clemency were in effect, the Clemency Board received 137, 647 cases and closed 171,948 cases, which included some 40,000 backlogged cases. The following year, fiscal year 2009, the Clemency Board received 68,008 cases and closed 76,069.<sup>47</sup>

In 2011 Governor Rick Scott (R) and the Cabinet rescinded the 2007 Revised Rules of Clemency. Similar to the process before the 2004 reforms of Governor Jeb Bush, all petitions to

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<sup>44</sup> See Debbie Cenziper & Jason Grotto, "Clemency Proving Elusive for Florida's Ex-Cons," *Miami Herald*, Oct. 31, 2004, p. 1A; Debbie Cenziper and Jason Grotto, "The Long Road to Clemency," *Miami Herald*, Nov. 7, 2004, p. 1A.

<sup>45</sup> 2004 Fla. R. Exec. Clem. § 9(A).

<sup>46</sup> 2007 Fla. R. Exec. Clem. § 9(A).

<sup>47</sup> Table 4.

restore civil rights to ex-felons are again individually reviewed and decided by the Clemency Board. Automatic restoration of civil rights is no longer granted for any ex-felon. In addition, petitioners are now saddled with new requirements to file paperwork with the Clemency Board.

Of note, in the fiscal year in which this process went into effect, more than 95,000 cases were pending review. That is approximately 7,000 more cases than in the previous year.<sup>48</sup>

## **V. FINDINGS AND RECOMMENDATIONS**

### **Florida State Advisory Committee to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The following findings and recommendations of the Florida Advisory Committee are made through the U.S. Commission on Civil Rights to state and local officials are submitted in accordance with the provisions of Section 703.2 of the Commission's regulations calling upon Advisory Committees to initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied.<sup>49</sup>

#### **A. Findings**

The disenfranchisement provision of Article VI of the Florida Constitution has come under scrutiny in recent years, in part because of its disparate impact on males and minorities. It is estimated that the total number of persons in the state estimated to be disenfranchised from voting likely ranges from 600,000 to 1.2 million persons, or from about 3 to 6 percent of the voting population.

In 2004 former Governor Jeb Bush (R) and the cabinet adopted changes to the Rules of Executive Clemency that made it easier for felons in Florida to get their civil rights restored. Those rules allowed felons who had been arrest-free for 5 years to obtain restoration of civil rights without a hearing, unless convicted of certain violent crimes, or if they owe restitution. In addition, anyone arrest-free for 15 years or more could have their rights restored without a hearing regardless of their crime unless they owe the victim.

In 2007, with the concurrence of a majority of the Cabinet, Governor Charlie Crist (R) issued revised Rules of Executive Clemency that automatically restored civil rights and voting rights to most felons upon release from prison. The 2007 rules no longer required ex-felons to file a formal application or petition for the restoration of their civil rights and have a hearing before the Clemency Board. In 2009, nearly 25,000 ex-felons had their voting rights restored.

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<sup>48</sup> Ibid.

<sup>49</sup> 45 C.F.R. § 703.2.

In 2009 the Florida Advisory Committee issued a report in support of the revised Rules of Executive Clemency. The Florida Advisory Committee recommended that as future studies show the automatic restoration of civil rights policy for ex-felons to enhance the civil rights of citizens and promote the general welfare that succeeding Governors and cabinet officials endorse and retain these revisions to the Rules of Executive Clemency

In 2011 Governor Rick Scott (R) with the support of a majority of the Cabinet amended the previous clemency rules so that again the Clemency Board must review all ex-felon cases individually and decide further action. In addition, under the 2011 rules the new Clemency Board has put in place additional paper work requirements for each individual case. Ex-felons must now submit supporting documentation along with the application to the Clemency Board regardless of the level of offense.

## **B. Recommendations**

The right to vote is fundamental to democracy. The right to vote is also a privilege.

Given the large number of persons disenfranchised in the state because of the state's ex-felon Constitutional provision, it is the considered opinion of the Florida Advisory Committee that former Governors Jeb Bush (R) and Charlie Crist (R) acted correctly to modify the rules for executive clemency. The original framers of the state's Constitution in 1845 could not have reasonably envisioned a state population of 20 million persons and the disenfranchisement of hundreds of thousands of persons when they enacted the ex-felon voting ban and the procedures for executive clemency.

In 2009 the Florida Advisory Committee issued a report in support of the revised Rules of Executive Clemency enacted in 2007 that allowed Level-1 offenders to automatically have their civil rights restored. The Committee continues to hold that position, absent the introduction of a compelling government interest or purpose; and believes doing so will allow for deserving persons who have made full and proper restitution to again have the privilege to vote and participate in the democratic processes as well as assist such persons to successfully integrate back into society.<sup>50</sup>

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<sup>50</sup> This report is the work of the Florida Advisory Committee to the U. S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

## Appendix 1: Restrictions on Voting Rights for Ex-Felons in States without Lifetime Bans

### No Prohibitions on Voting<sup>51</sup>

<i>Maine</i>	ME. REV. STAT ANN tit 21(A) § 112(14) Persons incarcerated in correctional facilities. Maine's statute restricting voter eligibility of convicted felons was repealed by the legislature in 1975. <i>See</i> ME. REV. STAT. ANN. tit. 21, § 247 (2011).
<i>Vermont</i>	17 V.S.A. § 2121. Eligibility of voters. VT. STAT. ANN. tit. 28, § 807 (2012).

### Incarcerated Individuals Can Not Vote<sup>52</sup>

<i>Hawaii</i>	Haw. Const. art. 2, § 2.
<i>Illinois</i>	Ill. Const. art. III, § 2; 10 Ill. Comp. Stat. Ann. 5/3.5 (West 2012); 730 Ill. Comp. Stat. Ann. 5/5-5-5(c) (West 2012).
<i>Indiana</i>	Ind. Const. art. 2, § 8; Ind. Code §§ 3-7-13-4 to -6 (2012).
<i>Massachusetts</i>	Mass. Const. art III; MASS. GEN. LAWS ANN. ch. 51, § 1 (West 2012).
<i>Michigan</i>	Convicted felony and misdemeanor offenders are disqualified from voting while confined in jail or prison. MICH. CONST. ART 2, § 2; MICH. COMP. LAWS § 168.758b (2012).
<i>Montana</i>	Mont. Const. art. IV, § 2; MONT. CODE ANN. § 13-2-402. Reasons for cancellation. (voter registration).
<i>New Hampshire</i>	N.H. Rev. Stat. Ann. §§ 607-A:2(I)(a), 654.5 (2012).
<i>North Dakota</i>	N.D. Const. art II, § 2; N.D. Cent. Code Ann. §§ 12.1-33-01, -03 (West 2012).
<i>Ohio</i>	Ohio Const. art. 5, § 4; Ohio Rev. Code Ann. § 2961.01(A) (West 2012).
<i>Oregon</i>	Or. Const. art II, § 3; Or. Rev. Stat. § 137.281 (2012).
<i>Pennsylvania</i>	The Pennsylvania Elections Statute provides that a convicted felony offender who has been confined in a penal institution for within the last five years is not eligible to register to vote. 25 PA. CONS. STAT. § 1301(a) (2012). However, in

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<sup>51</sup> As reported in Table 1.

<sup>52</sup> *Ibid.*

*Mixon v. Com.*, 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001), this provision was ruled unconstitutional. The court held that there was no rational basis for precluding these offenders from registering to vote when those who were legally registered prior to incarceration could vote upon their release. *Id.* at 451. Accordingly, only convicted felony offenders who are incarcerated on the date of a primary or general election are precluded from voting. See PENN. DEP'T OF STATE, VOTING RIGHTS OF CONVICTED FELONS, CONVICTED MISDEMEANANTS AND PRETRIAL DETAINEES 2, available at [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_160329\\_77\\_3092\\_0\\_0\\_18/Convicted\\_felon\\_brochure.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_160329_77_3092_0_0_18/Convicted_felon_brochure.pdf).

- Rhode Island* R.I. Const. art 2, § 1; R.I. Gen. Laws Ann. § 17-9.2-3 (West 2012).
- Utah* Utah Const. art IV, § 6; Utah Code Ann. §§ 20A-2-101(2)(b), -101.3, -101.5 (West 2012).

#### **Incarcerated Individuals and Persons on Parole Can Not Vote<sup>53</sup>**

- California* Cal. Const. art. II, § 4; Cal. Elec. Code §§ 2201, 2212 (West 2012).
- Colorado* Colo. Const. art. 7, § 10; Col. Rev. Stat. § 1-2-103(4) (2012).
- Connecticut* Conn. Gen. Stat. Ann. § 9-45 (2012).
- New York* N.Y. Const. art. II, § 3; N.Y. Elec. Law §§ 5-106(2) – (5) (McKinney 2012).

#### **Ex-Felons Prohibited from Voting until Sentence Is Complete<sup>54</sup>**

- Alaska* Alaska Const. art. 5, § 2; Alaska Stat. §§ 12.55.185(18), 15.05.030(a), 33.30.241 (2012).
- Arkansas* Ark. Const. art. 51, § 11(a)(4).
- Georgia* Ga. Const. art. II, § 1 para. (III)(a); Ga. Code § 21-2-216 (2012).
- Idaho* Idaho Const. art. VI, § 3; Idaho Code Ann. § 18-310 (West 2012).
- Kansas* Kansas Const. art. 5, § 2; Kan. Stat. Ann. §21-6613 (West 2012).
- Louisiana* La Const. art. I, § 10; La Rev. Stat. Ann. § 18:102 (2012).
- Maryland* Md. Const. art I, § 4; Md. Code Ann., Elec. Law § 3-102(b)(1) (West 2013).

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

- Minnesota* Minn. Const. art. VII, § 1; Minn. Stat. §§ 609.165(1), 201.014(2) (2013).
- Missouri* Convicted felony offenders are disqualified from voting while imprisoned or on probation or parole. MO. REV. STAT. § 115.133 (2011). Convicted misdemeanants are disqualified from voting only while imprisoned. *Id.* Those convicted of either felony or misdemeanor offenses “connected with the exercise of the right of suffrage” are permanently disqualified from voting. MO. CONST. art VIII, § 2.
- New Jersey* N.J. Const. art II, § 1(7); N.J. Stat. Ann. §§ 2C:51-3(a), 19:4-1(8) (2012). If disqualification from voting was imposed by the court as part of the punishment for a criminal violation of election laws, the right to vote can only be restored by pardon. *Id.* § 19:4-1(6), (7).
- New Mexico* N.M. Const. art. VII, § 1; N.M. Stat. Ann. § 31-13-1 (2012).
- North Carolina* N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. §§ 13-1, 165-55(a)(2) (2012).
- Oklahoma* Okla. Stat. tit. 26, § 4-101(1) (2012).
- South Carolina* S.C. Const. art II, § 7; Imprisonment results in disqualification even if conviction is for a misdemeanor offense. S.C. CODE ANN. §§ 7-5-120(B)(2), (3) (2011).
- South Dakota* On March 19, 2012, South Dakota enacted H.B. 1247, which removes voting rights from convicted felons until completion of sentence. H.B. 1247, 87th Leg. Assemb., (S.D. 2012). This legislation amended the state’s statutes on Registration of Voters, which previously precluded from voting only those felony offenders currently incarcerated or on parole. S.D. CODIFIED LAWS § 12-4-18 (2011).
- Texas* Tex. Const. art. 6, § 1(3); Tex. Elec. Code Ann. § 11.002(4) (West 2013).
- Washington* Felony offenders must re-register to vote after completing all requirements of their sentence including period of probation and parole. WASH. CONST. art. VI, § 3. The right to vote is provisionally restored when the offender is discharged from the authority of the Department of Corrections, but may be revoked if the sentencing court determines that they have willfully failed to meet any legal financial obligations resulting from conviction. WASH. REV. CODE ANN. §§ 29A.08.520(1), (2) (West 2013).
- West Virginia* W. Va. Const. art. IV, § 1; W. Va. Code § 3-2-2(b) (2012).
- Wisconsin* Wis. Stat. § 6.03(1)(b) (2012).

**Ex-Felons Prohibited from Voting for Treason<sup>55</sup>**

*Nebraska*      A convicted felon's right to vote is restored automatically two years after completion of sentence, including period of parole and probation, for all convictions except treason. NEB. CONST. art. VI, § 2; Neb. Rev. Stat. §§ 29-112, 32-313 (2012).

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<sup>55</sup> Ibid.



## Appendix 2: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans<sup>56</sup>

- Alabama A person convicted of a “felony of moral turpitude” is disqualified from voting until his/her civil and political rights are restored. Ala. Const. art. VIII, § 177. Upon completion of sentence, a disqualified person may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote, Ala. Code § 17-3-31 (2012), so long as he/she was not convicted of impeachment, murder, rape, sodomy, sexual abuse, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. *Id.* § 15-22-36.1(g).
- Arizona Ariz. Const. art. VII, § 2(c); Ariz. Rev. Stat. Ann. §§ 13-904(A)(1), 16-101(5) (2012). Voting rights for first-time felony offenders are automatically restored upon completion of sentence, as well as payment of any monetary fines or restitution. Ariz. Rev. Stat. Ann. § 13-912. All other offenders may apply for restoration of rights with the sentencing or discharging superior court judge. *Id.* § 13-905. The governor has the authority to grant pardons, except for convictions of treason or impeachment, but his authority may be restricted by statute. Ariz. Const. art. V, § 5; Ariz. Rev. Stat. Ann. § 31-443. Pardons must first be recommended by the Board of Executive Clemency. *Id.* § 31-402(A). The governor is required to publish reasons for each pardon and must report to the legislature at the beginning of each regular session. *Id.* §§ 31-445, 31-446.
- Delaware A convicted felon’s right to vote may be restored five years after completion of sentence and period of probation and parole upon application to the County Board of Elections. Del. Const. art. V, § 2; Del. Code Ann. tit. 15, § 6103-05 (West 2012). This provision does not apply to certain serious offenses including murder, manslaughter, sex offenses, or offenses against public administration. Del. Const. art. V, § 2.
- Florida Fla. Const. art. VI, § 4(a); *Id.* at art. IV, § 8(a); Fla. Stat. §§ 98.075, 944.292(a) (2012). The power to grant a pardon or restore civil rights following felony convictions for offenses other than treason or impeachment is vested in the Governor, and requires approval of two members of the Cabinet. Fla. Stat. §§ 940.01, -05.

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<sup>56</sup> As reported in Table 2.

- Iowa Iowa Const. art. II, § 5; *Id.* at art. IV § 16; Iowa Code Ann. §§ 48A.6, 914.2 (West 2012). Executive pardon by the Governor restores voting rights of an ex-felon.
- Kentucky Ky. Const. §§ 77, 145(1). Executive pardon by the Governor restores voting rights of an ex-felon.
- Mississippi Disqualification from voting occurs only upon conviction by a state court of certain identified felonies including murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, Miss. Const. art. 12, § 241, as well as armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, and carjacking, *see* Op. Miss. Att’y. Gen. No. 2004-0171 (Karrem, Apr. 23, 2004). Voter eligibility may be regained by executive pardon, Miss. Code Ann. § 47-7-41 (West 2012), or by a two-thirds vote of both houses, Miss. Const. art. 12, § 253. Individuals disqualified from voting in the state remain eligible to vote in federal elections. *Id.* § 241.
- Nevada Nev. Const. art. 2, § 1. The right to vote is automatically restored to first-time offenders charged with most non-violent felonies following completion of sentence. Nev. Rev. Stat. §§ 155, 213.157 (2012). For all other offenders, the right to vote may only be restored by executive pardon. *Id.* § 213.090.
- Tennessee Tenn. Const. art. 1, § 5; Tenn. Code. Ann. §40-20-112 (West 2013). Convicted felony offenders may apply to the Board of Probation and Parole for voting restoration upon completion of sentence, Tenn. Code. Ann. § 40-29-202. Persons convicted of certain felony offenses including murder, rape, treason, sexual offenses involving a minor victim, voter fraud, bribery, misconduct involving public officials and employees, or interference with government operations are permanently ineligible to vote. *Id.* § 40-29-204.
- Virginia Va. Const. art. II, § 1; *Id.* at art. V, § 12; Va. Code Ann. §§ 53.1-229, -231 (West 2013). Persons convicted of most non-violent felonies may apply to the governor for a pardon or restoration of voting rights two years after completion of sentence and payment of any monetary fines and restitution. See Sec’y of the Commonwealth, *Non-Violent Offenders Application for Restoration of Civil Rights*, available at <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/McDonnell2-YearRoRApplication-Latest92010.pdf> (last visited June 22, 2012). Persons convicted of violent offenses, drug manufacturing or distribution offenses, offenses against minors, or election law offenses must wait five years to apply for restoration of rights. See Sec’y of the Commonwealth, *Five Year Application for Restoration of Civil Rights*, available at

<http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/5-YearRoRAApplication-UpdatedJuly2010-2.pdf> (last visited June 22, 2012).

Also see: Governor McDonnell announced on May 29, 2013 a transition from an application process to an Automatic Restoration Process for Non-violent Felons effective on July 15, 2013, at <http://www.commonwealth.virginia.gov/judicialsystem/clemency/restoration.cfm>.<sup>57</sup>

Wyoming First-time non-violent felony offenders may apply to the Board of Parole for a certificate restoring voting rights five years after completion of sentence including period of probation. All others must apply to the governor for either a pardon or a restoration of rights. Wyo. Const. art. 6, § 6; Wyo. Stat. Ann. § 7-13-105 (2012).

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<sup>57</sup> Under the executive order, the right to vote is automatically restored to all non-violent offenders who meet the following conditions: (1) all term of incarceration, probation, and parole have been completed, (2) all court costs, fines, and any restitution has been paid, and (3) there are no pending felony charges.

**Florida Advisory Committee to the  
United States Commission on Civil Rights**



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## Felony Disenfranchisement in Florida: Past, Present, and Future

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# FELONY DISENFRANCHISEMENT IN FLORIDA: PAST, PRESENT AND FUTURE

ALLISON J. RIGGS, ESQ.<sup>1</sup>

Laws that restrict individuals with felony convictions from voting are widespread in the United States, but those laws themselves vary widely from state to state. Only Maine and Vermont allow people who are incarcerated for a felony to vote. Other states further prohibit individuals on parole or probation relating to a felony conviction from casting a ballot. The most stringent laws, that prohibit not only persons on probation and parole from voting, but also those who have satisfied their entire sentence, are found only in election states, including Florida.<sup>2</sup>

Because of disparities in the criminal justice system, African Americans, and other people of color are disproportionately more likely to be kept from voting because of felony disenfranchisement laws. Indeed, in Florida, 23 percent of voting-age African Americans is disenfranchised because of prior felony convictions.<sup>3</sup> Under Florida law, regaining the right to vote following a felony conviction is exceptionally difficult. This article examines the fluctuating rules governing restoration of the right to vote in Florida, including legal challenges to those rules. This article concludes by discussing potential legal, policy, and advocacy routes for ameliorating the enormous burden that these rules place on people of color seeking to participate in the political process.

## I. EVOLVING FELONY DISENFRANCHISEMENT RULES IN FLORIDA

The United States is unique amongst developed nations in its sanctioning of stringent felony disenfranchisement.<sup>4</sup> Florida is unique amongst the

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<sup>2</sup> Marla McDaniel et al., *Imprisonment and Disenfranchisement of Disconnected Low-Income Men*, URBAN INSTITUTE, 4 (August 2013), available at <http://www.urban.org/UploadedPDF/412986-Imprisonment-and-Disenfranchisement-of-Disconnected-Low-Income-Men.pdf>.

<sup>3</sup> *Id.* at 5-6.

<sup>4</sup> The Canadian Supreme Court held that criminal disenfranchisement laws are unconstitutional.

states in the stringency of its felony disenfranchisement, which leaves those convicted of a felony conviction permanently disenfranchised, absent affirmative action on the person with the conviction to seek restoration of the right to vote.<sup>5</sup> Although this practice has been a prominent characteristic of Florida criminal justice policy for many years, Florida, unlike most states, has moved to make these laws more restrictive in the last several years. That trend has had a significant detrimental impact on the state's electorate, with noticeable racial disparities. The fluctuation of the rules governing the restoration of civil rights in Florida only exacerbates the burdens on those formerly involved in the criminal justice system.

### *1. Origin of Felony Disenfranchisement in Florida*

Disenfranchisement of individuals with felony convictions dates back to Florida's first constitution in 1838, which stated, "The General Assembly shall have the power to exclude from. . .suffrage, all persons convicted of bribery, perjury, forgery, or other high crime, or misdemeanor."<sup>6</sup> This provision remained essentially unchanged in Florida's 1861 and 1865 Constitutions.<sup>7</sup> However, the provision was significantly amended in the state's 1868 constitutional convention. It was changed to say, "nor shall any person convicted of a felony be qualified to vote at any election unless restored to civil rights. . .The legislature shall have power and shall enact the necessary laws to exclude from. . .suffrage, all persons convicted of bribery, perjury, larceny or of infamous crime."<sup>8</sup> That provision remained unchanged until the 1968 constitutional convention. The language was then amended to state that "[n]o person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability."<sup>9</sup>

Suavé v. Canada, [2002] 3 S.C.R. 519, para. 7 (Can.). The European Court of Human Rights found that denying offenders serving more than a one-year sentence was a violation of the European Convention on Human Rights. See *Frodl v. Austria*, App. No. 20201/04, Eur. H.R. Rep. (2010). It also declared that blanket criminal disenfranchisement laws are illegal. See also *Hirst v. United Kingdom* (No. 2), 2005-IX Eur. Ct. H.R. (2005).

<sup>5</sup> FLA. CONST. art. 6, § 4 (West, Westlaw through Nov. 4, 2014, General Election).

<sup>6</sup> FLA. CONST. art. VI, §§ 4, 13 (amended 1868).

<sup>7</sup> FLA. CONST. art. VI, §§ 2, 9 (1968).

<sup>8</sup> FLA. CONST. art. XIV, §§ 2, 4 (amended 1968).

<sup>9</sup> FLA. CONST. art. VI, § 4 (1968).

## 2. *Changing Felony Disenfranchisement Rules in Florida*

Even after the last constitutional revision, Floridians were subjected to many changes in the application of the felony disenfranchisement constitutional provision. In 1974, the Florida legislature passed the Correctional Reform Act,<sup>10</sup> declaring that “[e]ffective July 1, 1974, upon conviction of a felony, the civil rights of a person convicted shall be suspended until he is discharged from parole or released from the custody of the department without parole, at which time such civil rights are automatically reinstated.” The governor at the time, Ruben Askew, immediately sought an advisory opinion on the legislation from the Florida Supreme Court. The court found that this portion of the Act—automatic reinstatement of civil rights—unconstitutionally infringed upon the constitutional power of the Governor (with the approval of three members of the Cabinet) to restore civil rights.<sup>11</sup> Thus, this early legislative attempt to minimize the long-term effects of felony disenfranchisement failed.

Following the Florida Supreme Court’s ruling, the Governor and the Cabinet in 1975 established the Rules of Executive Clemency, thereby creating the Office of Executive Clemency to process matters of executive clemency.<sup>12</sup> However, in an attempt to further the legislative intent of the invalidated part of the Correctional Reform Act, the Governor and three members of the Cabinet (together, the Board of Executive Clemency) implemented written rules under which certain categories of executive clemency cases would be eligible for automatic restoration of civil rights.<sup>13</sup>

From 1975 until 1991, the restoration of civil rights in Florida was automatic, although it was still necessary to apply and prove eligibility.<sup>14</sup> In 1991, the state began requiring a hearing before civil rights could be restored.<sup>15</sup> In 1999, the number of applicant criminal offenses that required a hearing before the applicant could have his or her right to vote restored was expanded to include about 200 crimes.<sup>16</sup> Governor Jeb Bush, however, shortened that list of offenses when media reports revealed

<sup>10</sup> FLA. STAT. § 944.292 (1974).

<sup>11</sup> In re Advisory of the Governor Civil Rights, 306 So. 2d 520, 524 (Fla. 1975).

<sup>12</sup> FLA. PAROLE COMM’N, 2013 ANNUAL REPORT 14, *available at* <https://www.fcor.state.fl.us/docs/reports/FCORAnnualreport201213.pdf>.

<sup>13</sup> FLA. PAROLE COMM’N, RESTORATION OF CIVIL RIGHTS’ (RCR) CASES GRANTED 2009 AND 2010 4-5, *available at* <https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

<sup>14</sup> Margaret Colgate Love, NACDL Restoration of Rights Resource Project, July 2013 at 3, *available at* [https://www.nacdl.org/uploadedFiles/files/resource\\_center/2012\\_restoration\\_project/state\\_narr\\_fl.pdf](https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_fl.pdf).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.*



enormous delays in the restoration process.<sup>17</sup>

In 2004, Governor Bush also established the Governor's Ex-Offender Task Force to assess the effectiveness of the state in reintegrating those involved in the criminal justice system. By the end of 2006, the Task Force concluded that successful re-integration was critical to reducing recidivism.<sup>18</sup> In addition, the Task Force recommended further study on "the loss of civil rights upon conviction of a felony, [ . . . ] with the aim of additional reform recommendations'[".]"<sup>19</sup>

In 2006, Florida Republican Charlie Crist's campaign promised to streamline the rights restoration process and improve the ability of formerly-incarcerated persons to vote and obtain professional licenses.<sup>20</sup> In April of 2007, Governor Crist, with the support of two of his three Cabinet members, revised and streamlined the rules governing the restoration of civil rights.<sup>21</sup> For many of those convicted of non-violent offenses, no affirmative action or petitioning would be required of them any longer.<sup>22</sup> Instead, the Florida Parole Commission would send a list of eligible persons who had completed their sentence to the Office of Executive Clemency.<sup>23</sup> Individuals on that list would have their civil rights restored without a hearing or investigation.<sup>24</sup> However, despite the improvement that these changes created, the new rules still fell short of the "automatic" restoration of rights promised during the campaign.<sup>25</sup> Restoration of civil rights still required the approval of the Clemency Board, requiring time and processing.<sup>26</sup> Those persons eligible for "automatic" restoration still found

<sup>17</sup> Debbie Cenziper & Jason Grotto, *Violent Offenders Rights Restored While Lesser Offenders Wait*, MIAMI HERALD (Nov. 21, 2004), available at <http://freerepublic.com/focus/f-news/1285619/posts>.

<http://search.proquest.com/docview/1000998163/F037CAFD824747F3PQ/2?accountid=14068>.

<sup>18</sup> Bryan Miller & Joseph Spillane, *Civil Death: An Examination of Ex-felon Disenfranchisement and Reintegration*, PUNISHMENT & SOCIETY, 14(4): 402-28, available at [http://www.researchgate.net/publication/258181096\\_Civil\\_death\\_An\\_examination\\_of\\_ex-felon\\_disenfranchisement\\_and\\_reintegration](http://www.researchgate.net/publication/258181096_Civil_death_An_examination_of_ex-felon_disenfranchisement_and_reintegration).

<sup>19</sup> *Id.* at 405.

<sup>20</sup> Farhad Manjoo, *What Was Charlie Crist Thinking?* SALON (April 6, 2007), available at [http://www.salon.com/2007/04/06/crist\\_10/](http://www.salon.com/2007/04/06/crist_10/)

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

<sup>22</sup> *Id.*

<sup>23</sup> See Bryan Miller & Joseph Spillane, *Governing the restoration of civil rights for ex-felons: an evaluation of the Executive Clemency Board in Florida*, CONTEMP. JUST. REV. Aug. 8, 2012, at 1, 2 available

[at http://www.researchgate.net/publication/263729991\\_Governing\\_the\\_restoration\\_of\\_civil\\_rights\\_for\\_ex-felons\\_an\\_evaluation\\_of\\_the\\_Executive\\_Clemency\\_Board\\_in\\_Florida](http://www.researchgate.net/publication/263729991_Governing_the_restoration_of_civil_rights_for_ex-felons_an_evaluation_of_the_Executive_Clemency_Board_in_Florida).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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

themselves caught in a backlog of paperwork in Tallahassee.<sup>27</sup>

In March of 2011, at the first Board of Executive Clemency meeting after Governor Rick Scott was elected, the Board voted unanimously to revise and pass more restrictive the rules governing the restoration of civil rights.<sup>28</sup> Under Scott, the Board of Executive Clemency promulgated Rules 9 and 10 of the Rules of Clemency, which provided for two levels of eligibility for restoration of civil rights.<sup>29</sup> Applicants convicted of more serious felonies are now required to wait seven years after the completion of their sentence, and must undergo a full investigation and hearing before the Board.<sup>30</sup> Applicants who fall into the category of less serious offenses must wait five years after the completion of their sentence before applying for the restoration of their rights, but they may be able avoid a hearing.<sup>31</sup> Any applicant whose request for restoration of civil rights is denied must wait two years before applying again.<sup>32</sup> Because the Board of Executive Clemency meets only quarterly in Tallahassee, an applicant who falls into the Rule 10 category may wait years for a hearing.<sup>33</sup>

The legislature in 2011 enacted a “decoupling” law, which prohibited licensing boards in the state from denying licenses based solely on the fact that the applicant for the license had not had his or her civil rights restored.<sup>34</sup> Agencies are not, however, prohibited from taking the lack of restoration of civil rights into account in making licensure decisions.<sup>35</sup>

## II. EFFECT OF FELONY DISENFRANCHISEMENT LAWS IN FLORIDA

The effect of Florida’s draconian felony disenfranchisement rules on its citizens and voters is jaw-dropping, especially when compared to the rest of the country. As of 2010, according to the most recent data available, over 1.5 million Floridians are prohibited from voting because of past felony convictions.<sup>36</sup> That number is increased from the approximately 1.1

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.*; See Fla. R. Exec. Clemency 9-10; See also Reginald R. Garcia, Esq., Florida Executive Clemency: Seeking Mercy and Justice for Convicted Felons, FLORIDA DEFENDER (May 2011), available at [http://www.floridaclemencyattorney.com/documents/FIDefender\\_2011\\_May.pdf](http://www.floridaclemencyattorney.com/documents/FIDefender_2011_May.pdf).

<sup>30</sup> Miller & Spillane, *supra* note 23 at 11; Fla. R. Exec. Clemency 10(A).

<sup>31</sup> Fla. R. Exec. Clemency 9(A).

<sup>32</sup> Fla. R. Exec. Clemency 14.

<sup>33</sup> Miller & Spillane, *supra* note 23 at 2.

<sup>34</sup> FLA. STAT. ANN. § 112.01(c) (repealed 2013).

<sup>35</sup> FLA. STAT. § 112.01(2) (repealed 2013).

<sup>36</sup> Christopher Uggen, Sarah Shannon, & Jeff Manza, *State-level Estimates of Felon Disenfranchisement in the United States*, THE SENTENCING PROJECT (July 2012) at 16, available at [http://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).

million Floridians disenfranchised in 2004.<sup>37</sup> Of those 1.5 million disenfranchised in 2010, over 1.3 million have been released from prison or jail and have completed all probation and parole.<sup>38</sup> Given that there were 14.8 million people eligible to vote in Florida in 2010, this means that over 10% of Floridians above the age of 18 were denied their constitutional right to vote.<sup>39</sup> In the entire United States, 5.85 million citizens are disenfranchised, meaning that over 26% of the country's disenfranchised live in the state of Florida.<sup>40</sup>

The effect on African-American Floridians is even more disheartening. In 2010, over a half a million African Americans were disenfranchised, constituting 23.32% of the state's African-American voting age population. Of those disenfranchised, over 83% had completed their sentences.<sup>41</sup> The disparity is undeniable. While one out of ten Floridians are disenfranchised, nearly one of four black Floridians are denied the right to vote.<sup>42</sup>

Felony disenfranchisement laws generally also have an effect on recidivism rates. A seminal study has indicated that there is a statistically significant relationship between voting and the likelihood of recidivism following a felony conviction. The study found that "among former arrestees, about 27 percent of the nonvoters were rearrested, relative to 12 percent of the voters."<sup>43</sup> Thus, while many supporters of felony disenfranchisement justify those laws as demanding proof of rehabilitation prior to the restoration of the right to vote, that logic is flatly backward.

Beyond just the impact of these laws by demographic, the voting rights restoration process is "[. . .] an exhausting, emotionally draining process [. . .]"<sup>44</sup> that undoubtedly has a huge psychological effect on those willing to brave that route. During Governor Bush's administration, restoration of civil rights applications faced a rejection rate of 85%.<sup>45</sup> In the late 2000s,

<sup>37</sup> Jeff Manza & Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 248 (Oxford (2006); Ryan S. King, *State Felony Disenfranchisement Reform, 1997-2008*, THE SENTENCING PROJECT (September 2008) at 9, available at [http://www.sentencingproject.org/doc/publications/fd\\_statedisenfranchisement.pdf](http://www.sentencingproject.org/doc/publications/fd_statedisenfranchisement.pdf).

<sup>38</sup> Uggen, Shannon & Manza, *supra* note 36, at 14.

<sup>39</sup> *Id.* at 16.

<sup>40</sup> Manza & Uggen, *supra* note 37.

<sup>41</sup> *Id.* at 17.

<sup>42</sup> Uggen, Shannon & Manza, *supra* note 36, at 15-17.

<sup>43</sup> Manza & Uggen, *supra* note 37 at 70.

<sup>44</sup> Thomas B. Pfankuch, *Clemency Board very cautious in restoring rights*, FLORIDA TIMES-UNION (June 3, 2001), at 1 (quoting Governor Bush), available at [http://jacksonville.com/tu-online/stories/060301/met\\_6339439.html#.VXtRAWBtNUQ](http://jacksonville.com/tu-online/stories/060301/met_6339439.html#.VXtRAWBtNUQ).

<sup>45</sup> Ted Chiricos et al., *Racial Threat and Opposition to the Re-Enfranchisement of Ex-Felons*, 1 INT'L J. CRIM. & SOCIOLOGY 13, 17 (2012), available at

more than 60% of the applications were summarily rejected, most often because of outstanding victim restitution or court fees.<sup>46</sup>

The effect of Florida's frequently-in-flux restoration rules can further be understood by looking at the number of people restored to full civil rights in recent years. In 2009-2010, 30,672 Floridians regained the right to vote via the restoration of civil rights.<sup>47</sup> In 2010-2011, 5,771 Floridians were granted a restoration of civil rights.<sup>48</sup> After the change to the rules made by the Scott administration, the number of restorations completed in 2011-2012 dropped precipitously, with only 420 Floridians regaining the right to vote in that year.<sup>49</sup> The Tampa Bay Times reported in June of 2011 that there were more than 95,000 applications for clemency pending before the Board of Executive Clemency.<sup>50</sup> That backlog was dramatically reduced after the vast majority of those were ruled ineligible because of the newly-mandated waiting period.<sup>51</sup>

Finally, Florida's felony disenfranchisement laws have a political effect as well, which is best highlighted by the 2000 Presidential election. In Florida, the presidential race was decided by a 537-vote margin, at a time when approximately 600,000 former offenders were prohibited from voting in the state.<sup>52</sup> Indeed, one study indicated that as many as seven U.S. Senatorial elections would have had a different outcome absent felony disenfranchisement laws.<sup>53</sup> In light of this, the unavoidable political effect on lower turnout elections is certainly not difficult to appreciate.

### III. CHALLENGES TO FELONY DISENFRANCHISEMENT IN FLORIDA

Opponents of felony disenfranchisement laws have employed a number of legal strategies to invalidate those laws, but legal challenges to felony disenfranchisement laws across the country have not been particularly successful. The United States Supreme Court first heard a Fourteenth

<http://www.lifescienceglobal.com/home/cart?view=product&id=184>.

<sup>46</sup> *Id.*

<sup>47</sup> Margaret Colgate Love, *NACDL Restoration of Rights Resource Project* (July 2013) FL1, at FL3, available at [https://www.nacdl.org/uploadedFiles/files/resource\\_center/2012\\_restoration\\_project/state\\_narr\\_fl.pdf](https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_fl.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Michael Bender, *Citrus County Electrician Gets Gov. Rick Scott's First Pardon*, TAMPA BAY TIMES, June 2, 2011, available at <http://www.tampabay.com/news/politics/gubernatorial/citrus-county-electrician-gets-gov-rick-scotts-first-full-pardon/1173320>.

<sup>51</sup> Love, *supra* note 47.

<sup>52</sup> George Brooks, Comment, *Felony Disenfranchisement: Law, History, Policy and Politics*, 32 FORDHAM URB. L.J. 851 (2005).

<sup>53</sup> Manza & Uggen, *supra* note 37.

Amendment challenge to such a law in *Richard v. Ramirez* in 1974.<sup>54</sup> In *Ramirez*, the Court rejected Plaintiffs' Fourteenth Amendment challenge, relying on an exception in Section 2 of the Equal Protection Clause that allows states to abridge the right to vote because of "participation in rebellion, or other crime."<sup>55</sup> Asserting the inconsistent logic that one part of the Equal Protection Clause prohibited a practice that another part of the Clause expressly endorsed, the Court thus concluded that felony disenfranchisement was at least facially constitutional.<sup>56</sup>

In 1985, however, opponents of felony disenfranchisement laws did succeed in convincing the Court that those laws could be intentionally discriminatory in violation of the Fourteenth Amendment. In *Hunter v. Underwood*,<sup>57</sup> the Supreme Court invalidated an Alabama felony disenfranchisement law where a substantial amount of evidence indicated that the law was passed in order to discriminate against black voters.<sup>58</sup> Thus far, *Hunter* has been the only exception to the *Ramirez*.

More recently, voting rights litigators have tried to attack felony disenfranchisement laws under Section 2 of the Voting Rights Act. In 1982, Congress revised Section 2, creating a "results" test that made clear that discriminatory intent is not necessary to establish a violation of Section 2. Under the 1982 Amendment, a violation of Section 2 is established when, in the "totality of circumstances," the impact of a challenged voting practice is discriminatory. To date, the three Circuit Courts of Appeals that have considered Section 2 challenges to felony disenfranchisement laws have all rejected the application of Section 2 to such laws.<sup>59</sup> Given the absence of a circuit split, the Supreme Court has yet to take up the issue, and voting rights litigators seem to be declining to pursue such challenges.

Challenges mounted against Florida's particularly stringent felony disenfranchisement laws have not been more successful than challenges in less restrictive states. The first devastating blow to opponents of felony disenfranchisement was delivered in *Beacham v. Braterman*.<sup>60</sup> In *Beacham*,

<sup>54</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1974).

<sup>55</sup> *Id.* at 43.

<sup>56</sup> *Id.* at 55.

<sup>57</sup> *Hunter v. Underwood*, 471 U.S. 222 (1985).

<sup>58</sup> *Id.* at 233.

<sup>59</sup> *Hayden v. Pataki*, 449 F.3d 305 (2d Cir. 2006); *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010); *Johnson v. Governor of State of Florida*, 405 F.3d 1214 (11th Cir. 2005). The Sixth Circuit "assumed" that Section 2 would apply to a felony disenfranchisement law, but found that there was no discriminatory effect resulting from Tennessee's law; *Wesley v. Collins*, 791 F.2d 1255, 1259-61 (6th Cir. 1986).

<sup>60</sup> *Beacham v. Braterman*, 300 F. Supp. 182, (S.D. Fla.) aff'd, 396 U.S. 12, 90 S. Ct. 153, 24 L.Ed. 2d 11 (1969).

which was decided before *Richardson v. Ramirez*, the U.S. Supreme Court summarily affirmed a trial court's dismissal of Plaintiff's class action lawsuit challenging Florida's felony disenfranchisement law. The lower court rejected Plaintiffs' Fourteenth Amendment equal protection claim, based almost entirely on the reasoning that the denial of voting rights following a felony conviction is a longstanding and quite common practice.<sup>61</sup> That court also flatly rejected the allegation that the Plaintiffs' due process rights were violated by the vesting of the power for the Governor of Florida, with the approval of three members of the Cabinet, to restore the right to vote to some people with felony convictions and not to others. The court stated, "[t]he restoration of civil rights is part of the pardon power and as such is an act of executive clemency not subject to judicial control."<sup>62</sup> In a per curiam decision, the Supreme Court affirmed the district court's ruling.<sup>63</sup>

But *Beacham* was not the last challenge to Florida's felony disenfranchisement law. In 2001, acting on behalf of all Floridians convicted of a felony who have completed their sentences but remain ineligible to vote, eight plaintiffs filed a lawsuit challenging Florida's felony disenfranchisement law under the First, Fourteenth, Fifteenth and Twenty-Fourth Amendment, and under the Voting Rights Act.<sup>64</sup> The District Court granted summary judgment to Defendants on Plaintiffs' Fourteenth Amendment claim. It concluded that the Supreme Court's decisions in *Ramirez* and the same District Court in *Beacham* (which summarily affirmed by the Supreme Court) precluded such a claim. Like the Court in *Richardson*, the District Court reiterated that Section 2 of the Fourteenth Amendment expressly sanctioned such an action.<sup>65</sup> The Court likewise rejected Plaintiffs' First Amendment claim.

The District Court in *Johnson* granted Defendant's summary judgment on Plaintiffs' intentional discrimination claims even though Plaintiffs had presented substantial evidence that the challenged provision was initially motivated by improper intent. The court concluded, however, that re-enactment of the law in 1968, without any proven discriminatory intent, relieved the state of any liability for the discriminatory origins of the law.<sup>66</sup>

<sup>61</sup> *Id.* at 184.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Johnson v. Bush*, 214 F. Supp. 2d 1333, 1337-38 (S.D. Fla. 2002) aff'd in part, rev'd in part and remanded sub nom. *Johnson v. Governor of State of Fla.*, 353 F.3d 1287 (11th Cir. 2003) reh'g en banc granted, opinion vacated sub nom. *Johnson v. Governor of Florida*, 377 F.3d 1163 (11th Cir. 2004) and aff'd sub nom. *Johnson v. Governor of State of Florida*, 405 F.3d 1214 (11th Cir. 2005)

<sup>66</sup> *Id.* at 1337; *See Richardson v. Ramirez*, 418 U.S. 24, 56 (1974); *See also Beachman v.*

With regard to Plaintiffs' claim under Section 2 of the Voting Rights Act, the court found that no Section 2 violation could occur where racially-neutral factors caused the disparate impact on minority voters.<sup>67</sup> Essentially dismissing the role of bias in the criminal justice system, the court held that the African-American Plaintiffs were not deprived of the right to vote because of any immutable characteristic they possessed, but rather because they committed criminal acts.<sup>68</sup> Finally, Plaintiffs alleged that the requirement that disenfranchised ex-offenders needed to have paid all victim restitution in order to be eligible for restoration of civil rights was an impermissible poll tax.<sup>69</sup> The court rejected this claim because impermissible poll taxes directly burden the right to vote, and Plaintiffs had no right to vote (because the state had deprived them of it).<sup>70</sup>

When appealed to the Eleventh Circuit, a three-judge panel affirmed the district court's grant of summary judgment on the poll tax claim, but reversed the grant of summary judgment on Plaintiffs' equal protection and Voting Rights Act claims because there were disputed issues of fact.<sup>71</sup> The panel concluded, quite differently than the district court, that the "discriminatory purpose behind Florida's felon disenfranchisement provision establishes an equal protection violation that persists with the provision unless it is subsequently reenacted on the basis of an independent, non-discriminatory purpose."<sup>72</sup>

With regard to the Section 2 claims, the appellate panel rejected the district court's interpretation of the Act. The court noted that the conclusion that the disparate impact is caused by felon's poor decision-making begs the statutorily mandated question: "whether felon status interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."<sup>73</sup> Specifically, the panel found that "racial bias in the criminal justice system may very well interact with voter disqualifications to create the kind of barriers to political participation on account of race that are prohibited by Section 2. Thus, rendering it simply another relevant

Braterman, 300 F. Supp. 192 (S.D. Fla. 1969) aff'd, 396 U.S. 12 (1969).

<sup>67</sup> *Id.* at 1341.

<sup>68</sup> *Id.* at 1341-42.

<sup>69</sup> *Id.* at 1342.

<sup>70</sup> *Id.* at 1343.

<sup>71</sup> *Johnson v. Governor of State of Fla.*, 353 F.3d 1287 (11th Cir. 2003) reh'g en banc granted, opinion vacated sub nom. *Johnson v. Governor of Florida*, 377 F.3d 1163 (11th Cir. 2004).

<sup>72</sup> *Id.* at 1301.

<sup>73</sup> *Id.* at 1305 (internal quotations omitted).

social and historical condition to consider where appropriate.”<sup>74</sup>

The state obtained *en banc* review from the Eleventh Circuit, which vacated the panel’s judgment and affirmed in its entirety the ruling by the District Court.<sup>75</sup> The Eleventh Circuit concluded that in fact there was no evidence that the original 1868 constitutional disenfranchising provision was motivated by racial animus.<sup>76</sup> And even had the appeals court been satisfied that Plaintiffs had proven racial animus motivating the 1868 provision, it agreed with the district court that such improper motivation would not condemn the 1968 constitutional provision.<sup>77</sup> The appeals court also held that Section 2 of the Voting Rights Act could not be constitutionally read to apply to felony disenfranchisement laws because Section 2 of the Fourteenth Amendment expressly endorsed such laws.<sup>78</sup>

Plaintiffs sought review by the United States Supreme Court, but the Court denied the petition for writ of certiorari.<sup>79</sup> As such, the Eleventh Circuit ruling stands today as binding precedent, creating an inhospitable environment for facial challenges to Florida’s felony disenfranchisement law. However, this reality does not mean all litigation solutions are off the table, and certainly does not mean that Floridians cannot obtain substantial relief through legislative and advocacy efforts.

#### IV. PROPOSALS FOR STRATEGIES TO AMELIORATE THE DEVASTATING IMPACT OF FLORIDA’S FELONY DISENFRANCHISEMENT RULES

As long as Florida, and indeed most of America, views exclusion from the political process as an acceptable or “traditional” punishment for criminal violations, citizens will be burdened and restricted from voting because of felony disenfranchisement law. But the failure of earlier legal challenges does not doom the effort as a whole. By adopting a multi-faceted approach to ameliorating the impact of Florida’s felony disenfranchisement laws—including legislative, advocacy and litigation strategies—the situation facing an enormous number of Florida voters can be improved. Three such options are presented below.

<sup>74</sup> *Id.* at 1306 (citing *Farrakhan v. Locke*, No. 96-0076, 2000 U.S. Dist. LEXIS 22212 (E.D. Wash. 2000) (“*Farrakhan II*”).

<sup>75</sup> *Johnson v. Bush*, 405 F.3d 1214, 1214 (11th Cir. 2005).

<sup>76</sup> *Id.* at 1219.

<sup>77</sup> *Id.* at 1225-26.

<sup>78</sup> *Id.* at 1233-34.

<sup>79</sup> *Johnson v. Bush*, 546 U.S. 1015, 126 S. Ct. 650, 651, 163 L. Ed. 2d 526 (2005).



### 1. Criminal Justice Reform

Perhaps the most important, and least intuitive for voting rights litigators and advocates, solution is reducing the opportunity for Florida's felony disenfranchisement rules to apply to its citizens in the first place. Florida's criminal code is particularly harsh, and as of 2009, Florida had the highest rate among all states of current and estimated former felons as a percent of the adult population—over 14%.<sup>80</sup>

Florida's drug laws are an enormous contributor to the number of its citizens who are prohibited from participating in the political process. A 2009 state-by-state analysis indicated that Florida more severely and more routinely punishes minor marijuana crimes than any other state. And that situation is unlikely to change, because in recent years, state legislators have elected to *enhance* Florida's criminal punishments each time they revisited the state's marijuana penalties<sup>81</sup>

Looking at what specifically constitutes a felony with regard to marijuana is enlightening and frustrating. Possession alone of more than 20 grams of marijuana is a felony punishable by a maximum sentence of 5 years imprisonment and a maximum fine of \$5,000.<sup>82</sup> Possession of fewer than 25 plants—including the possession of just a single marijuana plant—is a felony punishable by a maximum sentence of 5 years imprisonment and a maximum fine of \$5,000.<sup>83</sup> The sale of more than 20 grams but less than 25 lbs. or less is a felony punishable by a maximum sentence of 5 years imprisonment and a maximum fine of \$5,000.<sup>84</sup> Sale or delivery within 1,000 feet of a school, college, park, or other specified areas is a felony punishable by a maximum sentence of 15 years imprisonment and a maximum fine of \$10,000.<sup>85</sup>

Hashish and other such concentrates are considered schedule I narcotics in Florida.<sup>86</sup> Possession of hashish or concentrates is a felony in the third degree.<sup>87</sup> Possessing more than 3 grams of hash, selling, manufacturing, delivering, or possessing with intent to sell, manufacture or deliver, hashish or concentrates is also a third-degree felony. Moreover, the offense is

<sup>80</sup> Sarah Shannon et al., *Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948-2010*, POPULATION ASSOCIATION OF AMERICA (Apr. 18, 2011), <http://paa2011.princeton.edu/papers/111687>.

<sup>81</sup> Paul Armentano, *The 5 Worst States to Get Busted With Pot*, ALTERNET (May 13, 2011), available at [http://www.alternet.org/story/150935/the\\_5\\_worst\\_states\\_to\\_get\\_busted\\_with\\_pot](http://www.alternet.org/story/150935/the_5_worst_states_to_get_busted_with_pot).

<sup>82</sup> FLA. STAT. §§ 775.082(3)(e), 775.083(1)(c), See 893.13(6) (2014).

<sup>83</sup> FLA. STAT. §§ 775.082(3)(e), 775.083(1)(c), See 893.13(6), 893.135(1)(a) (2014).

<sup>84</sup> FLA. STAT. §§ 775.082(3)(e), 775.083(1)(c), See 893.13(1)(a)(2), 893.135(1)(a) (2014).

<sup>85</sup> FLA. STAT. §§ 775.082(3)(d), 775.083(1)(b), 893.03(1)(c), 893.13(1)(c) (2014).

<sup>86</sup> FLA. STAT. ANN. § 893.03(1)(c) (West 2014).

<sup>87</sup> FLA. STAT. ANN. § 893.13(1)(a)(2) (West 2014).

charged as a second-degree felony if the offense occurred within 1,000 feet of a child care facility between 6 A.M. and 12 midnight, a park or community center, a college, university or other postsecondary educational institute, any church or place of worship that conducts religious activities, any convenience business, public housing, or an assisted living facility.<sup>88</sup>

Of course, drug laws are not the only part of the Florida criminal justice system that imposes felony sentences and potential lifetime disenfranchisement for absurdly minor offenses. For example, in Florida, any property taken that carries a value of more than \$300 can be considered grand theft in certain circumstances, which is classified as a third-degree felony.<sup>89</sup> In one case, a couple was convicted of felonious grand theft for stealing razors from a store.<sup>90</sup> In some circumstances, “removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value” can constitute a third-degree felony.<sup>91</sup> The idea that a person might be disenfranchised for life for stealing razors or absconding with a shopping cart should offend the sensibilities of anyone considering the collateral consequences of a criminal justice system with such stiff sentencing structures.

Until politicians and the general public start appreciating the connection between voting rights and criminal justice policy, hundreds of thousands of Floridians will be face a lifetime of exclusion from the political process. Opponents of felony disenfranchisement have the opportunity to make important strides in the advocacy realm by encouraging dialogue about how the over-criminalization of Florida society creates absurd results, particularly in the voting rights arena.

## 2. *Statewide Constitutional Initiative*

Florida is uniquely situated because its citizens are empowered to amend their state constitution fairly easily and directly through the initiative process. The initiative process is a mechanism that has been utilized to protect voting rights in the past, and could be used now to ease the effects of Florida’s felony disenfranchisement rules.

Florida voters can use the constitutional initiative process by gathering petitions signed by a number of voters equal to eight percent of votes cast in the last presidential election. Those signed petitions are not required

<sup>88</sup> *Id.*

<sup>89</sup> FLA. STAT. ANN. § 812.014(2)(c)(1) (West 2014).

<sup>90</sup> *Rimondi v. State*, 89 So. 3d 1059, 1060 (Fla. Dist. Ct. App. 2012).

<sup>91</sup> FLA. STAT. ANN. tit. 46, § 812.015 (West 2012) (effective July 1, 2012).

simply on a statewide basis—they must come from at least one half of the state’s congressional districts. To begin the initiative petition process, an individual or group, wishing to propose an amendment must register as a political committee with the Division of Elections.<sup>92</sup> The political committee is then required to submit the proposed initiative amendment petition form to the Division of Elections. Then, the petitions are circulated for signatures. The division only reviews the initiative petition form for sufficiency of its format.<sup>93</sup>

The political committee must pay the Supervisor of Elections for each signature that the Supervisor’s office checks, which is either ten cents or the actual cost of checking the signature (whichever is less). The sponsoring political committee pays that fee at the time of submitting the petitions. If the political committee cannot pay for the signature-checking without creating an undue burden on the organization, the organization can seek to have those charges waived by submitting a written certification of that inability to pay. However, if the committee pays any person to solicit signatures, an undue burden affidavit may not be filed in lieu of paying the verification fee.<sup>94</sup>

Once a political committee secures signatures from 10% of the voters required, from at least 25% of the congressional districts, the Division of Elections will send the petition to the Attorney General. The Attorney General then, within thirty days of receipt of that petition, must request from the Supreme Court an advisory opinion regarding the compliance of the text of proposed amendment with Art. XI, Section 3, of the State Constitution and the compliance of the proposed ballot title and summary with Section 101.161 of the Florida Statutes.

The process does not end there, though. Any constitutional amendment brought through the citizen initiative process needs 60% of the vote to pass.<sup>95</sup> The cost of such direct democracy is substantial as well—recent examples attest to that. As of October 2010, the Fair Districts Florida campaign to establish constitutional criteria for redistricting had raised 6.9 million dollars to ensure the petition requirements were met and the electorate was educated on the amendments before voting on them.<sup>96</sup> The Floridians for Youth Tobacco Education, Inc. citizen initiative campaign

<sup>92</sup> FLA. STAT. ANN. tit. 9, § 106.03 (West 2013) (effective Nov. 1, 2013).

<sup>93</sup> See FLA. CODE § 1S-2.009 (effective: May 21, 2014).

<sup>94</sup> See FLA. STAT. ANN. tit. 9, § 106.191 (West 2014).

<sup>95</sup> FLA. CONST. art. 11 § 3.

<sup>96</sup> See *Campaign Finance Activity*, FLORIDA DEPT. OF STATE, DIVISION OF ELECTION, <http://election.dos.state.fl.us/committees/ComDetail.asp?account=43605> (last visited Mar. 1, 2015).

recently spent over \$5.3 million to ensure that the legislature was forced to use tobacco lawsuit settlement money to fund a statewide tobacco education and prevention program.<sup>97</sup>

Despite the cost and procedural hurdles for pursuing a legislative solution to the felony disenfranchisement problem, the current state of public opinion on felony disenfranchisement laws is encouraging, which makes direct democracy quite appealing. Recent public polling efforts indicate that approximately 80% of those polled (and the polls embrace a variety of methodologies) believe that disenfranchisement should end after an individual with a felony conviction completes his or her sentence, including parole and probation.<sup>98</sup>

Fortunately, the effort to utilize this strategy is already underway. A proposed measure that would amend Section 4 of Article VI of the Florida Constitution has already reached the stage where signatures are being collected. The language of the proposed amendment would add the underlined text:

Article VI, Section 4. Disqualifications—

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.<sup>99</sup>

Based on prior election results, supporters will need to collect a minimum of 683,149 valid signatures by February 1, 2016, in order to qualify the measure for the November 2016 ballot.<sup>100</sup>

While the financial and procedural burdens of pursuing a constitutional amendment to revise Florida's felony disenfranchisement laws may seem daunting, the benefits may be equally large. Firstly, this strategy bypasses the courts and legislature that historically have been unfriendly to re-enfranchisement efforts. Secondly, such a campaign would create an opportunity for grassroots organization on a large scale, and would

<sup>97</sup> Curry, Christopher, *Tobacco suit amendment on the ballot*, OCALA STAR BANNER, available at <http://www.ocala.com/article/20061010/NEWS/210100333> (last updated Oct. 10, 2006, 12:00 AM).

<sup>98</sup> Chiricos, *supra* note 45, at 16.

<sup>99</sup> FLA. CONST., art. VI, § 4 (West 2014).

<sup>100</sup> See *Collecting Signatures*, BALLOTPEdia, [http://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Florida#Collecting\\_signatures](http://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida#Collecting_signatures) (last visited Mar. 1, 2015).

facilitate public dialogue about the right to vote being worthy of constitutional protections. That type of conversation would likely have ancillary benefits in the broader voting rights struggle because one of the field's greatest challenges has been convincing the general public that voting is a right, not a privilege.

### 3. *Strategic Litigation*

Facial challenges to felony disenfranchisement laws brought under the Constitution or the Voting Rights Act have been minimally successful. While certainly not a novel suggestion, the use of strategic litigation bringing as-applied challenges to these laws has a strong appeal as part of a multi-pronged strategy in the overall effort to re-enfranchise Floridians who have had been involved in the criminal justice system.<sup>101</sup> And while this strategy has long been contemplated, its effectuation has been absent or excruciatingly slow in most instances.

A 2002 Harvard Law Review article recommended the use of strategic litigation, aiming at undermining felony disenfranchisement laws in small ways, particularly given the minimal success litigators have had in obtaining judicial invalidations of state disenfranchisement laws.<sup>102</sup> Certainly no one could argue that *Richardson* read in light of *Hunter* precludes all challenges to the administration of a state's clemency or restoration of civil rights process if that process can be shown to discriminate on the basis of race.

The Harvard Law article suggested two particular avenues of targeted attack.<sup>103</sup> First, the article recommended challenges to the choice of disqualifying crime, arguing that "*Richardson* did not address directly whether a state might choose among disqualifying crimes in a way that violates the Constitution."<sup>104</sup> Such an approach seems more suited to states that still attach disenfranchisement to the commission of "infamous" crimes (i.e., it is unclear exactly what crimes are disqualifying), but the arbitrary classification of felonies in Florida could provide some opportunity to test this strategy. Second, the article pointed to susceptibility of restoration conditions to constitutional and Voting Rights Act challenges.<sup>105</sup> Particularly in Florida, challenges might be promising where restoration is

<sup>101</sup> See *IV. One Person, No Vote: The Laws of Felon Disenfranchisement*, 115 HAR. L. REV. 1939, 1959 (2002).

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

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

granted on arbitrary basis, or where the restoration process is so long or so opaque as to constitute a due process violation. Given the judiciary's resistance to striking down felony disenfranchisement laws on their face, the article astutely noted that "[r]estricting the manner in which a state restores a felon's voting rights does not limit that state's power to take away the right to vote."<sup>106</sup>

So why have such targeted litigations efforts failed to materialize? In Florida, the lack of transparency with which the clemency process operates, along with the failure of the Board to offer reasons for its actions, certainly hamstrings the ability of challengers to mount an attack. For example, the Office of Executive Clemency refuses to release racial data on the restoration of civil rights applications it receives, despite such data being requested by the application form itself.<sup>107</sup> Often times, during clemency hearings, the Governor announces that restoration of civil rights application is denied without any explanation to the public viewing those hearings.<sup>108</sup> A first step in creating an environment more hospitable to such strategic litigation would be vigorous public record requests and litigation, if necessary, to obtain data that would support arbitrariness allegations. When litigators are fully informed of all relevant data they will be able to evaluate whether strategic litigation really is a strategy likely to provide any relief.

## CONCLUSION

While voting rights advocates and litigators frequently find themselves mired in frustration and failure in their battle to ensure that every Floridian, even those who have been involved with the criminal justice system, is afforded his or her constitutional right to vote, the battle is not lost. Judicial rejections of facial challenges to felony disenfranchisement laws do not mean that there are no tools left to resist disenfranchisement efforts. By replacing broad legal challenges with advocacy and strategic litigation approaches, felony disenfranchisement challengers might find themselves with an enthusiastic base of grassroots support and with improvements in the political exclusion of hundreds of thousands of Floridians.

<sup>106</sup> *Id.* at 1962.

<sup>107</sup> *Id.* at 1944-46.

<sup>108</sup> Bryan Lee Miller and Joseph Spillane, *Governing the Restoration of Civil Rights For Ex-Felons: An Evaluation of the Executive Clemency Board in Florida*, 15 CONTEMP. JUST. REV. 413, 423-24 (2012).





## Felon Voting Rights

9/29/2016



**Please Note:** The following information is provided for background information only. NCSL is unable to assist in or offer advice on the restoration of voting rights. We recommend that anyone interested in obtaining specific information on how to regain voting rights contact election officials in the jurisdiction where the person wishes to register and vote. To find contact information for your local election official click [here](#).

### Background and History

The idea of taking away a criminal's right to vote has been around since ancient Greece and Rome. A condition called "civil death" in Europe involved the forfeiture of property, the loss of the right to appear in court, and a prohibition on entering into contracts, as well as the loss of voting rights. Civil death was brought to America by English colonists, but most aspects of it were eventually abolished, leaving only felon disenfranchisement intact in some parts of modern America.

### Categories of Disenfranchisement

State approaches to felon disenfranchisement vary tremendously. In Maine and Vermont, felons never lose their right to vote, even while they are incarcerated. In Florida, Iowa and Virginia, felons and ex-felons permanently lose their right to vote. Virginia and Florida have supplementary programs which facilitate gubernatorial pardons. The remaining states each have their own approaches to the issue.

- In 38 states and the District of Columbia, most ex-felons automatically gain the right to vote upon the completion of their sentence.
- In some states, ex-felons must wait for a certain period of time after the completion of their sentence before rights can be restored.
- In some states, an ex-felon must apply to have voting rights restored.

### VOTING RIGHTS OF PERSONS WITH FELONY CONVICTIONS

Never Lose Right to Vote	Lost Only While Incarcerated; Automatic Restoration After Release	Lost Until the Completion Of Sentence (Parole and/or Probation); Automatic Restoration After	Restoration by Governor's Action or Court Action
Maine	District of Columbia	Arizona (1)	Alabama
Vermont	Hawaii	Alaska	Arizona (1)
	Illinois	Arkansas	Florida
	Indiana	California (2)	Iowa
	Maryland (3)	Colorado	Kentucky

Never Lose Right to Vote	Lost Only While Incarcerated; Automatic Restoration After Release	Lost Until the Completion Of Sentence (Parole and/or Probation); Automatic Restoration After	Restoration by Governor's Action or Court Action
	Massachusetts	Connecticut	Mississippi
	Michigan	Delaware	Nevada (5)
	Montana	Georgia	Virginia



	New Hampshire	Idaho	Wyoming (6)
	North Dakota	Kansas	
	Ohio	Louisiana	
	Oregon	Minnesota	
	Pennsylvania	Missouri	
	Rhode Island	Nebraska (4)	
		Nevada (5)	
		New Jersey	
		New Mexico	
		New York	
		North Carolina	
		Oklahoma	
		South Carolina	
		South Dakota	
		Tennessee	
		Texas	
		Utah	
		Washington	
		West Virginia	
		Wisconsin	
		Wyoming (6)	

(1) First time offenders have rights restored upon completion of sentence. Repeat offenders must have them restored through pardon.

(2) In 2016, [California](#) passed legislation allowing those in county jails to vote while incarcerated, but not state or federal prison.

(3) Convictions for buying or selling votes can only be restored through pardon.

(4) Rights restored after two year waiting period after completion of sentence.

(5) Rights are restored upon completion of sentence for first time felon offenders convicted of less serious crimes. Others must do so through court action or pardon.

(6) In 2015, Wyoming restored rights to those convicted of non-violent felonies upon completion of sentence.

## Barriers to the Restoration of Rights

Even in states where ex-offenders automatically regain the right to vote upon completion of their sentence, the process of re-registering to vote often is difficult. One reason is the complexity of the laws and processes surrounding disenfranchisement. In some cases, it is difficult to determine whose rights can be restored. This can vary in some states according to the date of the crime, the conviction, or the release from prison, or the nature of the crime. The complex restoration process also can be daunting. It often involves lengthy paperwork, burdensome documentation, and the involvement and coordination of several state agencies.

A second barrier to restoration of voting rights for ex-offenders is the often inconsistent communication among agencies. The methods of communicating the loss and restoration of voting rights among courts, corrections and elections officials are not always reliable, timely or consistent. This inconsistency can result in uneven application of the law, even when the laws are clear. Another barrier is lack of information. Ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence. They go through life believing they cannot vote when, in fact, they can. In other cases, they are not informed of the process for regaining their rights or offered assistance in doing so. As long as they remain ignorant of the necessary steps, ex-offenders cannot begin the process of regaining voting rights.

A final obstacle is under-funding of parole boards in some states where offenders must apply to have their rights

restored. A massive backlog of applications can exist because the agencies do not have adequate staff or resources to process them in a timely manner.

## Recent State Action

Most--though not all--recent state legislation seeks to expand felon voting rights and ease the process of restoration. Between 1996 and 2008, 28 states passed new laws on felon voting rights.

- Seven repealed lifetime disenfranchisement laws, at least for some ex-offenders.
- Two gave probationers the right to vote.
- Seven improved data-sharing procedures among state agencies.
- Nine passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.
- Twelve simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

Since 2008:

In 2016, [California](#) passed legislation allowing those in county jails to vote while incarcerated, but not state or federal prison.

In 2016, Virginia Governor Terry McAuliffe [announced an executive order](#) automatically restoring voting rights to convicted felons who have completed their prison sentence and their term of supervised release (parole or probation) as of April 22. This decision was a source of contention with the legislature. In July 2016, the Virginia Supreme Court overturned the order.

In 2016, the Maryland Legislature voted to override Governor Larry Hogan's veto of two bills (HB 980 and SB 340) that will restore voting rights to individuals after completion of term of incarceration, effective March 10.

In 2015, outgoing Kentucky Governor Steve Beshear signed an [executive order](#) to automatically restore the right to vote (and to hold public office) to certain offenders, excluding those who were convicted of violent crimes, sex crimes, bribery, or treason. However the order was [reversed by incoming Governor Matt Bevin](#) as one of his first acts in office. Bevin's order does not retroactively affect felons who, between Nov. 24 and Dec. 22, 2015, received a certificate from the state Department of Corrections confirming their restoration of rights.

In 2015, Wyoming enacted [HB 15](#) requiring the department of corrections to issue a certification of restoration of voting rights to certain non-violent felons after completion of sentence.

In 2013, Delaware eliminated the five-year waiting period before voting rights are restored. In Virginia, then-Governor McDonnell signed an executive order creating new rights restoration processes for persons with prior felony convictions.

In 2012, South Dakota mandated that felons on probation would not have voting rights restored. Previously, only felons on parole or incarcerated had their voting rights suspended.

In 2011, the Florida Board of Executive Clemency (composed of the governor and three cabinet members) reversed a 2007 policy change that automatically restored voting rights to non-violent offenders upon the completion of their sentence. The new policy requires that all ex-felons wait between five and seven years before applying to regain voting rights.

In Iowa, the governor in 2011 reversed an executive order issued in 2005 under the previous governor. The 2005 order automatically restored the voting rights of all ex-felons, but under the 2011 order they will now have to apply to regain rights.

In 2011 in Tennessee, HB 1117 was enacted, adding to the list of felons who will not be eligible to vote again

In 2009, Washington restored the right to vote to felons who completed their sentences, while requiring them to re-register to vote.

For more detailed information on state legislation dealing with the voting rights of convicted felons, visit [NCSL's 2011-current Election Legislation Database](#) and select the subtopic "Voters-Felon Voting Rights." For legislation from the period 2001-2010, visit [NCSL's 2001-2010 Election Legislation Database](#).

## Additional Resources

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- If you're seeking general information on state policies regarding felon voting rights, please contact [NCSL's elections team](#) for more information by email or at 303-364-7700.
- If you're looking for information on how you or someone else can regain the right to vote, NCSL is regrettably unable to help with or offer advice on this process. We suggest that you contact [election officials](#) in the appropriate jurisdiction to get the most current and accurate information available, and we wish you the best of luck!
- [The Sentencing Project](#) is an advocacy group that offers information on felon disenfranchisement in the states.
- The [Restoration of Rights Project](#), from the National Association of Criminal Defense Lawyers, also provides assistance on felon disenfranchisement.
- If you are seeking information on the process to regain voting rights, please contact an [election official](#) in the jurisdiction where you wish to register and vote.

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# Felony Disenfranchisement: A Primer

A striking 5.85 million Americans are prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.<sup>1</sup> Felony disenfranchisement rates vary by state, as states institute a wide range of disenfranchisement policies.

The 12 most extreme states restrict voting rights even after a person has served his or her prison sentence and is no longer on probation or parole; such individuals in those states make up approximately 45 percent of the entire disenfranchised population.<sup>2</sup> Only two states, Maine and Vermont, do not restrict the voting rights of anyone with a felony conviction, including those in prison.

Persons currently in prison or jail represent a minority of the total disenfranchised population. In fact, 75 percent of disenfranchised voters live in their communities, either under probation or parole supervision or having completed their sentence.<sup>5</sup> An estimated 2.6 million people are disenfranchised in states that restrict voting rights even after completion of sentence.

**Table 1. Summary of Felony Disenfranchisement Restrictions in 2016<sup>3,4</sup>**

No restriction (2)	Prison (15)	Prison & parole (4)	Prison, parole & probation (18)	Prison, parole, probation & post-sentence – some or all (12)
Maine Vermont	District of Columbia Hawaii Illinois Indiana Maryland Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon Pennsylvania Rhode Island Utah	California Colorado Connecticut New York	Alaska Arkansas Georgia Idaho Kansas Louisiana Minnesota Missouri New Jersey New Mexico North Carolina Oklahoma South Carolina South Dakota Texas Washington West Virginia Wisconsin	Alabama <sup>a</sup> Arizona <sup>b</sup> Delaware <sup>c</sup> Florida <sup>d</sup> Iowa <sup>e</sup> Kentucky <sup>f</sup> Mississippi <sup>a</sup> Nebraska <sup>g</sup> Nevada <sup>h</sup> Tennessee <sup>i</sup> Virginia <sup>j</sup> Wyoming <sup>d</sup>

<sup>a</sup> State disenfranchises post-sentence for certain offenses.

<sup>b</sup> Arizona disenfranchises post-sentence for a second felony conviction.

<sup>c</sup> Delaware requires a five-year waiting period for certain offenses.

<sup>d</sup> State requires a five-year waiting period.

<sup>e</sup> Governor Tom Vilsack restored voting rights to individuals with former felony convictions via executive order in 2005. Governor Terry Branstad reversed this executive order in 2011.

<sup>f</sup> Governor Steve Beshear restored voting rights to individuals with former non-violent felony convictions via executive order in 2015.

<sup>g</sup> Governor Matt Bevin reversed this executive order shortly after taking office in 2015.

<sup>h</sup> Nebraska reduced its indefinite ban on voting to a two-year waiting period in 2005.

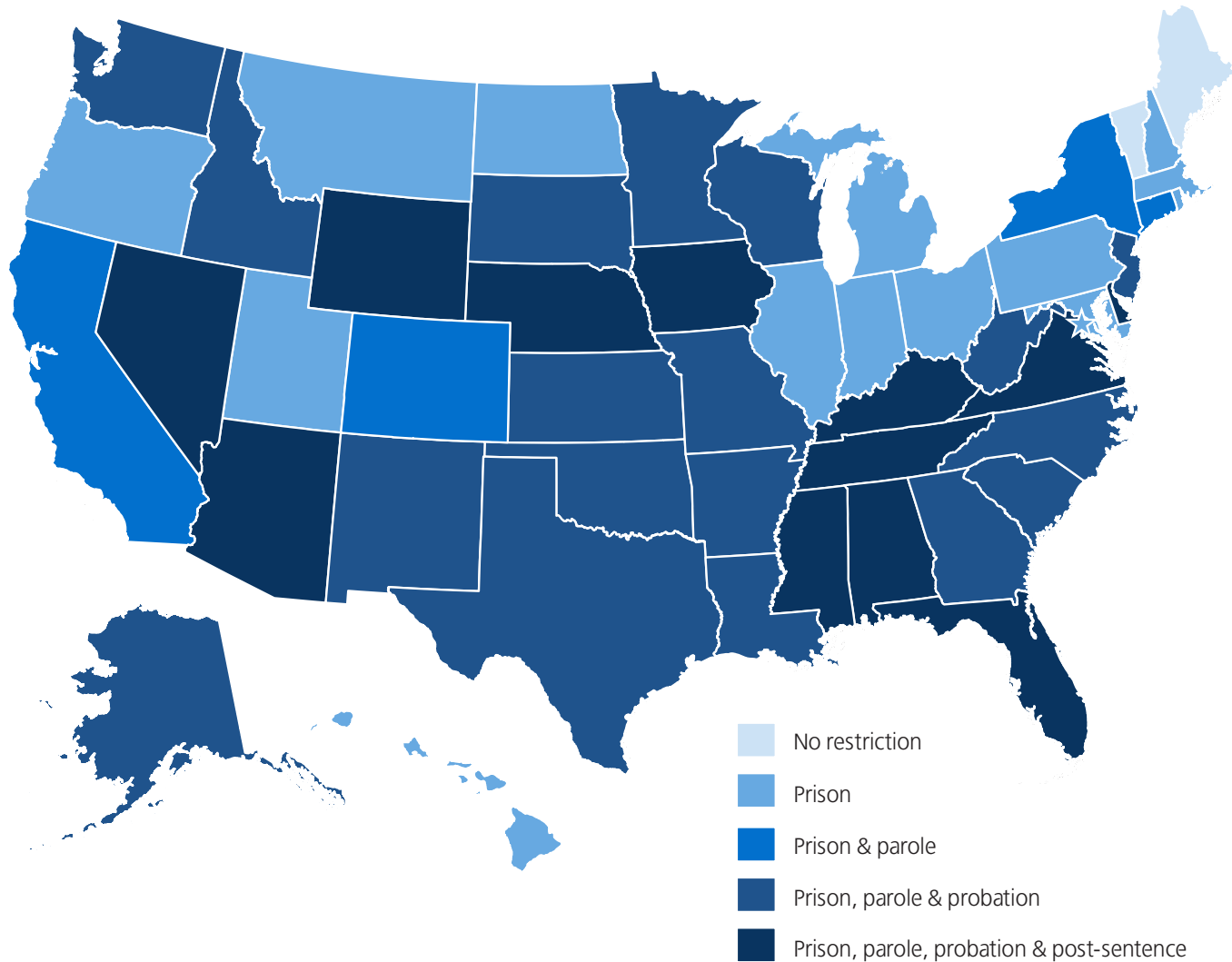
<sup>i</sup> Nevada disenfranchises post-sentence except for first-time non-violent offenses.

<sup>j</sup> Tennessee disenfranchises those convicted of felonies since 1981, in addition to those convicted of select offenses prior to 1973.

<sup>k</sup> Governor Terry McAuliffe restored voting rights to individuals with former felony convictions via executive order in 2016.

**Note:** Governor McAuliffe used his clemency power to restore voting rights to approximately 200,000 Virginians who have completed their sentences. However, Virginia's disenfranchisement laws remain unchanged, and the state constitution still disenfranchises individuals with felony convictions post-sentence. For individuals who complete their sentences during the rest of his term, the governor has stated that he plans to issue a similar order on a monthly basis to restore their voting rights post-sentence. Until the state constitution is amended, Virginia will continue to disenfranchise individuals with felony convictions post-sentence, and the restoration of their voting rights will depend on the governor's continued action.

Figure A. Felony Disenfranchisement Restrictions by State, 2016



Rights restoration practices vary widely across states and are subject to the turns of political climate and leadership, which has led some states to vacillate between reform and regression. In Florida, the clemency board voted in 2007 to automatically restore voting rights for many persons with non-violent felony convictions. This decision was reversed in 2011, and individuals must now wait at least five years after completing their sentence to apply for rights restoration. In Iowa, then-Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all persons who had completed their sentences, but this order was rescinded in 2011 by Governor Branstad.

Felony disenfranchisement policies have a disproportionate impact on communities of color. Black Americans of voting age are four times more likely to lose

their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally. In three states – Florida (23 percent), Kentucky (22 percent), and Virginia (20 percent) – more than one in five black adults is disenfranchised. In total, 2.2 million black citizens are banned from voting.<sup>6</sup>

## HISTORY OF FELONY DISENFRANCHISEMENT IN THE UNITED STATES

English colonists brought to North America the common law practice of “civil death,” a set of criminal penalties that included the revocation of voting rights. Early colonial laws limited the penalty of disenfranchisement to certain offenses related to voting or considered “egregious violations of the moral code.”<sup>7</sup>

After the American Revolution, states began codifying disenfranchisement provisions and expanding the penalty to all felony offenses.<sup>8</sup> Many states instituted felony disenfranchisement policies in the wake of the Civil War, and by 1869, 29 states had enacted such laws.<sup>9</sup> Elliot argues that the elimination of the property test as a voting qualification may help to explain the popularity of felony disenfranchisement policies, as they served as an alternate means for wealthy elites to constrict the political power of the lower classes.<sup>10</sup>

In the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to bar black male voters, targeting those offenses believed to be committed most frequently by the black population.<sup>11</sup> For example, party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft, and arson, but not for robbery or murder.<sup>12</sup> The author of Alabama’s disenfranchisement provision “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes,” resulting in a policy that would disenfranchise a man for beating his wife, but not for killing her.<sup>13</sup> Such policies would endure for over a century. While it is debatable whether felony disenfranchisement laws today are intended to reduce the political clout of communities of color, this is their undeniable effect.

## LEGAL STATUS

Disenfranchisement policies have met occasional legal challenges in the last century. In *Richardson v. Ramirez* 418 U.S. 24 (1974), three men from California who had served time for felony convictions sued for their right to vote, arguing that the state’s felony disenfranchisement policies denied them the right to equal protection of the laws under the U.S. Constitution. Under Section 1 of the Fourteenth Amendment, a state cannot restrict voting rights unless it shows a compelling state interest. Nevertheless, the U.S. Supreme Court upheld California’s felony disenfranchisement policies as constitutional, finding that Section 2 of the Fourteenth Amendment allows the denial of voting rights “for participation in rebellion, or other crime.” In the majority opinion, Justice Rehnquist found that Section 2 – which was arguably intended to protect the voting rights of freed slaves by sanctioning states that disenfranchised them – exempts from sanction disen-

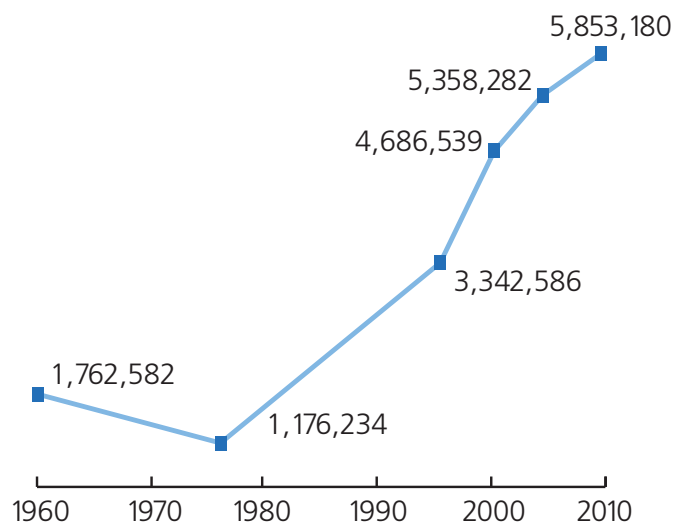
franchisement based on a felony conviction. By this logic, the Equal Protection Clause in the previous section could not have been intended to prohibit such disenfranchisement policies.

Critics argue that the language of the Fourteenth Amendment does not indicate that the exemptions established in Section 2 should prohibit the application of the Equal Protection Clause to voting rights cases.<sup>14</sup> Moreover, some contend that the Court’s interpretation of the Equal Protection Clause in *Richardson* is inconsistent with its previous decisions on citizenship and voting rights, in which the Court has found that the scope of the Equal Protection Clause “is not bound to the political theories of a particular era but draws much of its substance from changing social norms and evolving conceptions of equality.”<sup>15</sup> Therefore, even if the framers of the Fourteenth Amendment seemingly accepted felony disenfranchisement, our interpretation of the Equal Protection Clause today should allow for the ways in which our concept of equality may have evolved since 1868.

## GROWTH OF THE DISENFRANCHISED POPULATION

As states began expanding voting rights in the civil rights era, the disenfranchisement rate dropped between 1960 and 1976. Although reform efforts have been substantial in recent years, the overall disenfranchisement rate has increased dramatically in conjunction with the growing U.S. prison population, rising from 1.17 million in 1976 to 5.85 million by 2010.

**Figure B. Disenfranchised Population, 1960-2010**



## POLICY REFORMS IN RECENT YEARS

Public opinion surveys report that eight in ten U.S. residents support voting rights for citizens who have completed their sentence, and nearly two-thirds support voting rights for those on probation or parole.<sup>17</sup> In recent years, heightened public awareness of felony

disenfranchisement has resulted in successful state-level reform efforts, from legislative changes expanding voting rights to grassroots voter registration initiatives targeting people with felony convictions. Since 1997, 23 states have modified felony disenfranchisement provisions to expand voter eligibility.<sup>18</sup> As a result of successful reform efforts from 1997 to 2016, an estimated 940,000 citizens have regained the right to vote.

**Table 2. Felony Disenfranchisement Policy Changes, 1997-2016<sup>19,20</sup>**

State	Change
Alabama	Streamlined restoration for most persons upon completion of sentence (2003)
Connecticut	Restored voting rights to persons on probation (2001); repealed requirement to present proof of restoration in order to register (2006)
Delaware	Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses (2000); repealed five-year waiting period for most offenses (2013)
Florida	Simplified clemency process (2004, 2007); adopted requirement for county jail officials to assist with restoration (2006); reversed modification in clemency process (2011)
Hawaii	Codified data sharing procedures for removal and restoration process (2006)
Iowa	Restored voting rights post-sentence via executive order (2005); rescinded executive order (2011); simplified application process (2012)
Kentucky	Simplified restoration process (2001, 2008); restricted restoration process (2004, amended in 2008); restored voting rights post-sentence for non-violent felony convictions via executive order (2015); rescinded executive order (2015)
Louisiana	Required Department of Public Safety and Corrections to provide notification of rights restoration process (2008)
Maryland	Repealed lifetime disenfranchisement (2007); restored voting rights to persons on probation and parole (2016)
Nebraska	Repealed lifetime disenfranchisement, replaced with two-year waiting period (2005)
Nevada	Repealed five-year waiting period (2001); restored voting rights to persons convicted of first-time non-violent offenses (2003)
New Jersey	Established procedures requiring state criminal justice agencies to notify persons of their voting rights when released (2010)
New Mexico	Repealed lifetime disenfranchisement (2001); codified data sharing procedures, certificate of completion provided after sentence (2005)
New York	Required criminal justice agencies to provide voting rights information to persons who are again eligible to vote after a felony conviction (2010)
North Carolina	Required state agencies to establish a process whereby individuals will be notified of their rights (2007)
Rhode Island	Restored voting rights to persons on probation and parole (2006)
South Dakota	Established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions (2010); revoked voting rights for persons on felony probation (2012)
Tennessee	Streamlined restoration process for most persons upon completion of sentence (2006)
Texas	Repealed two-year waiting period to restore rights (1997)
Utah	Clarified state law pertaining to federal and out-of-state convictions (2006)
Virginia	Required notification of rights and restoration process by Department of Corrections (2000); streamlined restoration process (2002); decreased waiting period for non-violent offenses from three years to two years and established a 60-day deadline to process voting rights restoration applications (2010); eliminated waiting period and application for non-violent offenses (2013); restored voting rights post-sentence via executive order (2016)
Washington	Restored voting rights for persons who exit the criminal justice system but still have outstanding financial obligations (2009)
Wyoming	Restored voting rights to persons convicted of first-time non-violent offenses (2003); authorized automatic rights restoration for persons convicted of first-time non-violent felony offenses who receive a certificate of voting rights restoration (2015).

## DISENFRANCHISEMENT IN AN INTERNATIONAL CONTEXT

Although they are rooted in the “civil death” tradition of medieval Europe, disenfranchisement policies in the United States today are exceptional in their severity and the restriction of the voting rights of people who have completed their prison terms or were never incarcerated at all.<sup>21</sup> While only two states (Maine and Vermont) in the United States allow citizens to vote from prison, the European Court of Human Rights determined in 2005 that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections.<sup>22</sup> Indeed, almost half of European countries allow all incarcerated individuals to vote, facilitating voting within the prison or by absentee ballot.<sup>23</sup> In Canada, Israel, and South Africa, courts have ruled that any conviction-based restriction of voting rights is unconstitutional.

## IMPACT OF FELONY DISENFRANCHISEMENT IN THE UNITED STATES

The political impact of the unprecedented disenfranchisement rate in recent years is not insignificant. One study found that disenfranchisement policies likely affected the results of seven U.S. Senate races from 1970 to 1998 as well as the hotly contested 2000 Bush-Gore presidential election.<sup>24</sup> Even if disenfranchised voters in Florida alone had been permitted to vote, Bush’s narrow victory “would almost certainly have been reversed.”<sup>25</sup>

Disenfranchisement policies likely affected the results of **7 U.S. Senate races** from 1970 to 1998 as well as the **2000 Bush-Gore presidential election**.

Furthermore, restoring the vote to persons leaving prison could aid their transition back into community life. The revocation of voting rights compounds the isolation of formerly incarcerated individuals from their communities, and civic participation has been linked with lower recidivism rates. In one study, among individuals who had been arrested previously, 27 percent of non-voters were rearrested, compared with 12 percent of voters.<sup>26</sup> Although the limitations of the data available preclude proof of direct causation, it is clear that “voting appears to be part of a package of pro-social behavior that is linked to desistance from crime.”<sup>27</sup>

## CONCLUSION

The dramatic growth of the U.S. prison population in the last 40 years has led to record levels of disenfranchisement, with an estimated 5.85 million voters banned from the polls today. Disenfranchisement policies vary widely by state, ranging from no restrictions on voting to a lifetime ban upon conviction. Felony disenfranchisement has potentially affected the outcomes of U.S. elections, particularly as disenfranchisement policies disproportionately impact people of color. Nationwide, one in every 13 black adults cannot vote as the result of a felony conviction, and in three states – Florida, Kentucky, and Virginia – more than one in five black adults is disenfranchised.

Denying the right to vote to an entire class of citizens is deeply problematic to a democratic society and counterproductive to effective reentry. Fortunately, many states are reconsidering their archaic disenfranchisement policies, with 23 states enacting reforms since 1997, but there is still much to be done before the United States will resemble comparable nations in allowing the full democratic participation of its citizens.



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## State Felon Voting Laws



[View US Map of State Felon Voting Laws](#)

Two states allow felons to vote from prison while other states may permanently ban felons from voting even after being released from prison, parole, and probation, and having paid all their fines.

The chart below provides links to each state's laws on felon voting and places each US state within one of five categories ranging from harshest (may lose vote permanently) to least restrictive (may vote while in prison). Applications for re-enfranchisement and clemency have been provided for the states which require them.


Felon voting has not been regulated federally although some argue that Section 2 of the Voting Rights Act can be applied to felon disenfranchisement and that Congress has the authority to legislate felon voting in federal elections.

In addition, [10 states restrict some people with a misdemeanor conviction from voting.](#)

### I. State by State Chart of Felon Voting Laws:

	<b>May lose vote permanently:</b> <small>(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)</small>	<b>Vote restored after:</b> <b>Term of Incarceration + Parole + Probation</b>	<b>Vote restored after:</b> <b>Term of Incarceration + Parole</b>	<b>Vote restored after:</b> <b>Term of Incarceration</b>	<b>Unrestricted:</b> <small>(Convicted felons may vote by absentee ballot while in prison)</small>
	10 States	20 States	4 States	14 States & DC	2 States
1. <a href="#">Alabama</a>	✓ (more details)				
2. <a href="#">Alaska</a>		✓			
3. <a href="#">Arizona</a>	✓ (more details)				
4. <a href="#">Arkansas</a>		✓			
5. <a href="#">California</a>			✓		
6. <a href="#">Colorado</a>			✓		
7.					

	Connecticut					
8.	District of Columbia			✓		✓
9.	Delaware	✓ (more details)				
10.	Florida	✓ (more details)				
11.	Georgia		✓			
12.	Hawaii					✓
13.	Idaho		✓			
14.	Illinois					✓
15.	Indiana					✓
16.	Iowa	✓ (more details)				
17.	Kansas		✓			
18.	Kentucky	✓ (more details)				
19.	Louisiana		✓			
20.	Maine					✓
21.	Maryland				✓ (more details)	
22.	Massachusetts					✓
23.	Michigan					✓
24.	Minnesota		✓			
25.	Mississippi	✓ (more details)				
		<b>May lose vote permanently:</b>	<b>Vote restored after:</b>	<b>Vote restored after:</b>	<b>Vote restored after:</b>	<b>Unrestricted:</b>
		Click on the state to view its rules on felon disenfranchisement in PDF  format. Documents were sourced directly from state codes, acts, orders, constitutions, or other state election office documents	(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)	<b>Term of Incarceration + Parole + Probation</b>	<b>Term of Incarceration + Parole</b>	<b>Term of Incarceration</b>
26.	Missouri			✓ (more details)		
27.	Montana					✓
28.	Nebraska			✓ (more details)		
29.	Nevada	✓ (more details)				
30.	New Hampshire					✓
31.	New Jersey			✓		
32.	New Mexico			✓		
33.	New York				✓	
						(Convicted felons may vote by absentee ballot while in prison)

34.	<a href="#">North Carolina</a>		✓			
35.	<a href="#">North Dakota</a>				✓	
36.	<a href="#">Ohio</a>				✓	
37.	<a href="#">Oklahoma</a>		✓			
38.	<a href="#">Oregon</a>				✓	
39.	<a href="#">Pennsylvania</a>				✓	
40.	<a href="#">Rhode Island</a>				✓	
41.	<a href="#">South Carolina</a>		✓			
42.	<a href="#">South Dakota</a>		✓ (more details)			
43.	<a href="#">Tennessee</a>	✓ (more details)				
44.	<a href="#">Texas</a>		✓			
45.	<a href="#">Utah</a>				✓	
46.	<a href="#">Vermont</a>					✓
47.	<a href="#">Virginia</a>		✓ (more details)			
48.	<a href="#">Washington</a>		✓ (more details)			
49.	<a href="#">West Virginia</a>		✓			
50.	<a href="#">Wisconsin</a>		✓			
51.	<a href="#">Wyoming</a>	✓ (more details)				
<p>Click on the state to view its rules on felon disenfranchisement in PDF  format. Documents were sourced directly from state codes, acts, orders, constitutions, or other state election office documents</p>		<p><b>May lose vote permanently:</b></p> <p>(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)</p>	<p><b>Vote restored after:</b></p> <p><b>Term of Incarceration + Parole + Probation</b></p>	<p><b>Vote restored after:</b></p> <p><b>Term of Incarceration + Parole</b></p>	<p><b>Vote restored after:</b></p> <p><b>Term of Incarceration</b></p>	<p><b>Unrestricted:</b></p> <p>(Convicted felons may vote by absentee ballot while in prison)</p>

## II. Misdemeanor Convictions:

Anyone convicted of a misdemeanor in Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, South Carolina, and South Dakota may not vote while incarcerated. Kentucky and Missouri additionally require an executive pardon before allowing people convicted of certain misdemeanors ("high misdemeanors" in KY and "elections-related misdemeanors" in MO) from ever voting again. In Iowa, only people convicted of an "aggravated" misdemeanor cannot vote while incarcerated.

In West Virginia only people convicted of certain elections-related misdemeanors cannot vote while incarcerated - all others may vote by absentee ballot.

In the District of Columbia certain election, lobbying, and campaign finance-related crimes (that may be misdemeanors) are defined as felonies for the purpose of disenfranchisement under section 1-1001.02(7) of its code - all others with a misdemeanor conviction may vote by absentee ballot while incarcerated.

Individuals in the remaining 40 states may vote by absentee ballot while incarcerated for any misdemeanor.

### III. More details on State Felon Voting Policies:

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**Alabama** - Some people convicted of a felony may apply to have their vote restored immediately upon completion of their full sentence. Those convicted of certain felony offenses such as murder, rape, incest, sexual crime against children, and treason are not eligible for re-enfranchisement.


[Instructions for Voting Restoration, State of Alabama](#) (17 KB)  (accessed June 8, 2012)

[Alabama Code: Section 17-3-31](#) (57 KB)  (accessed June 8, 2012)

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**Arizona** - Automatic voting restoration upon completion of sentence and payment of all fines for first-time, single felony offenders. Second time felony offenders may apply for restoration with their county after completion of their sentence.

[Restoration of Civil Rights Frequently Asked Questions, Maricopa County Arizona Office of the Public Advocate](#) (86 KB)  (accessed Apr. 19, 2016)


[Instructions for Voting Restoration, State of Arizona](#) (65 KB)  (accessed June 8, 2012)

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**Delaware** - On April 16, 2013 the Delaware Senate passed the Hazel D. Plant Voter Restoration Act in a 15-6 vote. The act amended the Delaware Constitution by removing the five year waiting period for most felons to regain the ability to vote. People convicted of a felony (with some exceptions) are now automatically eligible to vote after serving their full sentence including incarceration, parole, and probation.

Exceptions: People convicted of murder or manslaughter, a felony offense against public administration involving bribery, improper influence or abuse of office, or a felony sexual offense, remain permanently disqualified from voting.

[Hazel D. Plant Voter Restoration Act](#) (174 KB)  (accessed Apr. 16, 2013)


[Delaware Constitution: Article V Section 2](#) (174 KB)  (accessed Feb. 12, 2014)

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**Florida** - On Mar. 9, 2011 the Florida rules of Executive Clemency were toughened. Automatic restoration of civil rights and the ability to vote will no longer be granted for any offenses. All individuals convicted of any felony will now have to apply for executive clemency after a five year waiting period. Individuals who are convicted, or who have previously been convicted, of certain felonies such as murder, assault, child abuse, drug trafficking, arson, etc. are subject to a seven year waiting period and a clemency board hearing to determine whether or not the ability to vote will be restored.

Prior to the Mar. 9, 2011 rule change some individuals convicted of nonviolent felonies were re-enfranchised automatically by the Clemency Board upon completion of their full sentence, including payment of fines and fees.




[Florida Rules of Executive Clemency](#) (81 KB)  (accessed June 8, 2012)

[Florida Clemency Application](#) (64 KB)  (accessed June 8, 2012)

According to the Florida Rights Restoration Coalition website (accessed Aug. 15, 2012), "If you were convicted of a felony in another state and had your civil rights restored before you became a Florida resident, you do not need to apply for RCR [restoration of civil rights] in Florida."

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**Iowa** - On Jan. 14, 2011, the Republican Governor of Iowa, Terry Branstad, issued executive order 70, rescinding a law allowing people convicted of a felony to automatically have their ability to vote restored after completing their sentences. The automatic voting restoration law had been instituted by former Democratic Governor Tom Vilsack's signing of executive order 42 in 2005. Felons in Iowa must now pay all outstanding monetary obligations to the court in addition to completing their sentence and period of parole or probation. People convicted of a felony may then apply for restoration of the ability to vote.

[Executive Order 70](#) (106 KB)  - Signed Jan. 14, 2011, Terry Branstad, Governor (R)  
[Iowa Streamlined Application for Resotration of Citizenship Rights](#) (481 KB)  (accessed Jan. 23, 2014)  
[Executive Order 42](#) (686 KB)  - Signed July 4, 2005, Thomas J. Vilsack, JD, Governor (D)

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**Kentucky** - On Nov. 24, 2015, Kentucky Gov. Steven L. Beshear issued executive order 2015-871 to automatically restore the right to vote to nonviolent felons who have completed probation, parole, and who have no outstanding court-ordered restitution payments. On Dec. 22, 2015, newly elected Gov. Matthew G. Bevin issued executive order 2015-052, rescinding the previous Governor's executive order.

As a result, people convicted of any felony in Kentucky must individually apply with the Governor to have their voting rights restored.

[Executive Order 2015-052](#) (210 KB)  - Signed Dec. 22, 2015, Matthew G. Bevin, Governor (R) Kentucky  
[Executive Order 2015-871](#) (136 KB)  - Signed Nov. 24, 2015, Steven L. Beshear, Governor (D)  
[Kentucky Application for Restoration of Civil Rights](#) (12 KB)  (accessed Nov. 25, 2015)

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**Maryland** - On Feb. 9, 2016, the Maryland General Assembly overrode the Governor's veto of SB 340 and restored the vote to all convicted felons immediately upon their release from prison.

Previously, convicted felons in Maryland had to complete all parole and probation before they were able to vote.




[Senate Bill 340](#)  (accessed Feb. 9, 2016)

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**Mississippi** - People convicted of a felony are barred from voting only if they have been convicted of one or more of the following specific felony crimes (in alphabetical order): "murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, bigamy, armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, carjacking, or larceny under lease or rental agreement"

To regain the ability to vote, an individual, after completion of his/her sentence, must go to his/her state representative and convince them to personally author a bill restoring the vote to that individual. Both houses of the legislature must then pass the bill. Re-enfranchisement can also be granted directly by the governor.

Individuals convicted of felonies in Mississippi remain eligible to vote for US President in federal elections.

[Mississippi Voter Registration Application](#) (50 KB)  (accessed June 8, 2012)  
[Mississippi Constitution: Article 12, Section 241](#) (50 KB)  (accessed June 8, 2012)  
[Mississippi Constitution: Article 12, Section 253](#) (6 KB)  (accessed June 8, 2012)


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**Missouri** - People convicted of "a felony or misdemeanor connected with the right of suffrage" are not permitted to vote.

[Missouri Code: Chapter 115, Section 115.133](#) (28 KB)  (accessed July 15, 2014)

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**Nebraska** - People convicted of a felony are automatically permitted to vote two years after completion of their sentence of incarceration and all parole and probation for all convictions except treason.

[Nebraska Code: Section 32-313](#) (16 KB)  (accessed June 8, 2012)


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**Nevada** - The vote is automatically restored to all people convicted of a nonviolent felony after the sentence completion. People convicted of a violent felony and all second- time felony offenders (whether violent or nonviolent) are not automatically re-enfranchised. Those individuals must seek restoration of their voting abilities in the court in which they were convicted.

[Nevada Code: Section NRS 213.09](#) (26 KB)  (accessed June 8, 2012)

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**South Dakota** - On Mar. 19, 2012, HB 1247 was enacted. The bill took the ability to vote away from convicted felons serving terms of probation. Previously, only people on parole or incarcerated were ineligible to register to vote. Now convicted felons must serve their full term of incarceration, parole, and probation before they may register to vote.

[South Dakota: HB 1247](#) (10 KB)  (accessed June 8, 2012)

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**Tennessee** - All people convicted of a felony since 1981, except for some serious felonies such as murder, rape, treason and voter fraud, may apply to the Board of Probation and Parole for voting restoration upon completion of their sentence.

People [convicted of a felony between Jan. 15, 1973, and May 17, 1981](#), are eligible to register to vote regardless of the crime committed. People [convicted of certain felonies prior to Jan. 15, 1973](#) may be barred from voting.

[Tennessee General Assembly, Public Chapter 860](#) (31 KB)  (accessed June 8, 2012)

[Tennessee Voting Restoration Application](#) (333 KB)  (accessed June 8, 2012)

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**Virginia** - On Apr. 18, 2014 Governor Terry McAuliffe announced changes to Virginia's restoration of rights process. Under the new rules, people convicted of non-violent felonies (including drug crimes) will have their ability to vote automatically restored providing that they:

1. have completed their term of incarceration and all probation or parole;
2. have paid all court costs, fines, and any restitution; and
3. have no pending felony charges.

On June 23, 2015 Governor McAuliffe announced that "outstanding court costs and fees will no longer prohibit an individual from having his or her rights restored."

On Apr. 22, 2016, Governor McAuliffe signed an order restoring the vote to all 200,000+ felons in Virginia, regardless of their charge, who had completed their term of incarceration and their term of probation or parole. The New York Times reports (Apr. 22, 2016, "Virginia Governor Restores Voting Rights to Felons") that the governor's action will not apply to felons released in the future, although the Governor's aides say he plans "to issue similar orders on a monthly basis to cover people as they are released."

On July 22, 2016 the Virginia Supreme Court overturned Gov. Terry McAuliffe's blanket restoration of voting rights for over 200,000 convicted felons. In a press release the Governor stated that he "will expeditiously sign nearly 13,000 individual orders to restore the fundamental rights of the citizens who have had their rights restored and registered to vote. And I will continue to sign orders until I have completed restoration for all 200,000 Virginians."

[Governor McAuliffe's Statement on the Virginia Supreme Court Decision](#) (146 KB)  (accessed July 26, 2016)

[Governor McAuliffe Restores Voting and Civil Rights to Over 200,000 Virginians](#) (146 KB)  (accessed Apr. 22, 2016)

[Governor McAuliffe Announces New Reforms to Restoration of Rights Process](#) (450 KB)  (accessed July 2, 2015)

[Governor McAuliffe's Letter Outlining His Policy Changes](#) (433 KB)  (accessed Apr. 21, 2014)

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**Washington** - All people with a felony conviction must re-register to vote after completion of their sentence and all parole and probation. However, the Secretary of State's website states that people who have "willfully failed to make three payments in a 12 month period" on any court imposed fines may have their ability to vote revoked by the prosecutor.

[Elections and Voting](#) (76 KB)  (accessed June 8, 2012)

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**Wyoming** - People convicted of a first-time nonviolent felony may apply to the Board of Parole for voting restoration five years after completion of their sentence, all others convicted of a felony must apply directly to the governor five years after completion of their sentence to have their voting ability restored.

[2003 Restoration of Voting Rights Bill](#) (123 KB)  (accessed June 8, 2012)

[Wyoming Restoration of Voting Rights Application](#) (10 KB)  (accessed June 8, 2012)

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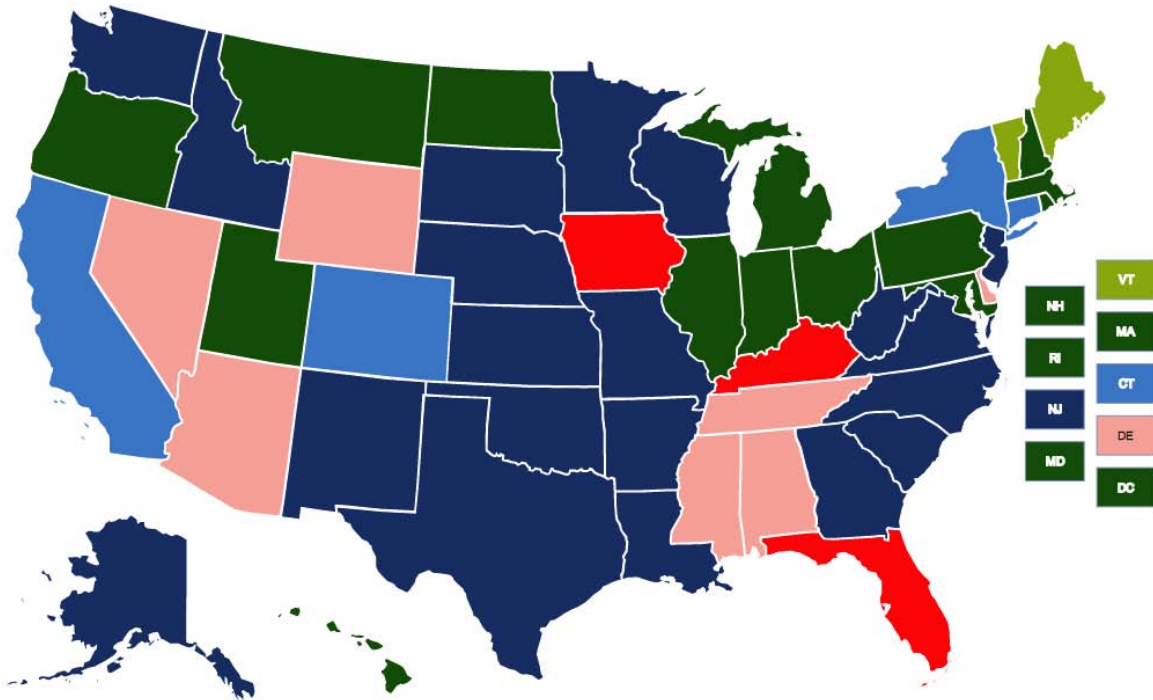
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## Criminal Disenfranchisement Laws Across the United States



- Permanent disenfranchisement for all people with felony convictions unless government approves individual rights restoration**  
 IA, FL, KY
- Permanent disenfranchisement for at least some people with criminal convictions, unless government approves restoration**  
 AL, AZ, DE, MS, NV, TN, WY
- Voting rights restored upon completion of sentence, including prison, parole, and probation**  
 AK, AR, GA, ID, KS, LA, MN, MO, NE\*, NJ, NM, NC, OK, SC, SD, TX, VA\*\*, WA, WV, WI
- Voting rights restored automatically after release from prison and discharge from parole (people on probation may vote)**  
 CA, CO, CT, NY
- Voting rights restored automatically after release from prison**  
 DC, HI, IL, IN, MA\*\*\*, MD, MI, MT, NH, ND, OH, OR, PA, RI, UT
- No disenfranchisement for people with criminal convictions**  
 ME, VT

States have a range of policies as to whether citizens with pending legal financial obligations (LFOs) relating to their conviction are eligible to vote, and also as to whether and in what circumstances misdemeanors are disenfranchising. These policies are not reflected in the above graphic.

\* Nebraska imposes a two-year waiting period after completion of sentence. Nebraska also disenfranchises persons with treason convictions until they have their civil rights individually restored.

\*\* Virginia's constitution imposes permanent disenfranchisement, but allows the governor to restore rights. The current governor's policy individually restores voting rights to those who have completed their sentences, prioritizing those with the earliest completed sentences and those who apply. See below for more details.

\*\*\* Massachusetts disenfranchises persons with convictions for "corrupt practices in respect to elections" until they have their civil rights individually restored.



*Permanent disenfranchisement for all people with felony convictions, unless government approves individual rights restoration*

Iowa

Florida

Kentucky



*Permanent disenfranchisement for at least some people with criminal convictions, unless government approves individual rights restoration*

**Alabama:** People with certain felony convictions involving moral turpitude can apply to have their voting rights restored upon completion of sentence and payment of fines and fees; people convicted of some specific crimes - including murder, rape, treason, and crimes involving children - are permanently barred from voting.

**Arizona:** People convicted of one felony can have their voting rights restored upon completion of sentence, including all prison, parole, and probation terms and payment of legal financial obligations. People convicted of two or more felonies are permanently barred from voting unless pardoned or restored by a judge.

**Delaware:** People with most felony convictions have their voting rights restored automatically after completion of sentence, including prison, parole, and probation. People who are convicted of certain disqualifying felonies - including murder, bribery, and sexual offenses - are permanently disenfranchised. People convicted of election offenses are disenfranchised for 10 years following their sentences.

**Massachusetts:** See below for Massachusetts.

**Mississippi:** People who are convicted of specified disqualifying offenses are permanently disenfranchised.

**Nebraska:** See below for Nebraska.

**Nevada:** Voting rights automatically restored to people completing sentences for most first-time felony convictions. People with certain felony convictions - including those defined as "category A" felonies - or with multiple felony convictions arising from separate instances are permanently disenfranchised unless they are pardoned or granted a restoration of civil rights from a court.

**Tennessee:** Tennessee has one of the most complex disenfranchisement policies in the country. People completing sentences for some felony convictions, who have paid all restitution and court costs, and are current with child support payments may apply for rights restoration. Individuals with certain types of convictions, including rape, murder, and bribery, among others, are permanently disenfranchised.

**Wyoming:** Voting rights automatically restored after five years to people who complete sentences for first-time, non-violent felony convictions in 2016 or after. Applications are required from people who completed sentences for first-time, non-violent felony convictions before 2016, and from people convicted outside Wyoming, or under federal law.

People with violent convictions or with multiple felony convictions are permanently disenfranchised, unless pardoned by the governor.

● *Voting rights restored upon completion of sentence, including prison, parole and probation*

**Alaska**

**Arkansas**

**Georgia**

**Idaho**

**Kansas**

**Louisiana**

**Minnesota**

**Missouri**

**Nebraska:** In Nebraska, voting rights are restored two years after the completion of sentence. Nebraska disenfranchises persons with treason convictions until they have their civil rights individually restored.

**New Jersey**

**New Mexico**

**North Carolina**

**Oklahoma:** In Oklahoma, citizens are disenfranchised for the time period set out in their original sentence. Voting rights are restored once this time period has elapsed.

**South Carolina**


**Texas**

**Virginia:** Virginia is one of four states whose constitution permanently disenfranchises citizens with past felony convictions, but grants the state's governor the authority to restore voting rights. After a July 2016 Virginia Supreme Court decision invalidated an executive order restoring voting rights to over 200,000 citizens, the state's governor announced his plan to issue individual restorations for citizens who have completed the terms of their sentence, including probation and parole.

**Washington**

**West Virginia**

**Wisconsin**


 *Voting rights restored automatically after release from prison and discharge from parole (people on probation may vote)*

**California**

**Colorado**

**Connecticut**

**New York:** People on parole who have no more than one felony conviction may have their voting rights restored by a Certificate of Relief from Disabilities or a Certificate of Good Conduct.

 *Voting rights restored automatically after release from prison*

**Hawaii**

**Illinois**

**Indiana**

**Maryland:** As of March 10th, 2016, voting rights restored automatically after release from prison.

**Massachusetts:** People with convictions for "corrupt practices in respect to elections" are permanently disenfranchised.

**Michigan**

**Montana**

**New Hampshire**

**North Dakota**


**Ohio**

**Oregon**

**Pennsylvania**

**Rhode Island**

**Utah**

 *No disenfranchisement for people with criminal convictions*

**Maine**

**Vermont**

# 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



# THE SENTENCING PROJECT

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# TABLE OF CONTENTS

<b>Overview</b>	<b>3</b>
<b>Disenfranchisement in 2016</b>	<b>6</b>
<b>Recent Changes</b>	<b>12</b>
<b>Disenfranchisement and Restoration of Civil Rights</b>	<b>13</b>
<b>Summary</b>	<b>14</b>
<b>References</b>	<b>17</b>





# OVERVIEW

The United States remains one of the world's strictest nations when it comes to denying the right to vote to citizens convicted of crimes. An estimated 6.1 million Americans are forbidden to vote because of "felony disenfranchisement," or laws restricting voting rights for those convicted of felony-level crimes.

In this election year, the question of voting restrictions is once again receiving great public attention. This report is intended to update and expand our previous work on the scope and distribution of felony disenfranchisement in the United States (see Uggen, Shannon, and Manza 2012; Uggen and Manza 2002; Manza and Uggen 2006). The numbers presented here represent our best assessment of the state of felony disenfranchisement as of the November 2016 election.

Our key findings include the following:

- As of 2016, an estimated 6.1 million people are disenfranchised due to a felony conviction, a figure that has escalated dramatically in recent decades as the population under criminal justice supervision has increased. There were an estimated 1.17 million people disenfranchised in 1976, 3.34 million in 1996, and 5.85 million in 2010.
- Approximately 2.5 percent of the total U.S. voting age population – 1 of every 40 adults – is disenfranchised due to a current or previous felony conviction.
- Individuals who have completed their sentences in the twelve states that disenfranchise people post-sentence make up over 50 percent of the entire disenfranchised population, totaling almost 3.1 million people.
- Rates of disenfranchisement vary dramatically by state due to broad variations in voting prohibitions. In six states – Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia – more than 7 percent of the adult population is disenfranchised.
- The state of Florida alone accounts for more than a quarter (27 percent) of the disenfranchised population nationally, and its nearly 1.5 million individuals disenfranchised post-sentence account for nearly half (48 percent) of the national total.
- One in 13 African Americans of voting age is disenfranchised, a rate more than four times greater than that of non-African Americans. Over 7.4 percent of the adult African American population is disenfranchised compared to 1.8 percent of the non-African American population.
- African American disenfranchisement rates also vary significantly by state. In four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent) – more than one in five African Americans is disenfranchised.

## STATE DISENFRANCHISEMENT LAW

To compile estimates of disenfranchised populations, we take into account new U.S. Census data on voting age populations and recent changes in state-level disenfranchisement policies, including those reported in *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010* (Porter 2010). For example, in 2007, Maryland repealed its lifetime voting ban that had applied to some individuals post-sentence, and in 2016 eliminated the voting ban for persons on probation or parole.

Other states have revised their waiting periods and streamlined the process for regaining civil rights. As shown in the following table, Maine and Vermont remain the only states that allow persons in prison to vote. Thirty U.S. states deny voting rights to felony probationers, and thirty-four states disenfranchise parolees. In the most extreme cases, twelve states continue to deny voting rights to some or all of the individuals who have successfully fulfilled their prison, parole, or probation sentences (for details, see notes to Table 1).

**Table 1. Summary of State Felony Disfranchisement Restrictions in 2016**

No restriction (2)	Prison only (14)	Prison & parole (4)	Prison, parole, & probation (18)	Prison, parole, probation, & post-sentence (12)
Maine	Hawaii	California <sup>3</sup>	Alaska	Alabama <sup>1</sup>
Vermont	Illinois	Colorado	Arkansas	Arizona <sup>2</sup>
	Indiana	Connecticut	Georgia	Delaware <sup>4</sup>
	Massachusetts	New York	Idaho	Florida
	Maryland <sup>6</sup>		Kansas	Iowa <sup>5</sup>
	Michigan		Louisiana	Kentucky
	Montana		Minnesota	Mississippi
	New Hampshire		Missouri	Nebraska <sup>7</sup>
	North Dakota		New Jersey	Nevada <sup>8</sup>
	Ohio		New Mexico	Tennessee <sup>9</sup>
	Oregon		North Carolina	Virginia <sup>12</sup>
	Pennsylvania		Oklahoma	Wyoming <sup>13</sup>
	Rhode Island <sup>10</sup>		South Carolina	
	Utah		South Dakota <sup>11</sup>	
			Texas	
			Washington	
			West Virginia	
			Wisconsin	

Notes:

- Alabama - In 2016, legislation eased the rights restoration process after completion of sentence for persons not convicted of a crime of "moral turpitude."
- Arizona - Permanently disenfranchises persons with two or more felony convictions.
- California - In 2016, legislation restored voting rights to people convicted of a felony offense housed in jail, but not in prison.
- Delaware - The 2013 Hazel D. Plant Voter Restoration Act removed the five-year waiting period. People convicted of a felony, with some exceptions, are now eligible to vote upon completion of sentence and supervision. People who are convicted of certain disqualifying felonies - including murder, bribery, and sexual offenses - are permanently disenfranchised.
- Iowa - Governor Tom Vilsack restored voting rights to individuals who had completed their sentences via executive order on July 4, 2005. Governor Terry Branstad reversed this executive order on January 14, 2011 returning to permanent disenfranchisement for persons released from supervision after that date.
- Maryland - Eliminated the ban on voting for persons on probation or parole supervision in 2016.
- Nebraska - Reduced its indefinite ban on post-sentence voting to a two-year waiting period in 2005.
- Nevada - Disenfranchises people convicted of one or more violent felonies and people convicted of two or more felonies of any type.
- Tennessee - Disenfranchises those convicted of certain felonies since 1981, in addition to those convicted of select crimes prior to 1973. Others must apply to Board of Probation and Parole for restoration.
- Rhode Island - A 2006 ballot referendum eliminated the ban on voting for persons on probation or parole supervision.
- South Dakota - State began disenfranchising people on felony probation in 2012.
- Virginia - When the Virginia Supreme Court overturned Governor Terry McAuliffe's blanket restoration of voting rights for people who had completed their sentences, he individually approved voting rights for 12,832 individuals in August, 2016.
- Wyoming - Voting rights restored after five years to people who complete sentences for first-time, non-violent felony convictions in 2016 or after.

## 4 The Sentencing Project

## METHODOLOGY

We estimated the number of people released from prison and those who have completed their terms of parole or probation based on demographic life tables for each state, as described in Uggen, Manza, and Thompson (2006) and Shannon et al. (2011). We modeled each state's disenfranchisement rate in accordance with its distinctive felony voting policies, as described in Table 1. For example, some states impose disenfranchisement for five years after release from supervision, some states only disenfranchise those convicted of multiple felonies, and some only disenfranchise those convicted of violent offenses.<sup>1</sup>

In brief, we compiled demographic life tables for the period 1948-2016 to determine the number of released individuals lost to recidivism (and therefore already included in our annual head counts) and to mortality each year. This allows us to estimate the number of individuals who have completed their sentences in a given state and year who are no longer under correctional supervision yet remain disenfranchised. Because data on correctional populations are currently available only through year-end

2014, we extended state-specific trends from 2013-2014 to obtain estimates for 2016. Our duration-specific recidivism rate estimates are derived from large-scale national studies of recidivism for prison releasees and probationers. Based on these studies, our models assume that most released individuals will be re-incarcerated (66 percent) and a smaller percentage of those on probation or in jail (57 percent) will cycle back through the criminal justice system. We also assume a substantially higher mortality rate for people convicted of felony offenses relative to the rest of the population. Both recidivists and deaths are removed from the post-sentence pool to avoid overestimating the number of individuals in the population who have completed their sentences. Each release cohort is thus reduced each successive year – at a level commensurate with the age-adjusted hazard rate for mortality and duration-adjusted hazard rate for recidivism – and added to each new cohort of releases. Overall, we produced more than 200 spreadsheets covering 68 years of data.<sup>2</sup> These provide the figures needed to compile disenfranchisement rate estimates that are keyed to the appropriate correctional populations for each state and year.

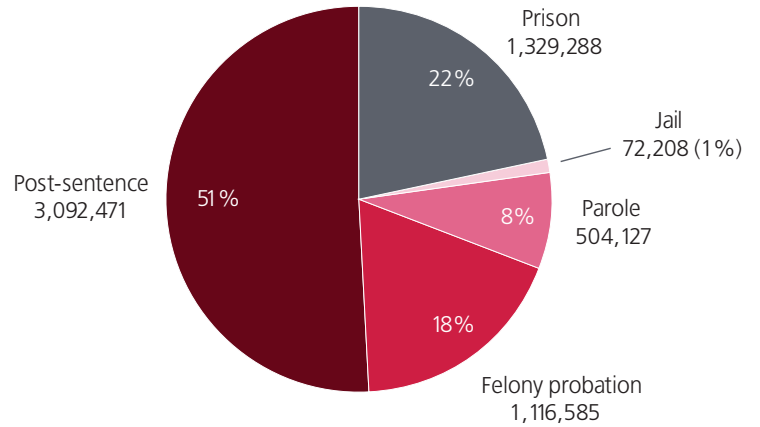
1 In Florida, some can avoid a formal felony conviction by successfully completing a period of probation. According to the Florida Department of Law Enforcement, as much as 40 percent of the total probation population holds this “adjudication withheld” status. According to reports by the Bureau of Justice Statistics, only about 50 percent of Florida probationers successfully complete probation. In light of this, we reduce the annual current disenfranchised felony probation numbers by 40 percent and individuals disenfranchised post-sentence by 20 percent (.4\*.5=.20) in each year in the life tables.

2 Our data sources include numerous United States Department of Justice (DOJ) publications, including the annual *Sourcebook of Criminal Justice Statistics, Probation and Parole in the United States*, as well as the *Prisoners and Jail Inmates at Midyear* series. Where available, we used data from state departments of corrections rather than national sources, as in the case of Minnesota. For early years, we also referenced *National Prisoner Statistics*, and *Race of Prisoners Admitted to State and Federal Institutions, 1926-1986*. We determined the median age of released prisoners based on annual data from the National Corrections Reporting Program. The recidivism rate we use to decrease the releasee population each year is based upon the Bureau of Justice Statistics (1989) “Recidivism of Prisoners Released in 1983” study and “Recidivism of Felons on Probation 1986-1989.” For those in prison or on parole, we use a reincarceration rate of 18.6% at one year, 32.8% at two years, 41.4% at 3 years. Although rearrest rates have increased since 1983, the overall reconviction and reincarceration rates used for this study are much more stable (Langan and Levin 2002, p. 11). For those on probation or in jail, the corresponding three-year failure rate is 36%, meaning that individuals are in prison or jail and therefore counted in a different population. To extend the analysis to subsequent years, we calculated a trend line using the ratio of increases provided by Hoffman and Stone-Meierhoefer (1980) on federal prisoners. By year 10, we estimate a 59.4% recidivism rate among released prisoners and parolees, which increases to 65.9% by year 62 (the longest observation period in this analysis). Because these estimates are higher than most long-term recidivism studies, they are likely to yield conservative estimates of the ex-felon population. We apply the same trend line to the 3-year probation and jail recidivism rate of 36%; by year 62, the recidivism rate is 57.3%. 1948 is the earliest year for which detailed data are available on releases from supervision.

# DISENFRANCHISEMENT IN 2016

Figure 1 shows the distribution of the 6.1 million disenfranchised individuals across correctional populations. People currently in prison and jail now represent less than one-fourth (23 percent) of those disenfranchised. The majority (77 percent) are living in their communities, having fully completed their sentences or remaining supervised while on probation or parole.

Figure 1. Disenfranchisement Distribution Across Correctional Populations, 2016



## VARIATION ACROSS STATES

Due to differences in state laws and rates of criminal punishment, states vary widely in the practice of disen-

Figure 2. Total Felony Disenfranchisement Rates, 2016

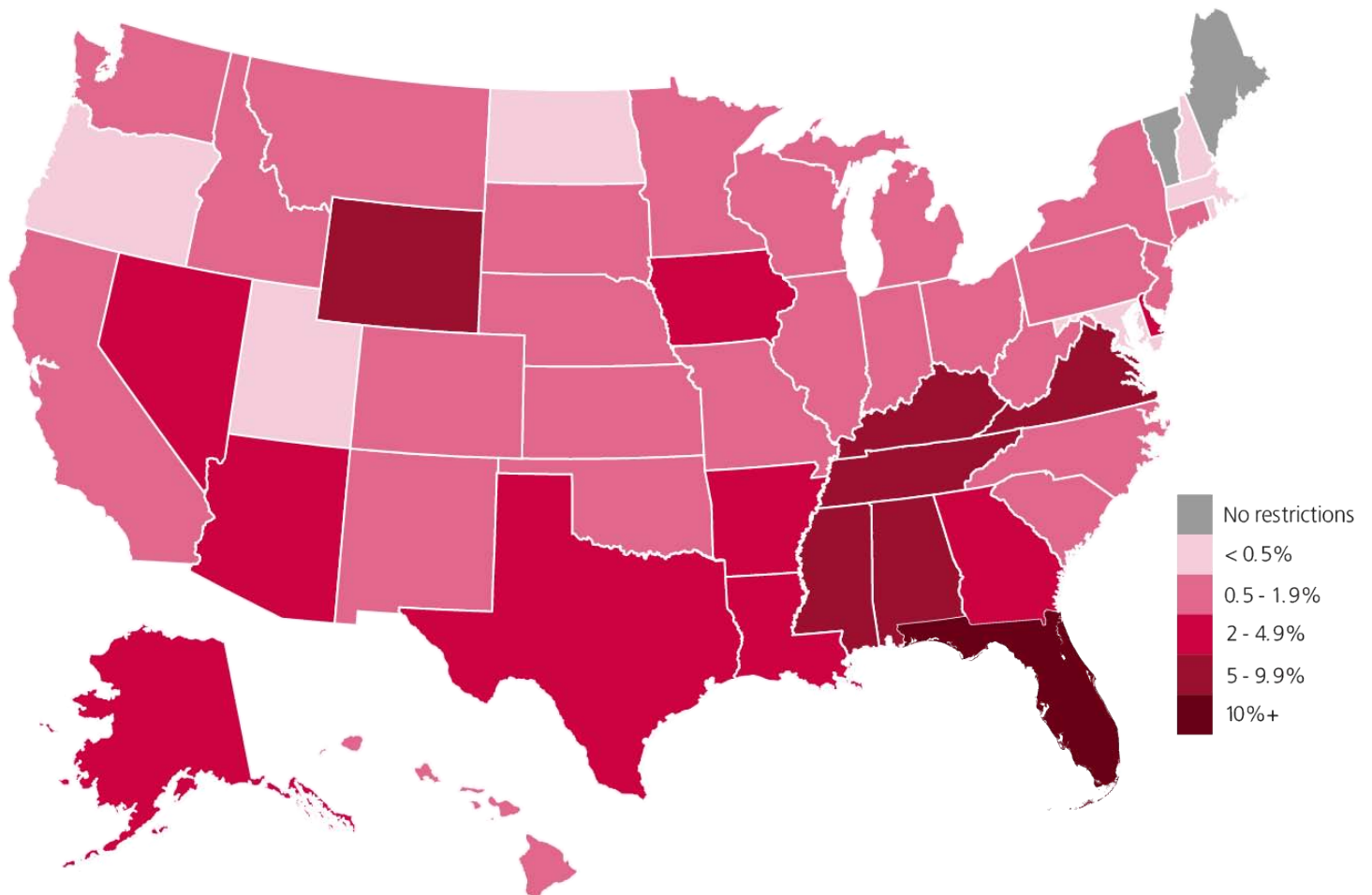
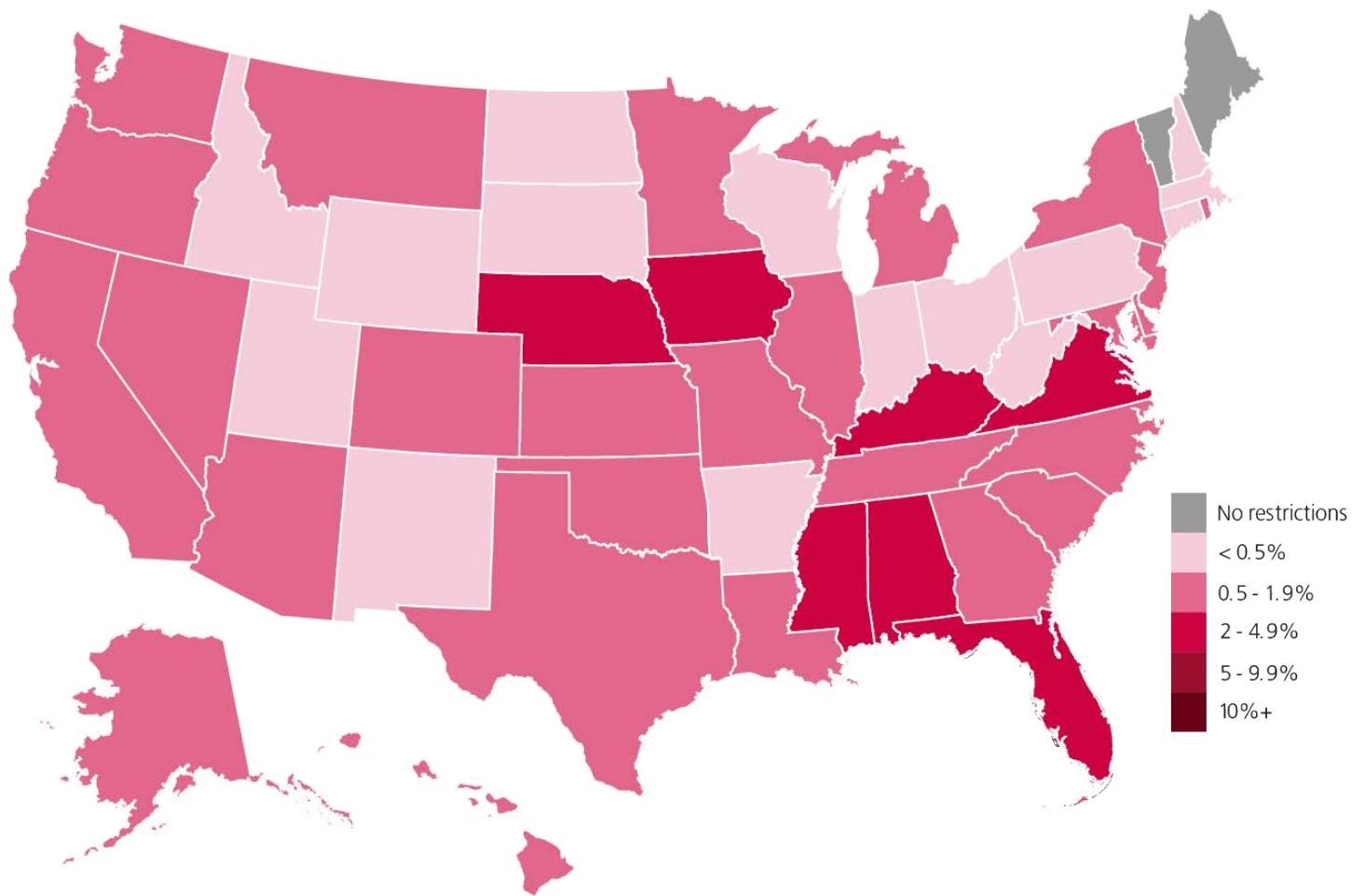


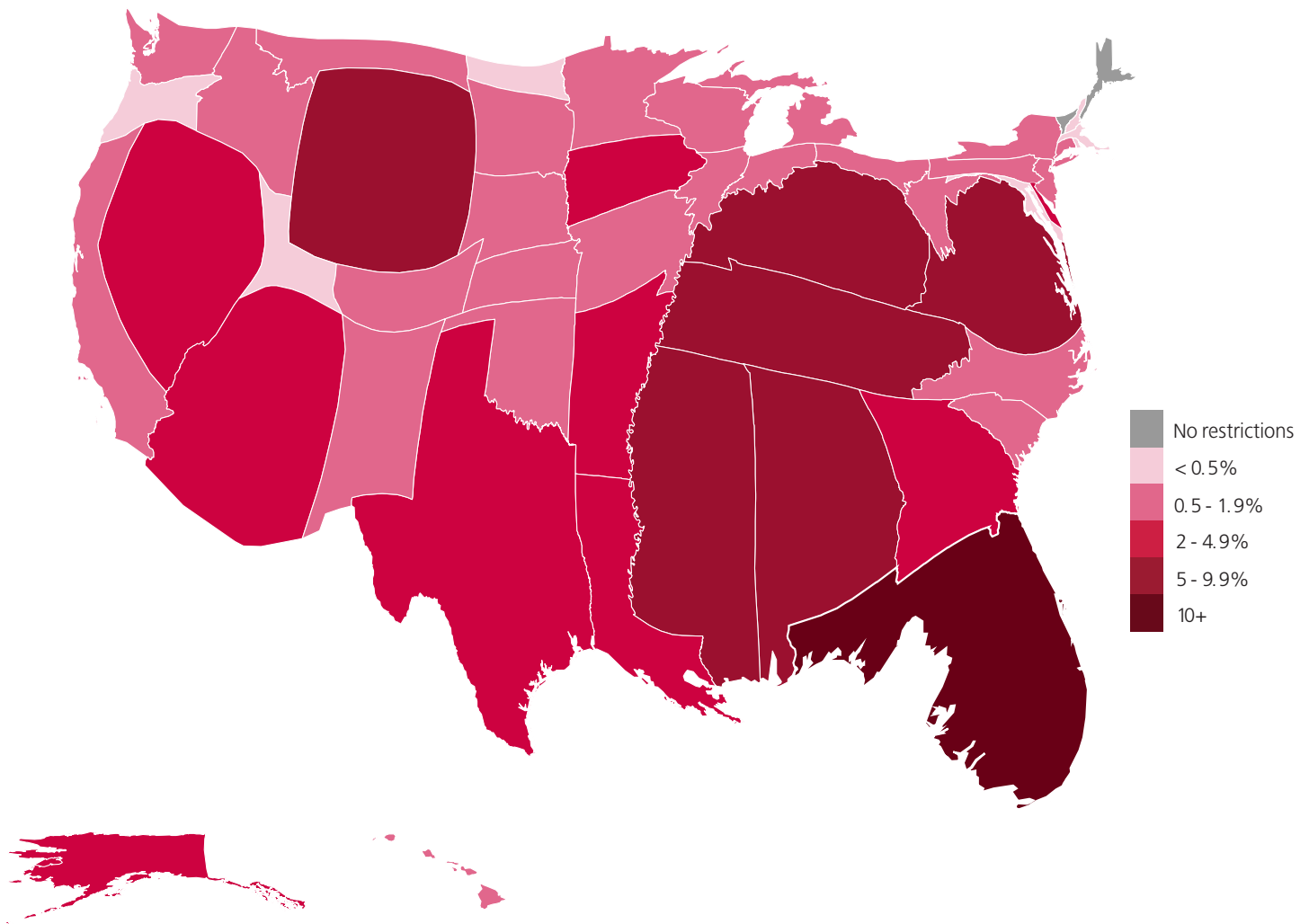
Figure 3. Total Felony Disenfranchisement Rates, 1980



franchisement. These maps and tables represent the disenfranchised population as a percentage of the adult voting age population in each state. As noted, we estimate that 6.1 million Americans are currently ineligible to vote by state law. As Figure 2 and the statistics in Table 3 show, state-level disenfranchisement rates in 2016 varied from less than .5 percent in Massachusetts, Maryland, New Hampshire, North Dakota, Oregon, Rhode Island, and Utah (and zero in Maine and Vermont) to more than 7 percent in Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia.

These figures show significant growth in recent decades, even as many states began to dismantle voting restrictions for formerly disenfranchised populations. Figure 3 displays disenfranchisement rates in 1980, retaining the same scale as in Figure 2. At that time, far more of the nation had disenfranchisement rates below .5 percent and no state disenfranchised more than 5 percent of its adult citizens.

Figure 4. Cartogram of Total Disenfranchisement Rates by State, 2016



The cartogram in Figure 4 provides another way to visualize the current state of American disenfranchisement, highlighting the large regional differences in felony disenfranchisement laws and criminal punishment. Cartograms distort the land area on the map according to an alternative statistic, in this case the total felony disenfranchisement rate. Southeastern states that disenfranchise hundreds of thousands of people who have completed their sentences, such as Florida, Kentucky, and Virginia, appear bloated in the cartogram. In contrast, the many Northeastern and Midwestern states that only disenfranchise individuals currently in prison shrivel in size. This distorted map thus provides a clear visual representation of the great range of differences in the scope and impact of felony disenfranchisement across the 50 states.

## TRENDS OVER TIME

Figure 5 illustrates the historical trend in U.S. disenfranchisement, showing growth in the disenfranchised population for selected years from 1960 to 2016. The number disenfranchised dropped from approximately 1.8 million to 1.2 million between 1960 and 1976, as states expanded voting rights in the civil rights era. Many states have continued to pare back their disenfranchisement provisions since the 1970s (see Behrens, Uggen, and Manza, 2003; Manza and Uggen, 2006). Nevertheless, the total number banned from voting continued to rise with the expansion in U.S. correctional populations. The total disenfranchised population rose from 3.3 million in 1996 to 4.7 million in 2000, to 5.4 million in 2004, to 5.9 million in 2010. Today, we estimate that 6.1 million Americans are disenfranchised by virtue of a felony conviction.

Figure 5. Number Disenfranchised for Selected Years, 1960-2016

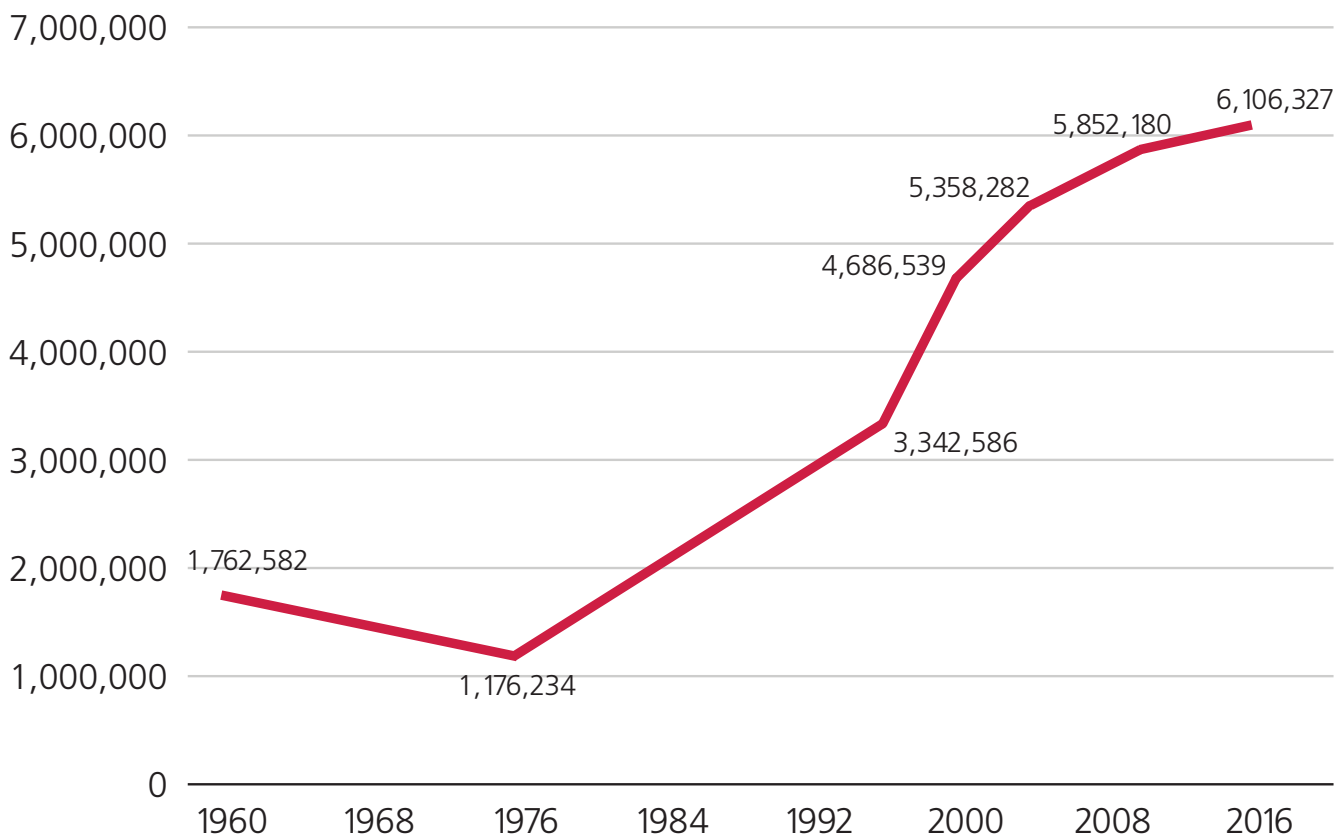
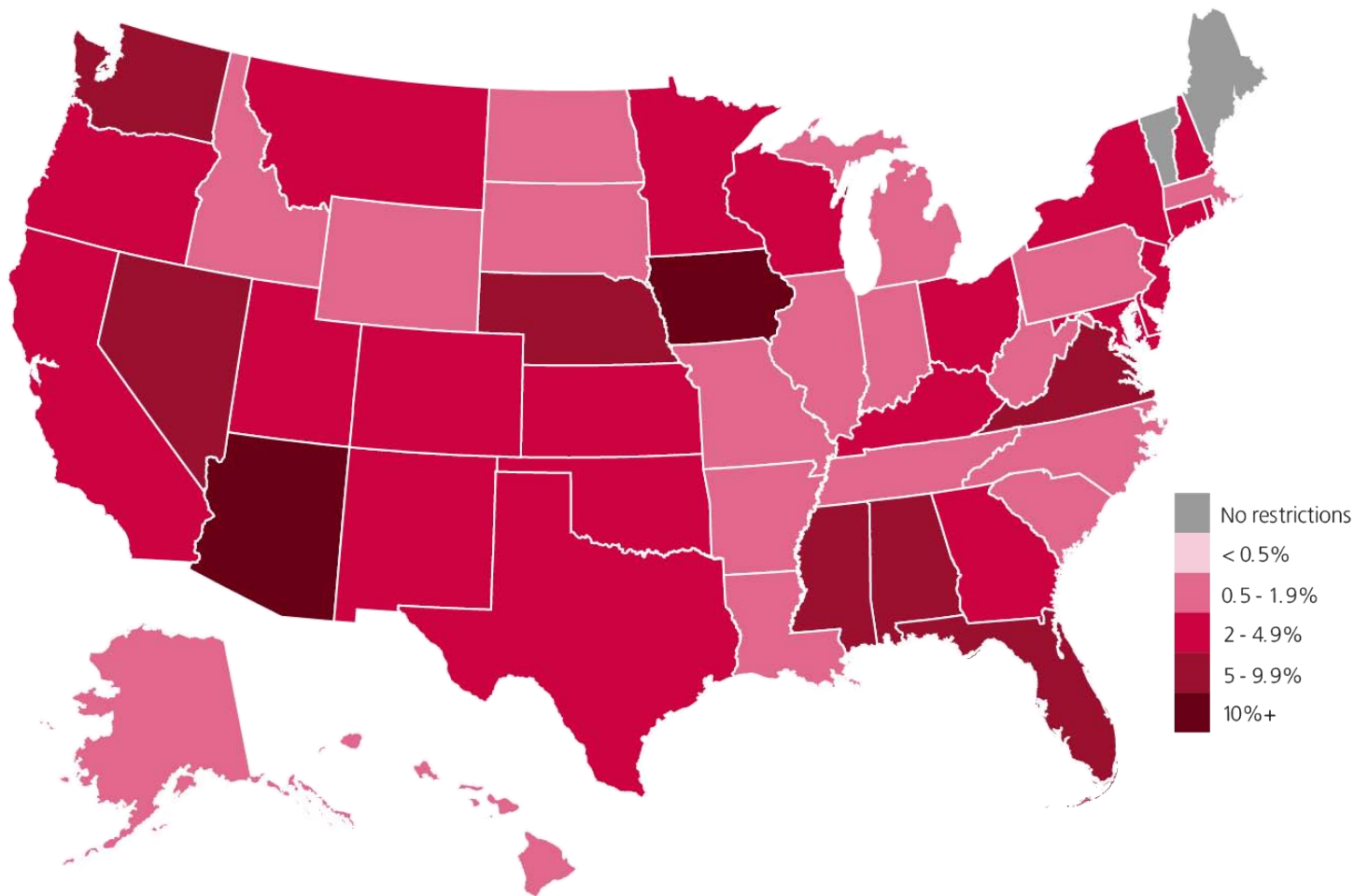


Figure 6. African American Felony Disenfranchisement Rates, 1980



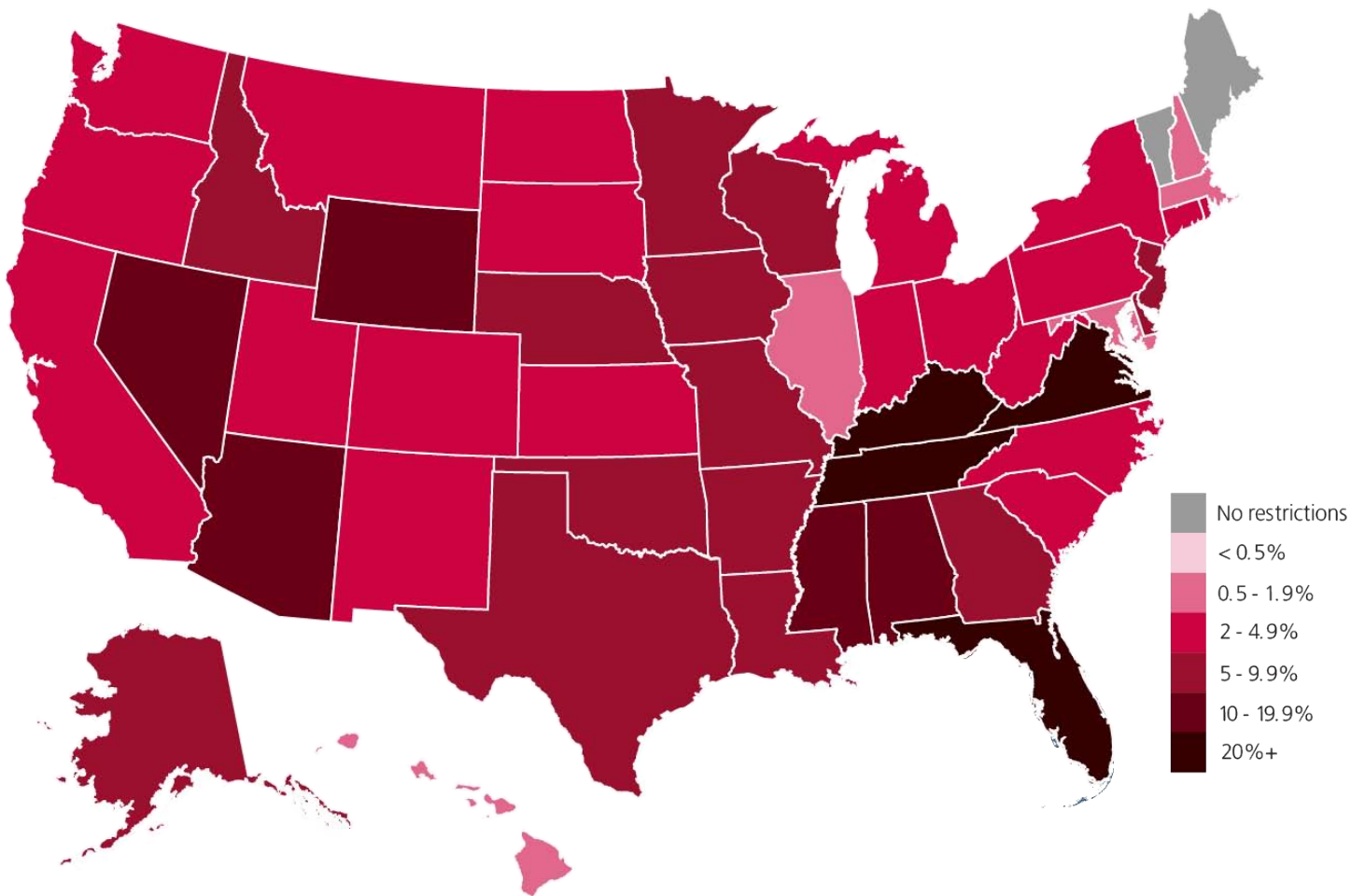
## VARIATION BY RACE

Disenfranchisement rates vary tremendously across racial and ethnic groups, such that felony disenfranchisement provisions have an outsized impact on communities of color. Race and ethnicity have not been consistently collected or reported in the data sources used to compile our estimates, so our ability to construct race-specific estimates is limited. This is especially problematic for Latinos, who now constitute a significant portion

of criminal justice populations. Nevertheless, we used the most recent data available from the Bureau of Justice Statistics to develop a complete set of state-specific disenfranchisement estimates for the African American voting age population, as shown in Figures 6 and 7. We first show a map of the African American disenfranchisement rate for 1980, and then show how the picture looks today. By 1980, the African American disenfranchisement rate already exceeded 10 percent of the adult population in states such as Arizona and Iowa, as shown in Figure 6. The figure also



Figure 7. African American Felony Disenfranchisement Rates, 2016



indicates that several Southeastern states disenfranchised more than 5 percent of their adult African American populations at that time.

Figure 7 shows the corresponding rates for 2016, again retaining a common scale and shading to keep the map consistent with the 1980 map in Figure 6. African American disenfranchisement rates in Kentucky, Tennessee, and Virginia now exceed 20 percent of the adult voting age population. Whereas only 9 states disenfranchised at least 5 percent of their African American adult citizens in 1980, 23 states do so today.

# RECENT CHANGES

The rate of total individuals disenfranchised in 2016 (2.47 percent) is quite similar to the 2010 figures reported by Uggen et al. for 2012 (2.50 percent) and Manza and Uggen in 2006 (2.42 percent), despite state changes in disenfranchisement policy and population growth. Our estimates for African American disenfranchisement in 2016, however, are slightly lower than those for 2010 – 7.44 percent versus 7.66 percent, and for 2004, 8.25 percent. For these estimates, we used the most inclusive denominator for the African American voting age population available from the U.S. Census to ensure that we do not overestimate the disenfranchisement rate for this population. While growth in the baseline population for African Americans contributes to the decline in the disenfranchisement rate from previous estimates, the lion's share of the difference is due to an important refinement in our estimation procedures. For 2016 and for 2010, we used race-specific recidivism rates (resulting in a higher rate for African Americans) that more accurately reflect current scholarship on recidivism. This results in a higher rate of attrition in our life tables, but produces a more conservative and, we believe, more accurate portrait of the number of disenfranchised African Americans. Though lower than in 2004, the 7.44 percent rate of disenfranchisement for African Americans remains four times greater the non-African American rate of 1.78 percent.

Given the size of Florida's disenfranchised population, we also note our estimation procedure for this state. Based on a state-specific recidivism report in 1999, our 2004 estimates included much higher recidivism rates for African Americans in Florida (up to 88% lifetime). A 2010 report from the Florida Department of Corrections shows that rates of recidivism for African Americans are now more closely in line with the national rates we apply to other states. In light of this more recent evidence, we begin applying our national rate of recidivism for African Americans (up to 73% lifetime) to Florida's African American population with prior felony convictions from 2005 onward.

In 2016, more people were disenfranchised in Florida than in any other state and Florida's disenfranchisement rate remains highest among the 50 states.

As Table 1 noted, there have been several significant changes in state disenfranchisement policies over the past decade. Most notably, Delaware removed its five-year waiting period for most offenses in 2013 and South Dakota began disenfranchising felony probationers in 2012. Governor Tom Vilsack of Iowa re-enfranchised all state residents who had completed their sentences by executive order on July 4, 2005 – though that order was then reversed by his successor, Governor Terry Branstad, in January 2011. In 2016 the Alabama legislature eased the rights restoration process after completion of sentence for persons not convicted of a crime of “moral turpitude.” Other states have also reduced disenfranchisement through streamlining restoration of rights or re-enfranchising certain groups of individuals with felony convictions. For example, both Rhode Island and Maryland now restrict voting rights only for those in prison as opposed to all individuals currently serving a felony sentence, including those on probation and parole. And in 2016, California restored voting rights to people convicted of a felony offense housed in jail, but not in prison.

Our intent here is to provide a portrait of disenfranchisement that would be accurate as of the 2016 November election, though we stress that all data reported here are estimates rather than head counts.

# DISENFRANCHISEMENT AND RESTORATION OF CIVIL RIGHTS

States typically provide some limited mechanism for disenfranchised persons to restore their right to vote. These vary greatly in scope, eligibility requirements, and reporting practices. It is thus difficult to obtain consistent information about the rate and number of disenfranchised Americans whose rights are restored through these procedures. Nevertheless, we contacted each of the appropriate state agencies by email and phone and compiled the information they made available to us in Table 2. This provides some basic information about the frequency of state restoration of rights in those 12 states that disenfranchise beyond sentence completion. The table shows how many people were disenfranchised and the number of restorations reported by state officials in a given reporting period.

While we were unable to obtain complete data from all states, we subtracted all known restorations of civil rights (including full pardons) from each state's total disenfranchised post-sentence figure. Even accounting for these restorations, it is clear that the vast majority of such individuals in these states remain disenfranchised. Indeed, some states have significantly curtailed restoration efforts since 2010, including Iowa and Florida.

**Table 2. Restoration of Voting Rights in States that Disenfranchise Residents Post-Sentence**

State	Restorations	Period of Restoration Estimates
Alabama	16,022	2004-2015
Arizona	31	2010-2015
Delaware	2,285	1988-2015
Florida	271,982	1990-2015
Iowa	115,325	2005-2015
Kentucky	10,479	2008-2015
Mississippi	335	2000-2015
Nebraska	N/A	-
Nevada	281	1990-2011
Tennessee	11,581	1990-2015
Virginia	21,664	2002-2016
Wyoming	107	2003-2015

# SUMMARY

This report provides new state-level estimates on felony disenfranchisement for 2016 in the United States to update those provided by Uggen, Shannon, and Manza (2012) for previous years. In Tables 3 and 4, we provide state-specific point estimates of the disenfranchised population and African American disenfranchised population, subject to the caveats described below.

Despite significant legal changes in recent decades, over 6.1 million Americans remained disenfranchised in 2016. When we break these figures down by race, it is clear that disparities in the criminal justice system are linked to disparities in political representation. The distribution of disenfranchised individuals shown in Figure 1 also bears repeating: less than one-fourth of this population is currently incarcerated, meaning that about 4.7 million adults who live, work, and pay taxes in their communities are banned from voting. Of this total, over one million are African Americans who have completed their sentences. Public opinion research shows that a significant majority of Americans favor voting rights for people on probation or parole who are currently supervised in their communities, as well as for individuals who have completed their sentences (Manza, Brooks, and Uggen 2004). How much difference would it make if state laws were changed to reflect the principles most Americans endorse? The answer is straightforward: Voting rights would be restored to 77 percent of the 6.1 million people currently disenfranchised.

## CAVEATS

We have taken care to produce estimates of current populations and “post-sentence” populations that are reliable and valid by social science standards. Nevertheless, readers should bear in mind that our state-specific figures for the 12 states that bar individuals from voting after they have completed their sentences remain point estimates rather than actual head counts. In addition, the prison, probation, parole, and jail populations we report for 2016 are also estimated, based on the recent state-specific trends in each state. In other work, we have presented figures that adjust or “bound” these estimates by assuming different levels of recidivism, inter-state mobility, and state-specific variation. With these caveats in mind, the results reported here present our best account of the prevalence of U.S. disenfranchisement in 2016. These estimates will be adjusted if and when we discover errors or omissions in the data compiled from individual states, U.S. Census and Bureau of Justice Statistics sources, or in our own spreadsheets and estimation procedures.

**Table 3. Estimates of Disenfranchised Individuals with Felony Convictions, 2016**

State	Prison	Parole	Felony probation	Jail	Post-sentence	Total	VAP	% Disenfranchised
Alabama	30,585	6,580	15,626	1,578	231,896	286,266	3,755,483	7.62%
Alaska	5,497	2,035	6,900	7		14,439	552,166	2.61%
Arizona	44,509	7,241	51,362	1,341	116,717	221,170	5,205,215	4.25%
Arkansas	19,224	21,811	24,695	975		66,705	2,272,904	2.93%
California	136,302	86,254				222,557	30,023,902	0.74%
Colorado	21,207	8,673		1,066		30,946	4,199,509	0.74%
Connecticut	14,926	2,419				17,345	2,826,827	0.61%
Delaware	6,858	716	4,074		4,067	15,716	741,548	2.12%
Florida	102,555	4,208	86,886	4,822	1,487,847	1,686,318	16,166,143	10.43%
Georgia	50,900	23,545	170,194	4,112		248,751	7,710,688	3.23%
Hawaii	6,364					6,364	1,120,770	0.57%
Idaho	7,873	5,057	9,863	314		23,106	1,222,093	1.89%
Illinois	47,537			2,089		49,625	9,901,322	0.50%
Iowa	9,127	6,133	12,365	410	23,976	52,012	2,395,103	2.17%
Indiana	28,028			1,630		29,658	5,040,224	0.59%
Kansas	9,466	4,023	3,426	679		17,594	2,192,084	0.80%
Kentucky	22,968	16,729	27,323	2,039	242,987	312,046	3,413,425	9.14%
Louisiana	35,614	31,450	37,761	3,211		108,035	3,555,911	3.04%
Maine						0	1,072,948	0.00%
Maryland	20,378			1,087		21,465	4,658,175	0.46%
Massachusetts	10,254			921		11,176	5,407,335	0.21%
Michigan	42,661			1,560		44,221	7,715,272	0.57%
Minnesota	11,369	8,148	43,215	608		63,340	4,205,207	1.51%
Mississippi	13,752	8,051	28,463	1,422	166,494	218,181	2,265,485	9.63%
Missouri	32,768	16,808	38,870	1,219		89,665	4,692,196	1.91%
Montana	3,816			330		4,146	806,529	0.51%
North Carolina	37,446	10,977	40,867	1,888		91,179	7,752,234	1.18%
North Dakota	2,042			136		2,178	583,001	0.37%
Nebraska	6,377	782	2,952	384	7,069	17,564	1,425,853	1.23%
Nevada	11,560	6,828	8,097	701	62,080	89,267	2,221,681	4.02%
New Hampshire	2,856			175		3,031	1,066,610	0.28%
New Jersey	19,964	14,831	58,123	1,396		94,315	6,959,192	1.36%
New Mexico	7,205	2,838	13,352	891		24,286	1,588,201	1.53%
New York	50,513	44,590		2,477		97,581	15,584,974	0.63%
Ohio	51,102			1,736		52,837	8,984,946	0.59%
Oklahoma	27,857	2,572	26,475	1,398		58,302	2,950,017	1.98%
Oregon	14,228			519		14,748	3,166,121	0.47%
Pennsylvania	49,269			3,705		52,974	10,112,229	0.52%
Rhode Island	3,355					3,355	845,254	0.40%
South Carolina	20,141	4,621	21,464	1,011		47,238	3,804,558	1.24%
South Dakota	3,464	2,643	4,114	170		10,392	647,145	1.61%
Tennessee	29,271	13,186	52,654	2,763	323,354	421,227	5,102,688	8.26%
Texas	161,658	111,632	216,033	6,605		495,928	20,257,343	2.45%
Utah	6,925			744		7,669	2,083,423	0.37%
Vermont						0	506,119	0.00%
Virginia	38,694	1,604	56,908	2,905	408,570	508,680	6,512,571	7.81%
Washington	18,395	3,811	25,164	1,182		48,552	5,558,509	0.87%
West Virginia	7,042	3,187	4,109	389		14,727	1,464,532	1.01%
Wisconsin	22,851	19,537	22,101	1,118		65,606	4,476,711	1.47%
Wyoming	2,536	607	3,148	141	17,414	23,847	447,212	5.33%
Total	1,329,288	504,127	1,116,585	63,855	3,092,471	6,106,327	247,219,588	2.47%

**Table 4. Estimates of Disenfranchised African Americans with Felony Convictions, 2016**

State	Prison	Parole	Felony probation	Jail	Post-sentence	Total	VAP	% Disenfranchised
Alabama	17,775	3,957	7,740	823	113,629	143,924	952,671	15.11%
Alaska	519	211	718	2		1,450	21,219	6.83%
Arizona	5,879	952	5,654	361	12,645	25,492	214,412	11.89%
Arkansas	8,524	8,844	8,676	62		26,106	333,472	7.83%
California	39,451	23,939				63,390	1,858,353	3.41%
Colorado	4,098	1,439		320		5,858	172,849	3.39%
Connecticut	6,222	1,041				7,263	273,185	2.66%
Delaware	3,910	396	1,869		1,937	8,113	151,584	5.35%
Florida	50,110	2,328	26,259	2,385	418,224	499,306	2,338,940	21.35%
Georgia	31,814	13,927	98,740	64		144,546	2,301,258	6.28%
Hawaii	269					269	23,868	1.13%
Idaho	192	105	207	77		580	8,308	6.98%
Illinois	27,292			135		27,427	1,387,719	1.98%
Iowa	2,341	1,065	1,881	159	1,434	6,879	69,892	9.84%
Indiana	10,280			37		10,317	444,706	2.32%
Kansas	3,130	1,164	1,021	286		5,601	130,602	4.29%
Kentucky	6,080	4,393	5,007	389	53,902	69,771	266,806	26.15%
Louisiana	24,848	20,284	21,829	1,104		68,065	1,084,997	6.27%
Maine						0	10,940	0.00%
Maryland	14,960			423		15,383	1,348,123	1.14%
Massachusetts	2,906			60		2,966	355,908	0.83%
Michigan	23,015			664		23,679	1,057,458	2.24%
Minnesota	4,032	2,121	9,151	127		15,432	210,110	7.34%
Mississippi	9,158	5,049	18,074	524	94,325	127,130	801,471	15.86%
Missouri	12,807	5,714	11,584	269		30,374	525,285	5.78%
Montana	106			98		204	4,245	4.80%
North Carolina	21,304	6,414	14,979	208		42,905	1,630,848	2.63%
North Dakota	144			38		182	8,799	2.07%
Nebraska	1,675	185	362	115	1,202	3,540	63,187	5.60%
Nevada	3,299	2,270	2,409	25	13,566	21,568	183,389	11.76%
New Hampshire	177			27		204	12,994	1.57%
New Jersey	12,294	6,466	28,243	467		47,470	899,227	5.28%
New Mexico	560	192	777	51		1,581	33,582	4.71%
New York	25,524	19,851		911		46,286	2,277,485	2.03%
Ohio	24,111			718		24,829	1,069,118	2.32%
Oklahoma	7,955	892	6,220	49		15,116	223,354	6.77%
Oregon	1,453			140		1,593	60,807	2.62%
Pennsylvania	24,360			1,235		25,596	1,041,629	2.46%
Rhode Island	963					963	47,566	2.03%
South Carolina	13,067	3,123	22,303	424		38,916	1,014,456	3.84%
South Dakota	189	151		24		363	9,316	3.90%
Tennessee	13,918	6,010	20,887	1,038	132,042	173,895	817,457	21.27%
Texas	58,254	41,812	47,428	233		147,727	2,393,055	6.17%
Utah	462			263		724	22,763	3.18%
Vermont						0	5,244	0.00%
Virginia	23,593	1,087	29,321	184	217,759	271,944	1,241,868	21.90%
Washington	3,470	703	3,789	24		7,987	215,438	3.71%
West Virginia	902	364	399	127		1,792	50,496	3.55%
Wisconsin	9,664	7,590	4,945	248		22,447	256,592	8.75%
Wyoming	113	32	93	16	712	966	5,621	17.18%
<b>Total</b>	<b>557,169</b>	<b>194,071</b>	<b>400,568</b>	<b>14,933</b>	<b>1,061,377</b>	<b>2,228,118</b>	<b>29,932,674</b>	<b>7.44%</b>

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# 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016

**Christopher Uggen, Ryan Larson, and Sarah Shannon**

October 2016



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# THE VIOLENCE OF VOICELESSNESS: THE IMPACT OF FELONY DISENFRANCHISEMENT ON RECIDIVISM

Guy Padraic Hamilton-Smith\*

Matt Vogel\*\*

## I. INTRODUCTION

*No class of men can, without insulting their own nature, be content with any deprivation of their rights.*<sup>1</sup>

In 2010, nearly 5.3 million American citizens were unable to vote because of a collateral consequence<sup>2</sup> from a felony conviction known as disenfranchisement.<sup>3</sup> The political disenfranchisement of ex-felons is not accomplished through applying a provision within the United States Constitution or of any federal statute, but is instead administered at the discretion of state legislatures.<sup>4</sup> In light of this state-by-state approach, there is considerable variation in how disenfranchisement is imposed throughout the country.<sup>5</sup> The severity of disenfranchisement runs the gamut from allowing incarcerated prisoners to vote (Maine and Vermont) to prohibiting voting rights to those who complete their sentences.<sup>6</sup> Even though disenfranchisement is a consequence of a felony conviction, courts have generally considered it to be

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1. Frederick Douglass, Speech at Massachusetts Anti-Slavery Society Meeting (1865).

2. The term “collateral consequence” refers to an effect of a criminal conviction that is separate and apart from the sentence imposed by a judge. Examples of collateral consequences include losing the right to possess a firearm, losing federal educational financial aid, and as this article addresses, losing the right to vote.

3. THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (2010), [http://www.sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinusDecl1.pdf](http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusDecl1.pdf) (Disenfranchisement refers to the ability and process of states to remove the voting rights of individuals convicted of serious criminal offenses).

4. *Id.* (Discussion of policy differences between states as a result of activity at the level of state legislatures).

5. *Id.*

6. THE SENTENCING PROJECT, *supra* note 3.

regulatory rather than punitive.<sup>7</sup>

Policy makers, philosophers, and jurists have voiced various rationales to support and oppose disenfranchisement. A frequently-made argument made against disenfranchisement is that it further isolates and segregates ex-felons re-entering into society by denying them the ability to participate in the political process. This isolation and segregation, in turn, is counterproductive to the rehabilitative ideals of the criminal justice system.<sup>8</sup> If, *arguendo*, the primary goal of the American criminal justice system is to reduce crime, then policies that result in increased crime rates make little sense.

Although there have been numerous legal challenges to disenfranchisement laws, courts have not found the practice to be unconstitutional as a general matter.<sup>9</sup> In these legal challenges, however, an argument that has not been meaningfully advanced is that disenfranchisement is intricately tied to recidivism, and that this relationship between disenfranchisement and recidivism poses a novel constitutional problem for disenfranchisement policies. This article argues that disenfranchisement of ex-felons is unconstitutional, that it results in increased crime, and that it should be abandoned as a draconian and costly practice of a pre-democratic era.

Part I of this article discusses the historical origins of disenfranchisement and its evolution to felony disenfranchisement as it exists today. Part II focuses on the philosophical, political and practical justifications that have traditionally been offered in support of disenfranchisement, and also briefly discusses mechanisms by which disenfranchisement can serve to increase criminal activity. Part III contains a discussion of the legal challenges that have been made against the practice of felony disenfranchisement and posits a novel constitutional argument against disenfranchisement. Part IV utilizes data collected by the Department of Justice Bureau of Justice Statistics to demonstrate that state disenfranchisement policies are significantly associated with recidivism. Finally, Part V contains a brief discussion of the implications of these findings.

## II. A CIVIL DEATH: HISTORICAL ORIGINS OF DISENFRANCHISEMENT

### A. *The Beginnings of Disenfranchisement*

Disenfranchisement is not a novel practice. Its roots are historic, dating to ancient Greece where a similar practice existed: *atimia* (“dishonor”).<sup>10</sup> In modern parlance, *atimia* was a form of constructive exile, much more expansive than modern disenfranchisement, wherein those subjected to *atimia* were unable to participate meaningfully in public life. They were prohibited from petitioning their government,

7. See *Trop v. Dulles*, 356 U.S. 86 (1958). Note that the treatment of disenfranchisement provisions as nonpenal in nature has been criticized elsewhere, see Pamela A. Wilkins, *The Mark of Cain: Disenfranchised Felons and the Constitutional No Man's Land*, 56 SYRACUSE L. REV. 85 (2005).

8. Jamie Fellner & Marc Maurer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, The Sentencing Project & Human Rights Watch (Oct. 1998), [http://www.sentencingproject.org/doc/File/FVR/fd\\_losingthevote.pdf](http://www.sentencingproject.org/doc/File/FVR/fd_losingthevote.pdf).

9. See *Richardson v. Ramirez*, 418 U.S. 24 (1974).

10. KATHERINE IRENE PETTUS, *FELONY DISENFRANCHISEMENT IN AMERICA: HISTORICAL ORIGINS, INSTITUTIONAL RACISM, AND MODERN CONSEQUENCES* 12 (2005).

voting, holding office, instituting any criminal or civil actions against citizens, fighting in the army, or receiving any sort of welfare-type public assistance.<sup>11</sup>

*Atimia* served as the basis for medieval European practices of outlawry and civil death.<sup>12</sup> Civil death was like *atimia* in that the individual affected by it was stripped of his or her civil rights.<sup>13</sup> Medieval Germany practiced a similar phenomenon, known as outlawry where the offender would either be forced into exile or would be forced to live as an animal in the forests.<sup>14</sup> He or she would lose all the benefits and protections that society could offer.<sup>15</sup> In England, disenfranchisement took the form of attainder, wherein those convicted of certain crimes would have three different penalties imposed on them: forfeiture of property, corruption of the blood (relating to a prohibition on passing property to heirs through inheritance), and a loss of civil rights.<sup>16</sup>

As with much of the American legal system, antebellum views on disenfranchisement were borrowed from English common law, including the practice of civil death.<sup>17</sup> Eventually, civil death became much more focused. Following the American Revolution, many states enacted statutes or constitutional provisions that prohibited offenders from voting; however, these provisions were less restrictive than those of a civil death.<sup>18</sup> The duration of disenfranchisement varied, with some localities denying felons the franchise only temporarily whereas others would permanently bar felons from voting, especially if the crime was related to the administration of elections.<sup>19</sup> Disenfranchisement became much more common following the Civil War as a means of keeping African-Americans from voting.<sup>20</sup> Since the passage of the Fourteenth and Fifteenth Amendments to the United States Constitution, felony disenfranchisement became one favored method utilized by states in suppressing the African-American vote.<sup>21</sup> After 1890, many states began enacting disenfranchisement statutes and constitutional provisions that listed crimes for which African-Americans were most often prosecuted—such as burglary, theft, perjury, and arson—as disqualifying offenses.<sup>22</sup> Disenfranchisement became an important aspect of the Jim Crow laws used in reconstruction-era America to continue to subjugate the newly-freed slaves.<sup>23</sup>

The views that early American colonists brought with them from England concerning disenfranchisement were not necessarily motivated out of concerns about

11. *Id.* at 24.

12. *Id.* at 29-30.

13. *Id.*

14. William Walton Liles, *Challenges to Felony Disenfranchisement Laws: Past, Present, and Future*, 58 ALA. L. REV. 615, 616 (2007).

15. *Id.* at 617.

16. *Id.* at 616-17.

17. *Id.* at 617.

18. *Id.*

19. Susan E. Marquardt, *Deprivation of a Felon's Right to Vote: Constitutional Concerns, Policy Issues and Suggested Reform for Felony Disenfranchisement Law*, 82 U. DET. MERCY L. REV. 279, 280-81 (2005).

20. Alysia Robben, *A Strike at the Heart of Democracy: Why Legal Challenges to Felon Disenfranchisement Laws Should Succeed*, 10 U. D.C. L. REV. 15, 19 (2007).

21. *Id.* at 19.

22. Carl N. Frazier, *Removing the Vestiges of Discrimination: Criminal Disenfranchisement Laws and Strategies for Challenging Them*, 95 KY. L.J. 481, 484 (2006).

23. PETTUS, *supra* note 10, at 33.

limiting repeat offenses. Rather, much of the motivation behind the adoption of these laws appeared to be consistent with the concept of a system of status citizenship whereby criminal offenders would lose essential aspects of citizenship by virtue of the crime committed.<sup>24</sup> Recidivism was generally treated as a peripheral issue in that it did not appear to be the primary motivating force behind disenfranchisement. That is not to say, however, that it is senseless to view disenfranchisement as relating to recidivism. Given that disenfranchisement's effects were often quite pervasive as applied to criminal offenders, and all societies have an interest in general crime control, it makes sense to view disenfranchisement as a deterrent to criminal activity.

### B. *Current Practices in America and Abroad*

Felony disenfranchisement remains an active practice in the United States. Forty-eight states and the District of Columbia practice some form of felony disenfranchisement.<sup>25</sup> Current disenfranchisement laws keep approximately 5.3 million Americans who have a prior felony conviction from voting in local and national elections.<sup>26</sup>

Although states differ in their approaches to disenfranchisement, they generally fall into one of several broad categories.<sup>27</sup> At one end of the spectrum are states that do not disenfranchise at all like Maine and Vermont.<sup>28</sup> In those states, felons are allowed to vote even while incarcerated using an absentee ballot.<sup>29</sup> On the other extreme are states such as Iowa, Kentucky, and Virginia that permanently disenfranchise all ex-felons, even after the expiration of their criminal sentence.<sup>30</sup> In those states, the only way for an individual to regain the ability to vote is through executive action, such as a pardon or restoration of civil rights. Most states, however, fall somewhere in between these two extremes and allow for the automatic restoration of voting rights after the completion of incarceration and parole or probation.<sup>31</sup>

Nearly three-fourths of individuals who are disenfranchised are not incarcerated.<sup>32</sup> Although every state has procedures for obtaining restoration of voting rights, many of these procedures are so involved and technical that they operate as a *de facto* bar to restoration, especially for those ex-offenders with limited resources and education.<sup>33,34</sup> This characterization of restoration as a hollow remedy is corroborated by the fact that very few disenfranchised individuals ever successfully get the right to vote back: in eleven different states that practice disenfranchisement, fewer than three percent of disenfranchised ex-felons have

24. *Id.*

25. THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (2011) [http://www.sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinusDec11.pdf](http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusDec11.pdf).

26. *Id.*

27. *Id.*

28. *Id.*

29. VERMONT DEP'T CORR. DIRECTIVE 324.01, *available at* <http://www.doc.state.vt.us/about/policies/rpd/324.01%20Voting.pdf/view?searchterm=voting>.

30. THE SENTENCING PROJECT, *supra* note 25.

31. *Id.*

32. Robben, *supra* note 20, at 20.

33. THE SENTENCING PROJECT, *supra* note 25.

34. Marquardt, *supra* note 19, at 295.

gotten their voting rights restored.<sup>35</sup>

Despite the shared historical roots of *atimia* and civil death with other nations, the United States is an outlier when it comes to disenfranchisement. No other country disenfranchises more of its citizens on a per capita basis than the United States.<sup>36</sup> Many other democratic nations have ceased automatic disenfranchisement of criminal offenders.<sup>37</sup> Disenfranchisement in other first-world democracies, if employed at all, is limited in period and imposed on individuals who were involved in offenses directly related to elections.<sup>38</sup> Disenfranchisement is associated more often with non-democratic regimes that have high incarceration rates and are economically underdeveloped.<sup>39</sup> Despite all of this, disenfranchisement retains popularity amongst American politicians and their constituents.<sup>40</sup> Contemporary examples of this sentiment are not hard to come by. Indeed, as of the writing of this article, state officials in Florida and Iowa have taken steps that would disenfranchise a greater number of ex-felons for longer periods of time.<sup>41,42</sup>

### III. PHILOSOPHICAL, PRACTICAL, AND POLITICAL PERSPECTIVES ON DISENFRANCHISEMENT

#### A. *Philosophical Underpinnings*

Given the long tradition of disenfranchisement policies through much of civilized society, it comes as no surprise that the practice has found support amongst classical theorists and philosophers as far back as Aristotle.<sup>43</sup> One way that disenfranchisement has traditionally been viewed is the consequence that arises from the breach of a “contract” between society and the individual, defined as an agreed upon set of norms of behavior meant to facilitate the functioning of society.<sup>44</sup> Thomas Hobbes and John Locke, for example, argued that by transgressing against

35. Marc Maurer & Tushar Kansal, *Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States*, THE SENTENCING PROJECT (Feb. 2005), [http://www.sentencingproject.org/doc/publications/fd\\_barredforlife.pdf](http://www.sentencingproject.org/doc/publications/fd_barredforlife.pdf).

36. Robben, *supra* note 20, at 20.

37. Nora V. Demleitner, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe*, in CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE 80 (Alec C. Ewald & Brandon Rottinghaus eds., 2009).

38. *Id.*

39. Christopher Uggen, Mischelle Van Brakle & Heather McLaughlin, *Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement*, in CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE 59 (Alec C. Ewald & Brandon Rottinghaus eds., 2009).

40. Elizabeth A. Hull, *Our ‘Crooked Timber’: Why is American Punishment So Harsh?*, in CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE 136 (Alec C. Ewald & Brandon Rottinghaus, eds. 2009).

41. Peter Wallsten, *Fla. Republicans Make it Harder for Ex-felons to Vote*, THE WASH. POST, Mar. 9, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/08/AR2011030806672.html>.

42. IA EXEC. ORDER NO. 70 (2011), *available at* [http://brennan.3cdn.net/3028848c276fa4ecf6\\_4fm6bxvvd.pdf](http://brennan.3cdn.net/3028848c276fa4ecf6_4fm6bxvvd.pdf). (Governor Branstad issued an Executive Order that terminated the automatic restoration of voting rights for felons).

43. JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 25 (Dedi Felman ed., 2006).

44. See Zdravko Planinc, *Should Imprisoned Criminals Have a Constitutional Right to Vote?*, 2 CAN. J.L. & SOC. 153 (1987).

fellow citizens and the state through violation of the law, criminals breach the social contract and become unfit for citizenship.<sup>45</sup> Support from influential thinkers, such as Hobbes and Locke, provided a theoretical basis for disenfranchisement which helped to perpetuate it. Many of these ideas, however, are representative of systems of thought concerning citizenship that are regarded as *anathema* to the ideal of universal suffrage:

[T]he confident dismissal of political rights for criminal offenders in the writings of early modern theorists had largely disappeared from political philosophy by the second half of the nineteenth century. This shift coincides with the beginnings of the modern democratic polity, and the modern criminal justice system of criminal courts, police forces, and graduated punishments. The problem becomes fundamentally different in a world in which mass participation—and citizenship *rights* defined by birth—emerges alongside notions of the possibility of *rehabilitating* criminal offenders.<sup>46</sup>

In essence, many of the philosophical justifications that helped to perpetuate disenfranchisement throughout history became largely vestigial in an era that began to view concepts like citizenship and civil participation as rights rather than privileges.

#### B. *Practical and Policy Considerations of Disenfranchisement*

In addition to the theoretical underpinnings of disenfranchisement, there are several more practical arguments that proponents have made in defense of the practice. One such argument is that, if allowed access to the ballot box, ex-felons would represent a voting bloc that could alter the administration and enforcement of the criminal law.<sup>47</sup>

This argument, however, suffers from two major weaknesses. First, it assumes that ex-felons are a homogeneous group of individuals who would vote and advocate for policies that would weaken the enforcement of the criminal law. Additionally, it assumes that some politicians would run on a “soft on crime” platform in a bid to appeal to the ex-felon voting bloc.

Such concerns, however, are bereft of evidentiary support. There is evidence, on the other hand, of ex-felons would not and have not sought to do away with the criminal justice system or to weaken its enforcement. There are examples of offenders who have lobbied legislators for *tougher* criminal laws.<sup>48</sup> In addition, there are cases where ex-felons served on juries and, rather than use their opportunity to sabotage the enforcement of the criminal law by forcing a hung jury, returned guilty verdicts after the prosecution had met their burden of proof.<sup>49</sup>

Perhaps the strongest rejoinder to this argument, however, comes from the

45. *Id.* at 155.

46. MANZA & UGGEN, *supra* note 43, at 25. (emphasis in original).

47. Frazier, *supra* note 22, at 484-85.

48. MANZA & UGGEN, *supra* note 43, at 143.

49. James M. Binnall, *Convicts in Court: Felonious Lawyers Make a Case for Including Convicted Felons in the Jury Pool*, 73 ALB. L. REV. 1379, 1403 (2010).

Supreme Court of the United States. In *Carrington v. Rash*, the Court ruled on the constitutionality of a provision of the Constitution of the State of Texas that prohibited members of the military from voting if they were not residents of Texas prior to joining the armed services.<sup>50</sup> This constitutional provision was enacted in response to a perceived threat from members of the military in local elections. Specifically, the Texas legislature, concerned with the prospect of large groups of military members exerting undue influence over local elections, voted to disenfranchise the entire group.<sup>51</sup> The Supreme Court held, however, that “[f]encing out” from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.<sup>52</sup> Therefore, even if the underlying assumptions of the argument that ex-felons would sabotage the criminal law through the political process were accurate, exclusion from the franchise on the basis of such a justification would not pass constitutional muster.<sup>53</sup>

Another argument made in support of disenfranchising ex-felons is that doing so prevents voter fraud or other election-related offenses.<sup>54</sup> The essential premise of this argument is that ex-felons, having demonstrated criminality in the past, are more likely to commit election-related offenses such as voter fraud or vote buying in the future.<sup>55</sup> There is, however, no empirical evidence that suggests ex-felons, either as a group or as individuals, are at a higher risk of committing election-related offenses.<sup>56</sup> Furthermore, the efficacy of disenfranchising ex-felons is dubious as a prophylactic measure because one does not need to be eligible to vote in order to commit election-related offenses.

### C. *Disenfranchisement as an Obstacle: Towards a Redemptive Theory of Criminal Justice*

It is the ultimate idea of this article that disenfranchisement is a policy that creates harms which far outweigh its benefits, serving only to further alienate and isolate a group of individuals at a time when they are trying to re-integrate into society.<sup>57</sup> Underlying the many collateral consequences of a conviction, especially that of disenfranchisement, is the implicit assumption communicated to the offender that the collateral consequences are permissible because total rehabilitation is impossible.<sup>58</sup> It is reasonable to hypothesize that these sanctions result in alienation and isolation, which only serves to *increase* further incidences of criminal activity. If one has no stake in his or her community, then one has little incentive to behave in a pro-social manner other than to avoid punishment. Punishment, in turn, often comes in the form of re-incarceration – a deterrent which, for many individuals, may be a

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50. *Carrington v. Rash*, 380 U.S. 89 (1965).

51. *Id.*

52. *Carrington v. Rash*, 380 U.S. 89, 94 (1965) (citing *Schneider v. State of New Jersey*, 308 U.S. 147, 161 (1939)).

53. See Avi Brisman, *Toward a More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 283, 344 (2007).

54. Fellner & Mauer, *supra* note 8, at 15.

55. *Id.*

56. MANZA & UGGEN, *supra* note 43.

57. Fellner & Mauer, *supra* note 8, at 16.

58. Demleitner, *supra* note 37, at 82.



threat that is more rote than daunting.

Research strongly supports the notion that ex-felons who are able to re-enter society with stable work and familial relationships are less likely to engage in criminal activity.<sup>59</sup> Many of the collateral consequences of a felony conviction—including disenfranchisement, becoming ineligible for certain types of public assistance, and stigmatization—function as an obstacle in achieving and maintaining stability.<sup>60</sup> Research has also supported the idea that active participants in the democratic process are more likely to adopt the shared values of their broader community.<sup>61</sup> Many individuals who are subject to disenfranchisement laws speak of disenfranchisement as a symbol that they do not belong, and that they are outsiders in their own community.<sup>62</sup> In this sense, disenfranchisement can be fairly characterized as a modern form of outlawry. While not, for example, forced to live in the forests as in medieval Germany, the message is nevertheless the same: ex-felons are not deserving of the benefits and protections of the law. Thus, if ex-felons are not deserving of the protections of the law, then there is even less incentive to abide by it.

The empirical research, although limited, supports the argument that democratic participation is positively associated with a reduction in recidivism. For example, one study found that voting behavior was significantly correlated with subsequent measures of incarceration, re-arrest, and self-reported criminality.<sup>63</sup> In other words, “[d]isenfranchisement cannot help to foster the skills and capacities that will rehabilitate offenders and help them become law-abiding citizens. Indeed, on the contrary, it is more likely that ‘invisible punishments’ such as disenfranchisement act as barriers to successful rehabilitation.”<sup>64</sup> Even if viewed from a retributive standpoint, evidence suggests that disenfranchisement is a policy that metes out punishment at the expense of reinforcing the individual’s perception that they are, and will continue to be, a criminal.

There are several plausible theoretical models that help describe how collateral consequences, such as disenfranchisement, impair the successful reintegration of offenders into society. One such model is reintegrative shaming, developed by Australian criminologist John Braithwaite.<sup>65</sup> The crux of reintegrative shaming is that the societal disapproval that undergirds punishment for criminal offenses can be thought of as falling into one of two categories: reintegrative or stigmatizing.<sup>66</sup> Reintegrative shaming is hypothesized to facilitate reintegration by denouncing the offense as opposed to the offender.<sup>67</sup> This is in contrast to more stigmatizing forms of shaming which function by denouncing the offender, not the

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59. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 196 (2004).

60. Jessica A. Focht-Perlberg, *Two Sides of One Coin – Repairing the Harm and Reducing Recidivism: A Case for Restorative Justice Reentry in Minnesota and Beyond*, 31 HAMLIN J. PUB. L. & POL’Y 219, 232 (2009).

61. Uggen & Manza, *supra* note 59, at 198.

62. *Id.* at 212.

63. *Id.* at 213.

64. MANZA & UGGEN, *supra* note 43, at 37. (Internal citations omitted).

65. JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION (9<sup>TH</sup> prt. 1999).

66. Toni Makkai & John Braithwaite, *ng and Compliance with Regulatory Standards*, 32 CRIMINOLOGY 361 (1994).

67. *Id.*

offense, and thereby acting as an obstacle to reintegration.<sup>68</sup> Disenfranchisement is best thought of as more stigmatizing as opposed to reintegrative in that it serves to further isolate the offender from society, and is tied to the offender as opposed to the offense.

Classical labeling is another theoretical model that helps illuminate the interaction between disenfranchisement and recidivism.<sup>69</sup> Classic labeling explains deviance through labels or traits ascribed to the individual by society and the interaction of those traits with the mentality of the individual.<sup>70</sup> While many labels are active only within certain contexts, others – such as the label of a criminal or a deviant—are more salient and have a greater impact on the psychology of the individual.<sup>71</sup> The salient impact of the criminal label trumps all other labels that society ascribes because it brands the ex-felon as “generally rather than specifically deviant produc[ing] a self-fulfilling prophecy.”<sup>72</sup> Once an individual is labeled as a criminal or deviant and internalizes that label, the label itself serves as the mechanism by which the demonized behavior is elicited.<sup>73</sup>

There are significant consequences for the individual and society once the deviant or criminal label is applied and internalized:

[d]eviant labeling, official labeling in particular, is seen as a transitional event that can substantially alter the life course by reducing opportunities for a conventional life. Thus, labeling is seen as being indirectly related to subsequent behavior through its negative impact on conventional opportunities. Sampson and Laub (1997) suggest that labeling is one factor that leads to “cumulative disadvantage” in future life chances and, thereby, increases the probability of involvement in delinquency and deviance during adulthood.<sup>74</sup>

Disenfranchisement can, in turn, be seen as an extension of the criminal label. Closely akin to ancient meanings of civil death and *atimia*, what is communicated to the offender is that they are no longer members of society on a basic, fundamental level. Consistent with labeling theory, the outsider or outcast label can become a self-fulfilling prophecy resulting in increased criminal activity by virtue of the psychological effects that the label has on the individual themselves.

It should be noted that, in understanding the effects of disenfranchisement on ex-felons, what is important to focus on is not whether one exercises the right to vote, but whether one possesses the right in the first place. This is a small but critical distinction since many people in the United States do not exercise their right to vote, despite having the ability to do so.<sup>75</sup> No message, however, is delivered by society

68. *Id.*

69. HOWARD BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963).

70. *Id.* at 25-40.

71. *Id.* at 34.

72. *Id.*

73. FRANK TANNENBAUM, *CRIME AND THE COMMUNITY* (1938).

74. Jön Gunnar Bergngurg & Marvin D. Krohn, *Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, 41 *CRIMINOLOGY* 1287, 1288 (2003).

75. Michael McDonald, UNITED STATES ELECTIONS PROJECT, (2011) (data listing the average

when non-voters fail to exercise their franchise and no label is thrust upon them. However, there is a clear and resounding message communicated by society to those individuals who are excluded from the franchise: that of being an outcast.

#### IV. THE LEGAL FRAMEWORK OF DISENFRANCHISEMENT IN THE UNITED STATES

Despite the paucity of policy justifications for disenfranchisement, the judiciary has provided a strong legal foundation for states to deny ex-felons the right to vote. Challenges to disenfranchisement have generally fallen into two categories: those based on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and those based on the Voting Rights Act of 1965.

##### A. Equal Protection Challenges to Felony Disenfranchisement

*Richardson v. Ramirez* is the most widely-recognized case establishing the constitutionality of felony disenfranchisement.<sup>76</sup> In *Ramirez*, the Supreme Court reviewed a petition for a writ of mandamus by three ex-felons, all of whom who had “served their time” and were disenfranchised by a provision of the California Constitution that excluded any person convicted of a felony from voting.<sup>77</sup> The respondents contended that their disenfranchisement was a violation of the Equal Protection Clause of the Fourteenth Amendment, an argument that the California Supreme Court found convincing.<sup>78</sup> Writing for the majority, Chief Justice Rehnquist disagreed and held that rather than indicating the unconstitutionality of disenfranchisement, the Fourteenth Amendment actually allowed states to disenfranchise felons as they pleased.<sup>79</sup> The Fourteenth Amendment provides, in relevant part, that:

[W]hen the right to vote at any election for the choice of electors . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced . . .<sup>80</sup>

The Court focused on the phrase “or other crime” in holding that disenfranchisement was constitutional.<sup>81</sup> Based on the floor debates in the House and Senate, the Court concluded that the Amendment’s principal architects intended disenfranchisement to be a constitutional exercise of Congressional power under Section Two.<sup>82</sup> The Court also addressed the relationship between disenfranchisement and rehabilitation. While the Court recognized that disenfranchisement may impede the rehabilitation and

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voter turnout in the 2010 General Election to be 41%) available at [http://elections.gmu.edu/Turnout\\_2010G.html](http://elections.gmu.edu/Turnout_2010G.html).

76. *Richardson v. Ramirez*, 418 U.S. 24 (1974).

77. *Id.* at 26-27.

78. *Id.* at 33-34.

79. *Id.* at 56.

80. U.S. CONST. amend. XIV, § 2 (emphasis added).

81. *Richardson v. Ramirez*, 418 U.S. at 56.

82. *Id.* at 45.

return of ex-felons to society, it reasoned that that was an issue that fell outside the Court's duties and obligations:

Pressed upon us by the respondents, and by amici curia, are contentions that these notions are outmoded, and that the more modern view is that it is essential to the process of rehabilitating the ex-felon that he be returned to his role in society as a fully participating citizen when he has completed the serving of his term. We would by no means discount these arguments if addressed to the legislative forum which may properly weigh and balance them against those advanced in support of California's present constitutional provisions. But it is not for us to choose one set of values over the other. If respondents are correct, and the view which they advocate is indeed the more enlightened and sensible one, presumably the people of the State of California will ultimately come around to that view.<sup>83</sup>

The Court's holding in *Ramirez*, however, did not completely insulate state disenfranchisement laws from legal challenges under the Equal Protection Clause. Commentators have suggested, and other courts have noted, that disenfranchisement provisions will still be subject to Fourteenth Amendment challenges under *Ramirez* if one of two conditions exists: if disenfranchisement is unequally enforced amongst felons, or if the primary motivating factor in the enactment of a particular state's disenfranchisement provisions is racial discrimination.<sup>84</sup>

*Hunter v. Underwood* provides an example of the Court's narrow view of viable Fourteenth Amendment challenges.<sup>85</sup> *Underwood* is a Supreme Court case that concerned a provision of Alabama's State Constitution that disenfranchised individuals who were convicted of "any . . . crime involving moral turpitude."<sup>86</sup> In addition to the moral turpitude provision, Alabama's Constitution specifically set forth several crimes for which disenfranchisement would result that would lead to disenfranchisement.<sup>87</sup> In *Underwood*, the Court dealt with the plight of Carmen Edwards and Victor Underwood, two Alabama citizens who were disenfranchised after being jailed for writing bad checks.<sup>88</sup> Even though these offenses were misdemeanors, state authorities nevertheless deemed that they were crimes involving moral turpitude, which made Edwards and Victor eligible for disenfranchisement under Alabama's Constitution.<sup>89</sup> In turn, Edwards and Victor argued that Alabama's disenfranchisement provision was enacted to intentionally exclude African-Americans from the franchise, that it actually disenfranchised large sections of the black electorate, and, as a result, it violated the Fourteenth Amendment's Equal

83. *Id.* at 55.

84. Liles, *supra* note 14.

85. *Hunter v. Underwood*, 471 U.S. 222 (1985).

86. *Id.* at 226 (citing ALA. CONST. § 182 (1901)).

87. *Id.* ("treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subordination of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, [and] crime [sic] against nature").

88. *Id.*

89. *Id.* at 223-24.

Protection Clause.<sup>90</sup> The Supreme Court agreed, holding that “its original enactment [of § 182 of the Alabama Constitution] was motivated by a desire to discriminate against blacks on the account of race and that the section continues to this day to have that effect.”<sup>91</sup> The Court further explained that its earlier holding in *Ramirez* was not inconsistent with finding Alabama’s constitutional provisions at odds with the Fourteenth Amendment: “we are confident that § 2 [of the Fourteenth Amendment] was not designed to permit the purposeful racial discrimination attending the enactment and operation of § 182 which otherwise violates § 1 of the Fourteenth Amendment. Nothing in our opinion in *Richardson v. Ramirez* . . . suggests the contrary.”<sup>92</sup>

Collectively, *Ramirez* and *Underwood* indicate that state disenfranchisement laws or constitutional provisions are vulnerable to Equal Protection challenges only where a racial animus motivated their enactment and where state authorities continued to operate in a way that was discriminatory in nature.<sup>93</sup> Otherwise, Section 2 of the Fourteenth Amendment would permit states to disenfranchise ex-felons in line with the Court’s reasoning in *Ramirez*.

### *B. Challenges to Felony Disenfranchisement based on the Voting Rights Act*

The Voting Rights Act of 1965<sup>94</sup> (“VRA”) was enacted for the purpose of helping to ensure racial equality at the ballot box in response “to the increasing sophistication with which the states were denying racial minorities the right to vote.”<sup>95</sup> The VRA was amended in 1983 to prohibit racially discriminatory voting practices.<sup>96</sup> Section 2 of the Act states that:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . .<sup>97</sup>

Numerous federal plaintiffs have challenged disenfranchisement provisions under the VRA, and several of these cases have reached U.S. Circuit Courts of Appeals. Thus far, the Supreme Court has not granted certiorari in any of these cases, but collectively they establish a new source for challenging disenfranchisement provisions outside of the Equal Protection Clause.<sup>98</sup>

Generally, plaintiffs challenging state disenfranchisement regimes under the VRA have asserted that state criminal justice systems discriminate by saddling a

90. *Id.* at 230.

91. *Id.* at 233.

92. *Id.* (internal citations omitted).

93. See Liles, *supra* note 14, at 620.

94. 42 U.S.C. § 1973(a) (2000).

95. *Farrakhan v. Washington*, 338 F.3d 1009, 1014 (9th Cir. 2003) (citing *Farrakhan v. Locke*, 987 F. Supp. 1304, 1308 (E.D. Wash. 1997)).

96. *Frazier*, *supra* note 22, at 494.

97. 42 U.S.C. § 1973(a) (2000).

98. See Liles, *supra* note 14.

disproportionate number of minorities who are arrested with felony convictions when compared with whites in the same position. The result is the disproportionate disenfranchisement of minority voters, which the plaintiffs in these cases allege violates Section 2 of the VRA.<sup>99</sup> Along these lines, in *Farrakhan v. Washington*, the Ninth Circuit Court of Appeals found that Section 2 of the VRA was, in fact, means by which an ex-felon could possibly challenge felony disenfranchisement.<sup>100</sup> According to the Court, in order to make a claim under Section 2 of the VRA, a plaintiff would have to demonstrate that a discriminatory bias based on race existed within the criminal justice system that had a positive discriminatory effect on the disenfranchisement of minorities.<sup>101</sup> On remand, the district court found evidence of racial discrimination within the Washington state criminal justice system, but found that it was insufficient under the test mandated by the Voting Rights Act to constitute a redressable injury.<sup>102</sup> The plaintiffs appealed to the Ninth Circuit Court of Appeals.<sup>103</sup>

In the time it took for *Farrakhan* to reach the Ninth Circuit a second time, several other circuits issued opinions utilizing alternative reasoning that ultimately caused a split with the Ninth Circuit. For example, in *Johnson v. Governor of the State of Florida*, the Court of Appeals for the Eleventh Circuit precluded challenges to state disenfranchisement laws under the VRA by employing the doctrine of constitutional avoidance.<sup>104</sup> The Court essentially found that interpreting the VRA to allow state level challenges to disenfranchisement under the Fourteenth Amendment would needlessly raise constitutional issues under the Fourteenth and Fifteenth Amendments, which would be inappropriate for review.<sup>105</sup>

In *Hayden v. Pataki*, the Second Circuit Court of Appeals dealt with a class of plaintiffs who were challenging the constitutionality of the disenfranchisement regime in New York State<sup>106</sup> on the basis that it violated Section Two of the VRA.<sup>107</sup> The Second Circuit, in addressing the matter *en banc*, held that Section Two of the VRA was not a viable means by which state inmates could challenge disenfranchisement.<sup>108</sup> In doing so, the *Hayden* court actually went a step further than the Eleventh Circuit in *Johnson* with respect to its interpretation of the VRA. The Court applied the “clear statement” doctrine, which is similar to but broader than the constitutional avoidance doctrine relied upon in *Johnson*.<sup>109</sup> In applying the clear statement doctrine to the VRA within the context of disenfranchisement, the Court found that the plaintiffs had no grounds under the VRA on which to challenge felony disenfranchisement:

99. *Farrakhan v. Washington*, 338 F.3d 1009, 1013 (9th Cir. 2003).

100. 338 F.3d at 1017.

101. *Id.* at 1021.

102. *Farrakhan v. Gregoire*, 623 F.3d 990, 992-93 (9th Cir. 2010).

103. *Id.*

104. *Johnson v. Governor of the State of Florida*, 405 F.3d 1214 (11th Cir. 2005).

105. *Id.* at 1229-1230.

106. The New York approach, at the time of *Hayden*, was that only those felons who were serving a sentence were disenfranchised from the polls.

107. *Hayden v. Pataki*, 449 F.3d 305 (2d Cir. 2005).

108. *Id.* at 326.

109. *Id.* at 323 (The clear statement rule is “a canon of interpretation which requires Congress to make its intent ‘unmistakably clear’ when enacting statutes that would alter the usual constitutional balance between the Federal Government and the States.”).

[T]he Voting Rights Act must be construed to not encompass prisoner disenfranchisement provisions like that of New York because (a) Congress did not intend the Voting Rights Act to cover such provisions; and (b) Congress made no clear statement of an intent to modify the federal balance [of power] by applying the Voting Rights Act to these provisions.<sup>110</sup>

In essence, neither the Second Circuit in *Hayden* nor the Eleventh Circuit in *Johnson* ever reached a substantive analysis of felony disenfranchisement provisions within the context of the VRA, instead relying on more general principles of constitutional law.

In light of the opinions subsequent to *Farrakhan v. Washington*, the Ninth Circuit Court of Appeals has retreated significantly from its earlier holding. More recently, the Court has stated that “plaintiffs bringing a section Two VRA challenge to a felon[y] disenfranchisement law based on the [sic] operation of a state’s criminal justice system must at least show that the criminal justice system is infected by *intentional* discrimination or that the felon disenfranchisement law was enacted with such intent.”<sup>111</sup>

Until the Supreme Court grants certiorari in a VRA case, doubt will remain about whether ex-felons can use it as an effective means to challenge felony disenfranchisement. Given the recent decisions that appear to entirely foreclose or significantly limit the possibility of a plaintiff’s victory under the VRA, however, any doubt that the Supreme Court could resolve by taking up a VRA case may be minimal at best.

### C. *Disenfranchisement as Cruel and Unusual Punishment*

The Eighth Amendment to the United States Constitution provides that, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>112</sup> A law must constitute a form of punishment to violate the Eighth Amendment. The judiciary has traditionally found that disenfranchisement laws are not punishments, and therefore are not subject to Eighth Amendment challenges.<sup>113</sup>

Perhaps the most commonly cited authority for this proposition comes from the Supreme Court in *Trop v. Dulles*.<sup>114</sup> *Trop* was not actually a voting-rights case, but instead concerned the Nationality Act of 1940 and whether its provision for the expatriation of members of the military who were court-martialed for desertion during wartime was constitutional.<sup>115</sup> In discussing the nature of statutes and punishment, the Court wrote specifically about disenfranchisement when discussing whether a statute should rightly be considered punitive in nature or as something other than punishment:

110. *Id.* at 328.

111. *Farrakhan v. Gregoire*, 623 F.3d at 993 (9th Cir. 2010) (emphasis in original).

112. U.S. CONST. amend. XIII.

113. *See Green v. Bd. of Elections of New York*, 380 F.2d 445, 450 (2d Cir. 1967).

114. *Trop v. Dulles*, 356 U.S. 86 (1958).

115. *Id.*

If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc., it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose. The Court has recognized that any statute decreeing some adversity as a consequence of certain conduct may have both a penal and a nonpenal effect. The controlling nature of such statutes normally depends on the evident purpose of the legislature. The point may be illustrated by the situation of an ordinary felon. A person who commits a bank robbery, for instance, loses his right to liberty and often his right to vote. If, in the exercise of the power to protect banks, both sanctions were imposed for the purpose of punishing bank robbers, the statutes authorizing both disabilities would be penal. But because the purpose of the latter statute is to designate a reasonable ground of eligibility for voting, the law is sustained as a nonpenal exercise of the power to regulate the franchise.<sup>116</sup>

However, the Supreme Court's view that disenfranchisement is not a punishment has been roundly criticized. For instance, in *Trop*, the Supreme Court rested its analysis on two cases that now represent antiquated views of what the right to vote represents as well as what power should states have in restricting the franchise.<sup>117</sup> Furthermore, the Thirty-ninth Congress—the same Congress that passed the Fourteenth Amendment on which the analysis in *Ramirez* so heavily relies—would, in laws readmitting the southern states to the union, typically “include[] the ‘fundamental condition’ that the state constitution ‘shall never be so amended or changed as to deprive any citizen or class of citizens of the United States who are entitled to vote by the constitution herein recognized, *except as a punishment for such crimes as are now felonies at common law . . .*’”<sup>118</sup> In other words, the 39th Congress believed that disenfranchisement was a politically acceptable practice *only* when it was viewed as a punishment, and not as a regulatory measure.<sup>119</sup>

Nevertheless, when confronted with an Eighth Amendment challenge, courts have continued to invoke the Supreme Court's holding in *Trop* that disenfranchisement is not a punishment in any sense of the word, much less a cruel and unusual one.

#### D. *Recidivism, Proportionality, and Policy – A Novel Approach*

While some briefs and arguments dealing with disenfranchisement have addressed rehabilitation as a general concern, none have squarely argued that

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116. *Id.* at 96-97.

117. See Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 STAN. L. REV. 1147, 1150-51 (2004) (stating the two cases relied on were *Davis v. Beason*, 133 U.S. 333 (1890), and *Murphy v. Ramsey*, 114 U.S. 15 (1885), wherein the Supreme Court affirmed the ability of states to exclude polygamists from the franchise on the proposition that the state's ability to restrict the franchise was virtually unlimited. That reasoning, however, has since been rejected in subsequent decisions).

118. *Id.* at 1154 (emphasis added).

119. *Id.*



disenfranchisement hinders rehabilitation in such a way as to *increase* recidivism.<sup>120</sup> Research in this area, has been limited because it was performed using community samples and criminal behavior was measured against voting *behavior* of ex-felons as opposed to *eligibility*.<sup>121</sup>

The argument concerning recidivism is important both within a legal and legislative context. Within a legal context, if it is persuasively shown that disenfranchisement is related to an increase in crime, then the legality of disenfranchisement, using the constitutional analysis in *City of Boerne v. Flores*, is subject to a novel argument.<sup>122</sup>

At first glance, *Flores* doesn't appear to be related much, if at all, to disenfranchisement and recidivism. In *Flores*, the Catholic Archbishop of San Antonio, Texas, brought suit against the City of Boerne for refusing to give a building permit to St. Peter's Catholic Church to enlarge their building.<sup>123</sup> The suit alleged that the refusal of the city to grant the building permit was done in violation of the Religious Freedom Restoration Act of 1993.<sup>124</sup> The Supreme Court's opinion, however, had occasion to discuss the Fourteenth Amendment. The Court stated that "[w]hile preventative rules are sometimes appropriate remedial measures, there must be a congruence between the means used and the ends to be achieved. The appropriateness of remedial measures must be considered in light of the evil presented."<sup>125</sup>

This holding potentially opens a new line of attack against disenfranchisement that is distinct from the prior challenges based on Equal Protection of the Voting Rights Act. One of the stated rationales of many disenfranchisement provisions is the prevention of recidivism.<sup>126</sup> Thus, if it can be shown that there is a significant relationship between disenfranchisement and recidivism, it could be argued that an across-the-board, one-size-fits-all approach to disenfranchisement is neither congruent nor proportional to the intended goal of preventing future offenses, whether those offenses are election-related or not. Moreover, state-law provisions—motivated either in whole or in-part by the prevention of crime—those preventative measures would not be proportional nor congruent under *Boerne* if they actually serve to *increase* the very evil they seek to ameliorate.

In addition to the constitutional argument, an argument linking recidivism and disenfranchisement is also important within a legislative and rhetorical context. Arguing that the disenfranchisement of those who have "served their time" actually creates more crime could resonate powerfully with state legislatures. If it can be demonstrated that disenfranchisement increases crime, then elected officials would be placed in the position of either defending a policy with dubious criminal justice utility, or scrapping it altogether.

The following section examines the link between recidivism and

120. See Brief for American Civil Liberties Union of Southern California as Amicus Curiae Supporting Respondents, *Richardson v. Ramirez*, 418 U.S. 24 (1974) (No. 72-1589), 1973 WL 172332.

121. See MANZA & UGGEN, *supra* note 43.

122. *City of Boerne v. Flores*, 521 U.S. 507 (1997).

123. *Id.* at 512.

124. *Id.*, 42 U.S.C.A. § 2000bb *et seq.*

125. 521 U.S. at 530.

126. E.g., the concern over ex-felons being more likely to engage in election-related offenses.

disenfranchisement using a different methodology than prior research. The analysis uses data on recidivism as well as state policies on disenfranchisement to examine whether states that take a more draconian approach to disenfranchisement (e.g. permanent disenfranchisement) actually see an increase in recidivism.

## V. IMPACT OF DISENFRANCHISEMENT ON RECIDIVISM: AN EMPIRICAL ANALYSIS

### A. Data

Data for this analysis is drawn from the Department of Justice's study *Recidivism of Prisoners released in 1994*.<sup>127</sup> This data pool represents a nationally representative sample of individuals released from prison in fifteen states in 1994.<sup>128</sup> States chosen for the sample provided basic information on all prisoners released that year, amounting to data on 302,309 prisoners.<sup>129</sup> The Department of Justice then drew a clustered sample of 38,624 releasees based on offense type and state of release.<sup>130</sup> This final sample is representative of 272,111 releasees, or roughly two-thirds of all prisoners released in 1994.<sup>131</sup>

State and federal RAP<sup>132</sup> sheets were the primary source of demographic and criminal history information.<sup>133</sup> The RAP sheet data include prisoners' date of birth, race, sex, and detailed information on past arrests, including type of offense, date, and arrest outcome.<sup>134</sup> The RAP sheets were reported to the Department of Justice spanning a minimum of three years following the 1994 release.<sup>135</sup> These data account for almost the entire criminal histories of 38,624 individuals released from prison in 1994, from the date of their first arrest through at least 1997.<sup>136</sup>

Although these data were collected almost fifteen years ago in the later part of the 1990s, it is the most comprehensive national study of recidivism in existence. Since the publication of these data, several states have conducted their own recidivism studies; however, the utilization of different measures, time points, and samples of offenders make it incredibly difficult to reliably conduct interstate comparisons. The only other national data on recidivism was published recently by the PEW Center on the States,<sup>137</sup> however, this report contained only aggregated state trends and focused exclusively on subsequent incarcerations. While this was an impressive enterprise, the lack of individual-level data makes it difficult to take into

127. Hereinafter, RPR94.

128. Patrick A. Langan, David J. Levin, *Recidivism of Prisoners Released in 1994*, U.S. Dep't of Justice (2002) <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

129. *Id.* at 12.

130. *Id.*

131. *Id.* at 1.

132. Record of Arrest and Prosecution.

133. Langan & Levin, *supra* note 128, at 12.

134. *Id.*

135. *Id.*

136. Report says that only ninety-seven percent of the data were obtained.

137. PEW CENTER ON THE STATES, STATE OF RECIDIVISM THE REVOLVING DOOR OF AMERICA'S Prisons (2011) [http://www.pewcenteronthestates.org/uploadedFiles/Pew\\_State\\_of\\_Recidivism.pdf](http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf).

account factors that are likely driving observed differences across states. Moreover, not all fifty states complied with the data collection procedures, and the PEW report contains no information on half of the states that permanently disenfranchise or those states that have no disenfranchisement policy.<sup>138</sup> While the Department of Justice recidivism data is now somewhat dated, it is still the most comprehensive study of recidivism in the United States and the most appropriate data to examine the effect of state disenfranchisement policies on individual recidivism.

## B. Measures

### 1. Recidivism

For the purposes of this analysis, recidivism is defined as an individual being re-arrested within three years following his or her release from prison. Approximately sixty-six percent of individuals in the sample experienced at least one post-release arrest.<sup>139</sup> Although the RPR94 also contains detailed information on the number of re-arrests, re-convictions, and returns to prison, the dichotomous re-arrest measure is preferred as a measure of recidivism for several reasons. First, a single post-release arrest could have led to a conviction and ultimately a subsequent prison sentence, thus removing an individual from the sample and biasing the interpretation of a large number of subsequent arrests (as these are likely to be relatively minor offenses). Second, given the relatively short observation period, the measures of conviction and incarceration are likely to vary as a function of a state's criminal justice processing time. Lastly, the process leading from arrest to eventual incarceration is lengthy, and many of those arrested towards the end of the observation period are unlikely to have been arraigned or sentenced, and therefore may be excluded from the analysis if a conviction or incarceration measure is utilized.

### 2. Individual Controls

The statistical models used in this analysis incorporate several individual-level controls that are traditionally associated with criminal behavior and consistently implicated as static predictors of recidivism.<sup>140</sup> Additionally, the statistical models also take into account the effects of sex, age, and race. Table 1 presents the descriptive statistics of the variables included in the models.

Two criminal history factors are also controlled: most recent offense, and number of prior offenses. Most recent offense captures the specific offense for which the individual was incarcerated prior to their 1994 release. This variable is collapsed into seven categories: murder, sexual offenses, assault, robbery, property offenses, drug offenses, and other.<sup>141</sup> In instances where individuals were serving time for multiple offenses, the value of the most severe offense is utilized. The number of prior offenses is measured as the number of arrests on an individual's record,

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138. *Id.*

139. *Id.* at 8, Table 9.

140. Paul Gendreau, Tracy Little & Claire Goggin, *A Meta-analysis of the Predictors of Adult Offender Recidivism: What Works?*, 34 CRIMINOLOGY 575 (1996).

141. The other category contains various public order, weapons, and DWI offenses.

excluding the arrest leading to the 1994 release. A score of zero signifies that the released prisoner was a first time offender when released. The average number of priors in this sample is 7.09.

### 3. State Level Predictors

State disenfranchisement is measured as a dichotomous variable that distinguishes states that permanently restricted the right to vote and states that returned the right to vote post-release in 1994. Roughly twenty-five percent of prisoners in the sample ( $N = 9,854$ ) were released in five states that permanently disenfranchised felons in 1994.<sup>142</sup> State-level unemployment (measured as the average unemployment rate over the three year period) is also controlled to account for variation in state-level factors that may contribute to differences in recidivism. Criminological research indicates that the crime rate varies with the unemployment rate, and so recidivism can be expected to be higher in states with higher unemployment.<sup>143</sup>

**Table 1: Descriptive Statistics (N=33,790)<sup>144</sup>**

#### *State Covariates*

	Mean/Proportion	SD
Disenfranchisement	0.33	_____
Unemployment Rate	5.25	1.03

#### *Individual Covariates*

	Mean/Proportion	SD
Subsequent Arrest	0.59	_____
Age	33.86	9.53
Female	0.06	_____
Black	0.44	_____
Other Race	0.01	_____
Number of Prior Convictions	7.09	7.81
Homicide Conviction	0.03	_____
Sex Offense	0.29	_____
Robbery Conviction	0.08	_____
Assault Conviction	0.07	_____
Property Crime Conviction	0.17	_____

\* Statistics in this table were computed after removing missing data.

\*\*Statistics presented here are not weighted.

142. Note that the Arizona and Maryland laws only apply to repeat offenders. We also computed the reported models excluding first time offenders in these states and noted no differences from the full models reported here. The five states that permanently disenfranchised in 1994 were Arizona, Delaware, Florida, Maryland, and Virginia.

143. Steven Raphael & Rudolf Winter-Ebmer, *Identifying the Effect of Unemployment on Crime*, 44 J.L. & ECON. 259 (2001).

144. The difference between this number and the number of prisoners in the RPR94 has to do with our removal of missing data—see Appendix.

### C. Analytic Strategy

The following analyses utilize multi-level logistic regression models to estimate the effect of disenfranchisement laws on recidivism while simultaneously accounting for unobserved differences across states and adjusting for the characteristics of releasees within those states.<sup>145</sup> The approach estimates whether an individual was rearrested post-release as a function of his or her background characteristics (race, gender, age, criminal history) and the characteristics of the state where he or she was released. The general method is popular in social-science research to estimate differences in individual outcomes across aggregate units (states, counties, schools) while also accounting for the possibility that individuals within each unit systematically differ from those in other units.<sup>146</sup> All data management was conducted in Stata/SE version 10 and the analyses were performed using HLM version 7.

The study demonstrates the robustness of the effect of disenfranchisement laws on subsequent arrest by first estimating the bivariate association in Model 1 and then re-estimating the association once controlling for individual characteristics and state unemployment in Model 2. The results indicate that net of the effects of demographic background characteristics, criminal history, and state unemployment rates, disenfranchisement laws have a robust effect on the likelihood of experiencing a subsequent arrest.

The models are estimated using a two-step approach. The first step, presented in Table 2, estimates the difference in the likelihood of being rearrested across states. This model indicates that there are statistically meaningful differences in the probability of being rearrested depending on the state in which an individual is released. Approximately seven percent of the variation is due to state-level differences. This means that it is appropriate to model individual variation in subsequent arrests as a function of state-level factors.

Next, the study considered whether variation in state disenfranchisement policies accounted for the observed variation in recidivism across states. A transformation of the coefficient for a state's disenfranchisement law reveals that individuals who are released in states that permanently disenfranchise are roughly nineteen percent more likely to be rearrested than those released in states that restore the franchise post-release.<sup>147</sup> This finding provides initial evidence consistent with the thesis that disenfranchisement is directly related to recidivism.

A potential issue with this conclusion is that unobserved differences in releases may be driving the observed variation in recidivism across states. For instance, some states may incarcerate only the most serious offenders, while other states may be more likely to incarcerate relatively minor offenders. Given the time-frame in which these data were collected, it is reasonable to expect some variation in drug statutes and mandatory minimums across the fifteen states. Therefore, variations in recidivism may simply reflect differences in the types of offenders being released.

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145. See RAUDENBUSH, S.W. & BRYK A.S., *HIERARCHICAL LINEAR MODELS: APPLICATIONS AND DATA ANALYSIS METHODS* (2d ed. 2002).

146. For a more technical discussion of the statistical models, refer to the Appendix.

147.  $p < 0.001$ , See Appendix.

In order to account for this possibility, the models are adjusted for each individual's demographic characteristics and criminal history. As evidenced in Model 2, being black, younger and having prior felony convictions are all positively associated with an individual's likelihood of experiencing a subsequent arrest. Conversely, being female, white, and older are negatively associated with the likelihood of arrest. Of particular interest here is that although the positive effect of permanent disenfranchisement policy on recidivism was slightly diminished once controlling for these individual factors, it remained a significant predictor nonetheless. The results of this model indicate the net of the effect of race, gender, criminal history, and the state unemployment rate on recidivism. Individuals released in states that permanently disenfranchise are roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release.<sup>148</sup> This association is displayed graphically in Figure 1.

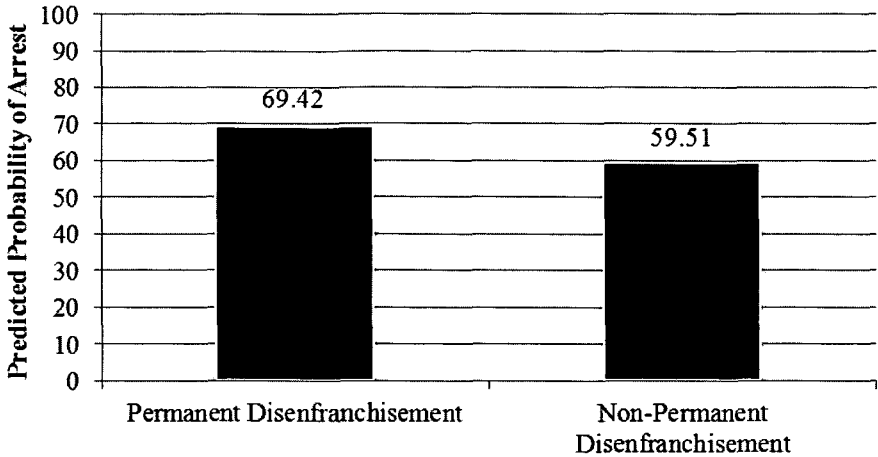
**Table 2: Restricted Maximum Likelihood Logistic Regression of Re-Arrest (N= 33,790)**

Fixed Effects	Model 1: Baseline			Model 2: Within States		
	LO	se		LO	se	
<i>Between States</i>						
Intercept	.283	.126	***	.434	.066	***
Permanent Disenfranchisement	.604	.220	***	.385	.117	**
Unemployment Rate	—	—		.083	.035	*
<i>Within States</i>						
Age at Release	—	—		-.059	.004	***
Sex	—	—		-.479	.009	***
Black	—	—		.491	.061	***
Other Race	—	—		-.392	.303	
Number of Prior Convictions	—	—		.077	.009	***
Homicide Conviction	—	—		-.651	.054	***
Sex Offense	—	—		-.504	.123	***
Robbery Conviction	—	—		-.058	.050	
Assault Conviction	—	—		-.051	.049	
Property Crime Conviction	—	—		.284	.056	***
<b>Random Effects</b>						
Between States	VC <sup>b</sup>	$\chi^2$ (df)		VC <sup>b</sup>	$\chi^2$ (df)	
	0.0723	415.48	***	0.066	259.61	***
		(1)			(12)	
<b>Statistics</b>						
Likelihood (Estimated Parameters)	-54864.62			-54650.59		
$\chi^2$ (df) <sup>d</sup>	—			426.82 (11)		***

\*\*\*p < 0.001; \*\*p < 0.01, \* p < 0.05

148. p<0.01.

**Figure 1: Predicted Probability of Rearrest for Offenders Released from Prison in 1994.**



**\* Adjusted for age, race, sex, criminal history and state-level unemployment and weighted at the individual level**

## VI. CONCLUSION

Disenfranchisement excludes large numbers of American citizens from the franchise, thereby prohibiting their participation in the political process. The philosophical views that underlie disenfranchisement are reflective of a pre-modern era, one not characterized by the ideals of democracy and universal suffrage.<sup>149</sup> Disenfranchisement is a stark example of American exceptionalism as no other first-world democracies disenfranchise their citizens to the extent seen in the United States.

Disenfranchisement is a practice that has thus far been resistant to legal challenges. Plaintiffs have primarily challenged disenfranchisement under the Equal Protection provision of the Fourteenth Amendment or under the Voting Rights Act—challenges, which have largely been ineffective. Courts have also been reluctant to view disenfranchisement as punishment at all, thereby insulating it from attack under the Eighth Amendment.

One argument, which courts have never fully examined, however, is that disenfranchisement is linked to recidivism. Consistent with theories of labeling and shaming, one potential consequence of disenfranchisement is to create a permanent criminal underclass of outcasts, which is unable to fully rejoin society after their sentence is served. The outcome of this effect could, in turn, lead to an increase in criminal activity.

149. MANZA & UGGEN, *supra* note 43.

Not only is disenfranchisement a poor social policy, it is arguably unconstitutional under the Supreme Court's *Boerne* test. Disenfranchisement schemes also do not fulfill any crime prevention purpose, either as deterrence to criminal offenses or prevention of election-related offenses. Disenfranchisement may actually increase criminal activity across-the-board for all criminal offenders, regardless of class or type of offense.

Taken as a whole, these findings indicate that states which permanently disenfranchise ex-felons experience significantly higher repeat offense rates than states that do not. If it is the case that disenfranchisement policy has a causal relationship with recidivism, then states that disenfranchise permanently can expect to see a significant reduction in the re-arrest rates of ex-felons should they restore the franchise post-release. A reduction of this sort would be a potential boon for states, not only in terms of the general principles of crime control, but economically as well.<sup>150</sup>

The analysis, however, is not without several important caveats and limitations. Foremost, what is borne out by the data is simply an association between disenfranchisement and recidivism, but the nature of that relationship—whether it is simply correlational or causal—remains unclear. In addition, the criminal justice systems across states differ in many respects, and many of those variables can be difficult to both detect and control through statistical analysis. If nothing else, the data suggests there is a relationship between disenfranchisement and recidivism, which should create significant implications for policy-makers, the judiciary, and the criminal justice system. However, the relationship deserves further investigation in subsequent work.

In conclusion, while disenfranchisement has been a part of many political and social traditions, it is a vestige of a pre-democratic era and makes little sense in modern times. Its justifications are illusory, its history is dubious, and as this article has shown, its effects on those trying to make amends for their crimes and rejoin the ranks of society may well outweigh any supposed benefit that disenfranchisement provides.

## VII. APPENDIX

The following provides a more technical discussion of the hierarchical logistic regression models presented in Table 2. As reflected in Eq. 1, the outcome variable in each model is the natural logarithmic transformation of the odds of being re-arrested in the three-year observation period, denoted here as  $p$ .

$$\text{Eq. 1 } \eta_{ij} = \log(p/1-p)$$

This outcome variable is interpreted as the log odds of individual  $i$  in state  $j$  experiencing a subsequent arrest. An exponential transformation of  $e^{\eta_{ij}}$  yields the expected odds which can be transformed again ( $e^{\eta_{ij}} / 1 + e^{\eta_{ij}}$ ) to determine the predicted probability of re-arrest. The models present the coefficients as log odds, but for ease of interpretation the findings are discussed in terms of predicted probabilities.

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150. See PEW CENTER ON THE STATES, *supra* note 137.



The logistic regression models can be best conceptualized as a two-level process. The level-one models refer to the effect of individual characteristics (demographic and criminal history) and level-two models refer to the effect of state factors on recidivism. To gauge the magnitude of variation in recidivism across states, an unconditional model was specified with no covariates at either level. Given the Bernoulli sampling distribution, the level one model is expressed as:

$$\eta_{ij} = \beta_{0j}$$

and the level two model as:

$$\beta_{0j} = \gamma_{00} + U_{0j}$$

In this unconditional model,  $\gamma_{00}$  is the average log-odds of recidivism across states and  $U_{0j}$  is a random effect accounting for variation in the average log-odds of recidivism across states. The level-one model incorporates respondent-level covariates allowing for an estimation of the log-odds of recidivism controlling for characteristics of releasees in each of the states:

$$\eta_{ij} = \beta_{0j} + \beta_{1j}(\text{black}) + \beta_{2j}(\text{other race}) + \beta_{3j}(\text{Age}) + \beta_{4j}(\text{Gender}) + \beta_{5j}(\text{Priors}) + \beta_{6j}(\text{Homicide Conviction}) + \beta_{7j}(\text{Sex Offense Conviction}) + \beta_{8j}(\text{Robbery Conviction}) + \beta_{9j}(\text{Assault Conviction}) + \beta_{10j}(\text{Property Crime Conviction})$$

Each of the level-one covariates was grand mean centered allowing the intercept,  $\beta_{0j}$ , to be interpreted as the expected odds of an average prisoner experiencing a subsequent arrest across states. The equation incorporates a random intercept ( $\beta_{0j}$ ) at level-one, which allows one to assess the variation in recidivism due to state-level characteristics (as reflected in the variance component). For the sake of model parsimony the effects of the level-one covariates in each of the models are fixed. These results, then, rest on the assumption that the associations between race, gender, age, criminal history, and recidivism are constant across states. It is important to note that there may be reason to believe that these relationships vary across states, but the limited number of level-two units necessitates that degrees of freedom are preserved where possible. Thus this restriction is based on empirical, rather than theoretical grounds.

The level-two model incorporates the intercept from the level-one model as a dependent variable such that:

$$B_{0j} = \gamma_{00} + \gamma_{01}(\text{Disenfranchisement Law}) + \gamma_{02}(\text{State Unemployment Rate}) + U_{0j}$$

In this equation,  $\gamma_{00}$  is the mean log odds of recidivism across states,  $\gamma_{01}$  is the effect of the state's disenfranchisement law,  $\gamma_{02}$  is the effect unemployment rate and  $U_{0j}$  is the error term for the effect of the  $j$ th state on the mean log-odds of recidivism. The final models were weighted for survey design. The application of these probability weights adjusts the results to be representative of over 300,000

prisoners released in 1994, which accounts for over two-thirds of all prisoners released in the United States that year. The missing variables list-wise are excluded, which reduced the final sample to roughly ninety-two percent of all available cases.

The random effects portion of the models represents the variation in subsequent arrests due to state-level characteristics. In the first model, the variance component indicates that roughly seven percent<sup>151</sup> of the variation in arrests is due to differences across states. Although most of the observed variation in arrests is due to individual characteristics, an appreciable portion can be attributed to state-level differences. In the second model, this figure drops slightly once controlling for individual-factors and unemployment, suggesting we have explained part of the state differences in subsequent arrest by controlling for unemployment rates.

Model fits were estimated by multiplying the difference between the likelihood functions of the full and restricted models by -2. This quotient approximates a chi-square distribution with degrees of freedom equal to the difference in parameters between the two models. A significant chi-square value indicates the full model is preferred over the restricted model. The  $\chi^2$  reported here indicates that the model including the individual characteristics and state unemployment rate provides a more comprehensive explanation of recidivism than the model with disenfranchisement law only.

In order to gauge the effect of dataset outliers and points of leverage on these results, the standardized Pearson residual, the deviance residual, and the Pregibon leverage statistic were computed. Individual data points with leverage greater than 3 times the average leverage, and data points with residuals that were greater than the absolute value of 2.0 were then removed. This amounted to removing roughly 4.5 percent of the data points. The statistical models were then re-fit. The general findings reported here remained significant in these updated models, suggesting that outliers and points of leverage do not undermine the strong association between disenfranchisement and recidivism.

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151. 0.0723,  $p < 0.001$ .



## **Tab 5**

# **Florida and Other State Legislation**



1 reinforces their ties to the community and thus helps to  
2 prevent recidivism.

3 (c) Under current law, the state permanently denies  
4 the right to vote to all persons convicted of felonies unless  
5 they receive discretionary executive clemency.

6 (d) The restoration of voting rights through the  
7 clemency process is cumbersome and costly and produces long  
8 delays. The clemency process imposes administrative burdens on  
9 the state and economic burdens on state taxpayers, and it  
10 should be reserved for extraordinary cases. Streamlining the  
11 restoration process for the majority of former offenders will  
12 advance administrative efficiency, fiscal responsibility,  
13 fairness, and democracy.

14 (2) PURPOSE.--The purposes of this act are to  
15 strengthen democratic institutions by increasing participation  
16 in the voting process, to help felons who have completed their  
17 sentences to become productive members of society, and to  
18 streamline procedures for restoring the right to vote.

19 Section 3. Section 944.294, Florida Statutes, is  
20 created to read:

21 944.294 Restoration of voting rights.--

22 (1) A person who has been convicted of a felony, other  
23 than those set forth in subsection (3), shall be restored the  
24 right to vote upon completion of his or her sentence.

25 (2) For purposes of this section, "completion of  
26 sentence" occurs when a person is released from incarceration  
27 upon expiration of his or her sentence and has completed all  
28 other terms and conditions of the sentence or subsequent  
29 supervision or, if the person has not been incarcerated for  
30 the felony offense, has completed all terms and conditions of  
31 supervision imposed on him or her.

1           (3)(a) Persons convicted of crimes defined by the  
2 following statutes shall be ineligible for restoration of  
3 voting rights under this section:

4           1. Section 782.04, relating to murder.

5           2. Section 782.07(3), relating to aggravated  
6 manslaughter of a child.

7           3. Section 794.011, relating to sexual battery.

8           4. Section 796.03, relating to procuring a person  
9 under 18 for prostitution.

10           5. Section 796.035, relating to selling or buying  
11 minors into sex trafficking or prostitution.

12           6. Section 826.04, relating to incest.

13           7. Section 827.071, relating to sexual performance by  
14 a child.

15           8. Section 847.0145, relating to selling or buying  
16 minors.

17           (b) Persons convicted of treason or whose impeachment  
18 has resulted in conviction, as referred to in s. 8, Art. IV of  
19 the State Constitution, shall also be ineligible for  
20 restoration of voting rights under this section.

21           (4) Nothing in this section shall be construed to  
22 impair the ability of any person convicted of a felony to  
23 apply for executive clemency under s. 8, Art. IV of the State  
24 Constitution.

25           (5) A court shall, before accepting a plea of guilty  
26 or nolo contendere to a felony without trial or, if a trial is  
27 held, before imposing sentence for a felony, notify the  
28 defendant as follows:

29           (a) If the felony is described in subsection (3), that  
30 conviction will result in permanent loss of the right to vote  
31

1 unless he or she receives executive clemency under s. 8, Art.  
2 IV of the State Constitution.

3 (b) If the felony is not described in subsection (3),  
4 that conviction will result in loss of the right to vote until  
5 the defendant completes his or her sentence and that voting  
6 rights will be restored thereafter.

7 (6) The Secretary of State shall ensure that persons  
8 who become eligible to vote upon completion of sentence face  
9 no continued barriers to registration or voting resulting from  
10 their felony convictions.

11 (7) The Secretary of State shall develop and implement  
12 a program to educate attorneys; judges; election officials;  
13 corrections officials, including parole and probation  
14 officers; and members of the public about the requirements of  
15 this section, ensuring that:

16 (a) Judges are informed of their obligation to notify  
17 criminal defendants of the potential loss and restoration of  
18 their voting rights as required by subsection (5).

19 (b) The Department of Corrections, including offices  
20 of probation and parole, is prepared to assist people with  
21 registering to vote in anticipation of their completion of  
22 sentence, including forwarding their completed voter  
23 registration forms to the appropriate voter registration  
24 official.

25 (c) Accurate and complete information about the voting  
26 rights of people who have been charged with or convicted of  
27 crimes, whether disenfranchising or not, is made available  
28 through a single publication to government officials and the  
29 public.

30 Section 4. Paragraph (s) of subsection (2) of section  
31 97.052, Florida Statutes, is amended to read:



1           97.052 Uniform statewide voter registration  
2 application.--

3           (2) The uniform statewide voter registration  
4 application must be designed to elicit the following  
5 information from the applicant:

6           (s) Whether the applicant has been convicted of a  
7 felony, and, if convicted, has had his or her voting ~~civil~~  
8 rights restored by including the statement "I affirm I am not  
9 a convicted felon, or, if I am, my voting rights ~~relating to~~  
10 ~~voting~~ have been restored." and providing a box for the  
11 applicant to check to affirm the statement.

12  
13 The registration application must be in plain language and  
14 designed so that convicted felons whose civil rights have been  
15 restored and persons who have been adjudicated mentally  
16 incapacitated and have had their voting rights restored are  
17 not required to reveal their prior conviction or adjudication.

18           Section 5. Paragraph (a) of subsection (5) of section  
19 97.053, Florida Statutes, is amended to read:

20           97.053 Acceptance of voter registration  
21 applications.--

22           (5)(a) A voter registration application is complete if  
23 it contains the following information necessary to establish  
24 the applicant's eligibility pursuant to s. 97.041, including:

- 25           1. The applicant's name.  
26           2. The applicant's legal residence address.  
27           3. The applicant's date of birth.  
28           4. A mark in the checkbox affirming that the applicant  
29 is a citizen of the United States.

30  
31

1           5.a. The applicant's current and valid Florida  
2 driver's license number or the identification number from a  
3 Florida identification card issued under s. 322.051, or

4           b. If the applicant has not been issued a current and  
5 valid Florida driver's license or a Florida identification  
6 card, the last four digits of the applicant's social security  
7 number.

8  
9 In case an applicant has not been issued a current and valid  
10 Florida driver's license, Florida identification card, or  
11 social security number, the applicant shall affirm this fact  
12 in the manner prescribed in the uniform statewide voter  
13 registration application.

14           6. A mark in the checkbox affirming that the applicant  
15 has not been convicted of a felony or that, if convicted, has  
16 had his or her voting ~~civil~~ rights restored.

17           7. A mark in the checkbox affirming that the applicant  
18 has not been adjudicated mentally incapacitated with respect  
19 to voting or that, if so adjudicated, has had his or her right  
20 to vote restored.

21           8. The original signature or a digital signature  
22 transmitted by the Department of Highway Safety and Motor  
23 Vehicles of the applicant swearing or affirming under the  
24 penalty for false swearing pursuant to s. 104.011 that the  
25 information contained in the registration application is true  
26 and subscribing to the oath required by s. 3, Art. VI of the  
27 State Constitution and s. 97.051.

28           Section 6. Paragraph (c) of subsection (1) of section  
29 98.045, Florida Statutes, is amended to read:

30           98.045 Administration of voter registration.--

31

1           (1) ELIGIBILITY OF APPLICANT.--The supervisor must  
2 ensure that any eligible applicant for voter registration is  
3 registered to vote and that each application for voter  
4 registration is processed in accordance with law. The  
5 supervisor shall determine whether a voter registration  
6 applicant is ineligible based on any of the following:

7           (c) The applicant has been convicted of a felony for  
8 which his or her voting ~~civil~~ rights have not been restored.

9           Section 7. Paragraph (g) of subsection (2) of section  
10 98.093, Florida Statutes, is redesignated as paragraph (h),  
11 and a new paragraph (g) is added to that subsection to read:

12           98.093 Duty of officials to furnish lists of deceased  
13 persons, persons adjudicated mentally incapacitated, and  
14 persons convicted of a felony.--

15           (2) To the maximum extent feasible, state and local  
16 government agencies shall facilitate provision of information  
17 and access to data to the department, including, but not  
18 limited to, databases that contain reliable criminal records  
19 and records of deceased persons. State and local government  
20 agencies that provide such data shall do so without charge if  
21 the direct cost incurred by those agencies is not significant.

22           (g) The Department of Corrections shall furnish  
23 monthly to the department a list of those persons who, in the  
24 preceding month, have been released from incarceration upon  
25 expiration of sentence and have completed all other terms and  
26 conditions of the sentence or subsequent supervision, or who  
27 were not incarcerated for the felony offense but have  
28 completed all terms and conditions of supervision imposed upon  
29 them. The Department of Corrections shall also furnish any  
30 updates to prior records which have occurred in the preceding  
31 month. The list shall contain the name, address, date of

1 birth, race, sex, social security number, Department of  
2 Corrections record identification number, and associated  
3 Department of Law Enforcement felony conviction record number  
4 of each person.

5 Section 8. Section 940.061, Florida Statutes, is  
6 amended to read:

7 940.061 Informing persons about executive clemency and  
8 restoration of ~~civil~~ rights.--The Department of Corrections  
9 shall inform and educate inmates and offenders on community  
10 supervision about:

11 (1) The restoration of voting rights and assist  
12 eligible inmates and offenders on community supervision with  
13 the completion of a voter registration application, unless the  
14 inmate or offender on community supervision declines such  
15 assistance.

16 (2) The restoration of civil rights and assist  
17 eligible inmates and offenders on community supervision with  
18 the completion of the application for the restoration of civil  
19 rights.

20 Section 9. Subsection (1) of section 944.292, Florida  
21 Statutes, is amended to read:

22 944.292 Suspension of civil rights.--

23 (1) Upon conviction of a felony as defined in s. 10,  
24 Art. X of the State Constitution, the civil rights of the  
25 person convicted shall be suspended in Florida until such  
26 rights are restored by a full pardon, conditional pardon, or  
27 restoration of civil rights granted pursuant to s. 8, Art. IV  
28 of the State Constitution or, as to voting rights, until  
29 restoration of voting rights pursuant to s. 944.294.

30 Section 10. Section 944.293, Florida Statutes, is  
31 amended to read:

1           944.293   Initiation of restoration of ~~civil~~  
2 rights.--With respect to those persons convicted of a felony,  
3 the following ~~procedures~~ procedure shall apply:

4           (1) Prior to the time an eligible offender is  
5 discharged from supervision, an authorized agent of the  
6 department shall obtain from the Department of State the  
7 necessary application for registering to vote. An authorized  
8 agent shall provide this application to the eligible offender  
9 and inform him or her that the decision whether to register to  
10 vote is voluntary and that applying to register or declining  
11 to register to vote will not affect any term or condition of  
12 the offender's supervision.

13           (2) The authorized agent shall inform the eligible  
14 offender of the opportunity to file a complaint with the  
15 Secretary of State on the belief that someone has interfered  
16 with the offender's right to register or to decline to  
17 register to vote, the right to privacy in deciding whether to  
18 register or in applying to register to vote, or the right to  
19 choose a political party or other political preference. The  
20 authorized agent shall provide the address and telephone  
21 number of the appropriate office in the Department of State  
22 where a complaint may be filed.

23           (3) The authorized agent shall offer the eligible  
24 offender assistance with the voter registration application  
25 but shall make clear that the offender may fill out the  
26 application in private. Unless the offender declines  
27 assistance, the authorized agent shall assist the offender in  
28 completing the application and shall ensure that the completed  
29 application is forwarded to the appropriate voter registration  
30 official before the eligible offender is discharged from  
31 supervision.

1           ~~(4)~~ Prior to the time an offender is discharged from  
2 supervision, an authorized agent of the department shall  
3 obtain from the Governor the necessary application and other  
4 forms required for the restoration of civil rights. The  
5 authorized agent shall assist the offender in completing these  
6 forms and shall ensure that the application and all necessary  
7 material are forwarded to the Governor before the offender is  
8 discharged from supervision.

9           Section 11. Paragraph (g) of subsection (2) of section  
10 944.705, Florida Statutes, is redesignated as paragraph (h),  
11 and a new paragraph (g) is added to that subsection to read:

12           944.705 Release orientation program.--

13           (2) The release orientation program instruction must  
14 include, but is not limited to:

15           (g) Restoration of voting rights and restoration of  
16 civil rights.

17           Section 12. This act shall take effect on the  
18 effective date of House Joint Resolution \_\_\_ or another  
19 amendment to the State Constitution which authorizes, or  
20 removes impediments to, enactment of this act by the  
21 Legislature and shall apply retroactively to all persons who  
22 are eligible to vote under its terms, regardless of whether  
23 they were convicted or discharged from sentence prior to its  
24 effective date.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2230

The committee substitute differs from the original bill in that it: requires as a condition of automatic restoration of voting rights that former felons complete all the terms and conditions of their sentences, both monetary (i.e., victim's restitution) and nonmonetary; and removes findings relating to the number of disenfranchised felons in Florida and the corresponding disproportionate impact on minority communities.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 2230

INTRODUCER: Ethics and Elections Committee and Senator Wilson

SUBJECT: Restoration of Voting Rights Act

DATE: April 19, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Fav/CS</b>
2.	Davis	Cannon	CJ	<b>Favorable</b>
3.			JU	
4.			JA	
5.				
6.				

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## I. Summary:

The bill provides for the automatic restoration of a former felon's right to vote following the completion of the terms and conditions of his or her sentence of incarceration and community supervision, except for felons convicted of certain reprehensible crimes or whose impeachment has resulted in conviction who must seek restoration through the clemency process. The bill also contains certain notice and education requirements aimed at assisting former convicted felons in exercising their right to register to vote.

The bill takes effect on the effective date of an amendment to the State Constitution which authorizes, or removes impediments to, the provisions of this bill.

This bill creates section 944.294 of the Florida Statutes, and amends sections 97.052, 97.053, 98.045, 98.093, 940.061, 944.292, 944.293 and 944.705, Florida Statutes, to conform.

## II. Present Situation:

The restoration of the civil rights of a convicted felon, which includes the right to register to vote, is a form of executive clemency --- a power granted by the Florida Constitution to the Governor with the consent of at least two members of the Cabinet.<sup>1</sup> The Florida Constitution specifically bars any person convicted of a felony from being qualified to vote or hold office until that person's civil rights have been restored.<sup>2</sup> Florida Statutes implement the constitutional

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<sup>1</sup> Article IV, s. 8(a), Florida Constitution.

<sup>2</sup> Article VI, s. 4(a), Florida Constitution.



bar against felons voting by providing that any person convicted of a felony, who has not had his or her right to vote restored pursuant to law, may not register or vote.<sup>3</sup>

The FAQ section of Board of Executive Clemency's web site provides a summary of the basic procedure for the restoration of civil rights, including the right to vote:

**1. If I am released from custody or supervision from the Florida Department of Corrections, how can my civil rights be restored?**

At the completion of your sentence, the Florida Department of Corrections will automatically submit an electronic application for you to the Parole Commission for eligibility review for restoration of civil rights without a hearing. If determined eligible, your name will go to the Clemency Board for a 30-day review, and if no objection from two or more Board Members is received, your rights will be restored and a certificate of restoration of civil rights will be mailed to your last known address. If you are determined ineligible by the Commission, or receive objections from the Board, you will be notified that the restoration process may continue if you contact the Office of Executive Clemency and request a hearing and agree to participate in the investigative process.

Each of the fifty states has statutes governing the restoration of civil rights of convicted felons. These varied approaches range from a life time ban on voting in some states to allowing felons to vote while incarcerated in other states.<sup>4</sup>

**III. Effect of Proposed Changes:**

**Section 1.** Provides a short title.

**Section 2.** Contains a list of legislative findings and defines the purpose of the bill.

**Section 3.** Creates s. 944.294, F.S.; provides for the automatic restoration of the right to vote for certain former felons who complete the terms and conditions of their sentence of incarceration and community supervision; excludes former felons convicted of crimes relating to murder, aggravated manslaughter of a child, sexual battery, procuring a person under 18 for prostitution, selling or buying minors into sex trafficking or prostitution, incest, sexual performance by a child, selling or buying minors, and treason, or whose impeachment has resulted in conviction; requires a court to notify convicted felony defendants of how their voting rights can be restored; mandates that the Secretary of State ensure that those persons who become eligible to vote upon completion of their sentence face no continued barriers to voter registration; requires the Secretary of State to develop an educational program ensuring that (1) judges are informed of their new notice obligations, (2) that the Department of Corrections is prepared to assist people with registering to vote in anticipation of the completion of their sentence, including forwarding completed voter registration forms to the appropriate voter registration official, and (3) that

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<sup>3</sup> Section 97.041(2)(b), F.S.

<sup>4</sup> See The Florida House of Representatives interim project, *Report on the Restoration of Felons' Voting Rights in Florida*, December 16, 2005.

accurate and complete information about the voting rights of convicted criminals is made available through a single publication to government officials and the public.

**Sections 4, 5, and 6.** Amends ss. 97.052, 97.053, and 98.045, F.S.; technical; makes conforming changes to the Florida Election Code.

**Section 7.** Amends s. 98.093, F.S.; requires the Department of Corrections to furnish a monthly list to the Department of State of persons who have been released from incarceration and community supervision who have completed all terms and conditions of their sentence. The list must include the person's name, address, date of birth, race, sex, social security number, Department of Correction identification number, and associated FDLE felony conviction record number.

**Section 8.** Amends s. 940.061, F.S.; requires the Department of Corrections to inform and educate inmates and offenders on community supervision about the restoration of voting rights and assist eligible inmates and offenders with the completion of a voter registration application unless the person declines such assistance.

**Section 9.** Amends s. 944.292, F.S.; technical; conforming.

**Section 10.** Amends s. 944.293, F.S.; adopts extensive procedures for the Department of Corrections with respect to providing notice and assisting felons with voter registration proximate to their release from incarceration and community supervision, to conform.

**Section 11.** Amends s. 944.705, F.S.; technical; conforming.

**Section 12.** Contains a contingent effective date, making the Act effective on the effective date of an amendment to the State Constitution which authorizes, or removes impediment to, enactment of the Act by the Legislature; providing for retroactive application.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The educational, notice and procedural requirements in the bill will result in indeterminate fiscal costs to the Department of State, Department of Corrections, and county supervisors of elections. This may be offset somewhat by a reduced workload for the Office of Executive Clemency.

**VI. Technical Deficiencies:**

As specified by the contingent effective date in Section 12 of the bill, a constitutional amendment is necessary in order to give effect to the provisions of this bill. CS/SB 2230, therefore, is an “implementing bill.”

Although Senate bill history does not identify a constitutional amendment linked to CS/SB 2230, SJR 1082 by Senator Dawson or SJR 2734 by Senator Siplin could serve to provide the necessary underlying constitutional amendment proposal.

**VII. Related Issues:**

On November 14, 2005, the U.S. Supreme Court denied certiorari and refused to hear a Florida case concerning the restoration of a felon’s voting rights. In refusing to accept the case the Court upheld Florida’s 160 year old law which created a life long ban on convicted felons voting unless those voting rights are restored by the governor.<sup>5</sup>

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This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>5</sup> Johnson v. Bush, 126 S.Ct. 650, 2005 WL 3027725 (U.S.).

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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COMMONWEALTH OF KENTUCKY  
STATE FISCAL NOTE STATEMENT

GENERAL ASSEMBLY  
2008 REGULAR SESSION

LEGISLATIVE RESEARCH COMMISSION  
2008-2010 INTERIM

MEASURE

(x) 2008 BR No. 0194 (x) House Bill No. 70 GA

( ) Resolution No. \_\_\_\_\_ ( ) Amendment No. \_\_\_\_\_

SUBJECT/TITLE An Act proposing an amendment to Section 145 of the Constitution of Kentucky relating to persons entitled to vote.

SPONSOR Representatives Owens and Crenshaw

NOTE SUMMARY

Fiscal Analysis: \_\_\_\_\_ Impact x No Impact \_\_\_\_\_ Indeterminable Impact

Level(s) of Impact: \_\_\_\_\_ State \_\_\_\_\_ Local \_\_\_\_\_ Federal

Budget Unit(s) Impact \_\_\_\_\_

Fund(s) Impact: \_\_\_\_\_ General \_\_\_\_\_ Road \_\_\_\_\_ Federal  
\_\_\_\_\_ Restricted Agency (Type) \_\_\_\_\_ (Other)

FISCAL SUMMARY

<u>Fiscal Estimates</u>	<u>2007-2008</u>	<u>2008-2009</u>	<u>2009-2010</u>	<u>Future Annual Rate of Change</u>
Revenues (+/-)				
Expenditures (+/-)				
Net Effect				

**MEASURE'S PURPOSE:** The primary purpose of the bill is to make it easier and simpler for most persons convicted of a felony to regain their right to vote.

**PROVISION/MECHANICS:** Persons convicted of certain felonies defined in the bill could only regain voting rights through a pardon by the Governor. All others convicted of felonies would have their rights automatically returned after expiration of probation, final discharge of parole, or maximum expiration of sentence. Four of the amendments add certain felonies to the list requiring gubernatorial action. The fifth amendment requires that persons must obtain a "receipt of a certificate of completion of a civics review course as determined by general law".

**FISCAL EXPLANATION:** The original bill and the amendments have no fiscal impact on state or local government.

DATA SOURCE(S) \_\_\_\_\_

NOTE NO. 102.1 PREPARER Mike Mullins REVIEW LBH DATE 4/11/08

**Department of Legislative Services**  
 Maryland General Assembly  
 2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 340 (Senator Conway)

Education, Health, and Environmental Affairs

Ways and Means

**Election Law - Voting Rights - Ex-Felons**

This bill limits the disqualification of a person from registering to vote for a felony conviction to the period when the individual is serving a court-ordered sentence of imprisonment for the conviction (eliminating the inclusion of any term of parole or probation).

The bill takes effect July 1, 2015.

**Fiscal Summary**

**State Effect:** Transportation Trust Fund (TTF) expenditures increase by \$10,000 in FY 2015 to revise and reprint Motor Vehicle Administration (MVA) forms containing voter registration qualifications. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	10,000	0	0	0	0
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Current Law:** An individual is not qualified to be a registered voter if the individual has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, for the conviction.

**Background:** State law regarding disqualification from registering to vote based on a criminal conviction or convictions was last modified under Chapter 159 of 2007. The changes under Chapter 159 included the repeal of a provision requiring an individual with a second or subsequent conviction of theft or other infamous crime to allow three years to elapse after completing the individual's court-ordered sentence as well as the repeal of a provision permanently disqualifying an individual who had been convicted of a second or subsequent crime of violence.

The National Conference of State Legislatures (NCSL) indicates that state approaches to felon disenfranchisement vary significantly, but in 38 states and the District of Columbia, most ex-felons automatically gain the right to vote on the completion of their sentence. According to NCSL, most recent legislation, since 1996, has sought to expand felon voting rights and ease the process of voting rights restoration.

**State Expenditures:** TTF expenditures increase by \$10,000 in fiscal 2015 for one-time revision and reprinting of MVA forms containing voter registration qualifications. Costs are incurred in fiscal 2015 to implement changes prior to the bill's effective date of July 1, 2015.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 980 (Delegate McCray, *et al.*) - Ways and Means.

**Information Source(s):** State Board of Elections, Department of Public Safety and Correctional Services, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2015  
md/hlb Revised - Senate Third Reader - March 24, 2015

---

Analysis by: Scott D. Kennedy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510



# 45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR: SRC DATE TYPED: 03/01/01 HB

SHORT TITLE: Restore Voting Rights SB CS/204/aSJC

ANALYST: Woodlee

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates Senate Joint Resolution 8.

### SOURCES OF INFORMATION

LFC Files  
Secretary of State

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment for SRC Substitute for Senate Bill 204 makes technical changes to the bill. The amendment ensures that references to a felon being “registered” means “registered to vote.” Also, the amendment clarifies that the clerk of the court shall notify the county clerk of the county where the convicted felon is registered to vote.

#### Synopsis of Substitute Bill

The Senate Rules Committee Substitute for Senate Bill 204 amends the Election Code and allows for a convicted felon to have full voting rights upon completion of probation or parole requirements.

#### Significant Issues

The bill provides for a process of canceling an individual’s voter registration following a felony conviction. In addition, the bill provides that after the conditions of probation or parole have been met by the individual, the state or federal institution will notify the Secretary of State and the Clerk of the County in which he or she resides. The bill proposes to not allow a person who has been convicted of a felony to be permitted to vote in any statewide, county, municipal, or district election unless they:

## **Senate Bill CS/204/aSJC -- Page 2**

1. Have satisfactorily completed the terms of a suspended or deferred sentence imposed by a court;
2. Was unconditionally discharged from a state correctional facility and has satisfactorily completed all conditions of probation or parole;
3. Was unconditionally discharged from a federal correctional facility and has satisfactorily 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 full rights of citizenship.

The bill provides that after serving the entire sentence, including probation or parole, the individual must request a certificate of completion, which is to be presented to the county clerk. In addition to this certificate, the county clerk may accept a judgement or sentence from a court which shows completion of the sentence or a certificate of completion from another state or the federal government. Also, the bill indicates a convicted felon 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, as in item 4 above.

The bill provides for penalties and exception for allowing prisoners to vote.

### **FISCAL IMPLICATIONS**

There is no appropriation contained within this bill.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

Senate Rules Committee Substitute for Senate Bill 204 is a companion to Senate Joint Resolution 8 which proposes a constitutional amendment to allow persons convicted of a felony to vote.

MW/ar

## **BILL ANALYSIS**

Senate Research Center

H.B. 1001  
By: Dutton (Cain)  
State Affairs  
5-17-97  
Engrossed

### **DIGEST**

Under current Texas law, there is considerable confusion regarding the time at which ex-felons regain their right to vote. Current law states at least two years must pass, since the issuance of discharge papers, before the ex-felon is eligible to vote again. The confusion arises because discharge papers are issued upon release from a Texas Department of Criminal Justice facility, however, a person may continue on parole for some period.

H.B. 1001 would clarify when an ex-felon regains the right to vote.

### **PURPOSE**

As proposed, H.B. 1001 clarifies when an ex-felon regains the right to vote.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 11.002, Election Code, to redefine "qualified voter."

SECTION 2. Amends Section 13.001(a), Election Code, to require a person convicted of a felony, in order to be eligible for registration as a voter in this state, to have fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court. Deletes text regarding discharge papers by the pardons and paroles division or the institutional division of the Texas Department of Criminal Justice and elapsed time from the date of issuance of discharge papers or completion of probation.

SECTION 3. Effective date: September 1, 1997.

SECTION 4. Emergency clause.

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE  
75th Regular Session

May 9, 1997

TO: Honorable Kenneth Armbrister, Chair  
Committee on State Affairs  
Senate  
Austin, Texas

IN RE: House Bill No. 1001, As Engrossed  
By: Dutton

FROM: John Keel, Director

In response to your request for a Fiscal Note on HB1001 ( Relating to eligibility requirements for voting by persons convicted of a felony.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HB1001-As Engrossed

No fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source:

Agencies:

LBB Staff: JK ,JD ,PE ,JC

**Tab 6**

# **Presentations**

Fri 10/7/2016 1:09 PM  
Re: Follow-up to FIEC - October 5th

Dear Ms. Schenker:

Thank you for reaching out to me.

I have attached 2 documents. This first one is a summary that I prepared in the past to highlight economic motivations to revise the current policy. It contains my fiscal calculations with a link to the Florida Department of Corrections' Report, and references to the Parole Commission Report.

If you have any other questions and/or concerns, please do not hesitate to contact me.

Respectfully yours,

*Desmond B. Meade*

**Florida Rights Restoration Coalition**  
*President*

Floridians for a Fair Democracy  
Chairman

*Florida Coalition on Black Civic Participation*  
*Chair, Black Men's Roundtable*

*Live Free Campaign*

Office: (305) 809-6260  
Cell: (305) 244-2577  
[dmeade.frc@gmail.com](mailto:dmeade.frc@gmail.com)  
[Florida Rights Restoration Coalition](#)  
[www.floridiansforafairdemocracy.com](http://www.floridiansforafairdemocracy.com)

Follow Me on Twitter:  
[@DesmondMeade](#)

"*Injustice* anywhere is a threat to justice everywhere."

-Martin Luther King Jr

PROPONENT'S  
FISCAL ARGUMENT

Please see the information below that would serve as a basis in making a fiscal argument for automatic rights restoration. Where studies will show that public safety is increased, and that Florida can save billions of dollars while increasing contributions to the tax base, it should be clearly evident that implementing a policy that allows for automatic rights restoration would be prudent and economically sound.

<http://www.dc.state.fl.us/secretary/press/2010/RecidivismStudy.pdf>

2009 Florida Prison Recidivism Study: Released in May 2010

Subject: Releases from 2001 to 2008

“Note that a one percentage point drop in the recidivism rate results in approximately 400 fewer inmates being admitted over a three-year period at a cost of \$20,000 per year per inmate\* or a cost avoidance of approximately \$8,000,000.” Florida Prison Recidivism Study, 2010, pg. 4 of 18

“Considering that it costs taxpayers almost \$20,000 per year for each inmate incarcerated, even a relatively small decrease in recidivism rates that persists over multiple years can result in millions of taxpayer dollars to be used for other priorities.” Florida Prison Recidivism Study, 2010, pg. 7 of 18

Recently released study by Florida Parole Commission revealed a combined 22 percentage point drop in the recidivism rate for individuals whose rights were restored in 2009 and 2010, and a 27 percentage point drop for individuals whose rights were restored in 2010 alone.

**22% point drop - \$176,000,000 annually 8,800 fewer inmates being admitted**

**27% point drop - \$216,000,000 annually 10,800 fewer inmates being admitted**

According to the Parole Commission Report, there were a total of 27,266 individuals whose rights were restored in 2009 and 2010 who did not recidivate. Those 27,266 individuals represent an annual saving of between 490,788,000 and 545,320,000 for Florida.

**27,266 at a cost of supervision of 18,000 per year = \$490,788,000**

**Four-year Term total of - \$1,963,152,000**

**27,266 at a cost of supervision of 20,000\*\* per year = \$545,320,000**

**Four-year Term total of - \$2,173,280,000**

\* denote that while cost of supervision per inmate is \$18,000 -20,000, the funding allocated per student in K-12 is only \$3,500

\*\* denote cost of supervision as quoted in Florida Prison Recidivism Study, 2010

In addition, the 27,266 individuals represent enough individuals to fill to capacity over 20 correctional institutions.

In 2009, the cost to build 3 new prisons, each with the ability to house 1,300 inmates cost \$300,000,000. [http://realcostofprisons.org/blog/archives/2009/02/fl\\_business\\_lob.html](http://realcostofprisons.org/blog/archives/2009/02/fl_business_lob.html)

Based on the above mentioned figures, to house the 27,266 individuals, the state would have to spend **\$62,921,000,000 to build 20 prisons.**

Reducing the recidivism rate will reduce the demand to build prisons, and thus reduce the amount of funding needed.

Considering that implementing a policy that automatically restores the civil rights of a person once they have successfully completed their sentence would:

- Save the state of Florida billions of dollars which could be reallocated to areas of need (i.e. education).
- Significantly increase contributions to the tax base, and thereby relieving some of the tax burdens placed on citizens.
- Increase public safety by significantly reducing recidivism, thus reducing the amount of crimes committed.
- Stimulate the economy.
- Not cost Florida taxpayers anything to implement.

It would be then reasonable to deduce that those not in support of implementing a policy of automatic rights restoration are those who would stand to profit from an environment that increases the chances of an individual committing a new offense.

## **PUBLIC SAFETY**

Every respected authority in the study of the criminal justice system agree that the reduction of recidivism is essential to curtail crime, and the rising cost of supervision.



Every respected authority in the study of the criminal justice system agree that the most effective method to reduce recidivism is to reintegrate released individuals back into society as quickly as possible.

The critical time frame for successful reintegration is within the 6-9 months after release from incarceration.

When an individual is stigmatized, encounters barriers to education, employment, and housing, the probability of that individual committing a new offense is greatly increased. See. Governor Jeb Bush Re-Entry Task Force Study released in 2008.

The recent clemency policy changes prolongs successful reintegration by requiring individuals to wait 5 to 7 years before applying, then an additional 3 to 6 years for application processing.

The implementation of the 5-7 year waiting period increases the propensity of individuals committing a new offense. See Parole Commission Report.

Therefore, the recent clemency policy changes endanger public safety.

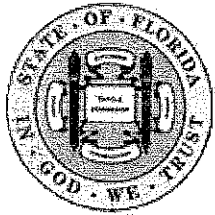
# FLORIDA PAROLE COMMISSION

A Governor and Cabinet Agency Created in 1941



**STATUS UPDATE:  
RESTORATION OF CIVIL RIGHTS' (RCR) CASES GRANTED  
2009 AND 2010**

**PRESENTED TO THE  
FLORIDA BOARD OF EXECUTIVE CLEMENCY  
JULY 1, 2011**



# FLORIDA PAROLE COMMISSION

TENA M. PATE, CHAIR  
MONICA DAVID, VICE CHAIR  
VACANT, SECRETARY

RICK SCOTT, GOVERNOR  
PAM BONDI, ATTORNEY GENERAL  
JEFF ATWATER, CHIEF FINANCIAL OFFICER  
ADAM PUTNAM, COMMISSIONER OF AGRICULTURE

June 30, 2011

The Honorable Rick Scott, Governor  
The Honorable Pam Bondi, Attorney General  
The Honorable Jeff Atwater, Chief Financial Officer  
The Honorable Adam Putnam, Commissioner of Agriculture

Dear Governor Scott, General Bondi, CFO Atwater, and Commissioner Putnam:

Pursuant to the Rules of Executive Clemency, as amended March 9, 2011, attached is the first report required by the new Rule Eighteen – "Collection of Statistics and Evaluation of Clemency Action."

This initial report provides information on the status of individuals, whose rights were restored for the previous two calendar years, including recidivism statistics and evaluative data. However, the felon population reviewed and subsequent data measured includes only those individuals whose civil rights were granted during the reporting period and are identified by a Department of Corrections (DC) number in the MAC clemency database.

If you have any questions regarding the content of this report, please contact me at your convenience at 850-487-1980.

Sincerely,

A handwritten signature in black ink, appearing to read "Tena M. Pate".

Tena M. Pate  
Chair

cc: Drew Atkinson, Assistant General Counsel, Executive Office of the Governor  
Carolyn Snurkowski, Associate Deputy Attorney General, Legal Affairs  
Robert Tornillo, Director, Cabinet Affairs, Financial Services  
Robert Williams, Senior Attorney, Agriculture and Consumer Services

COMMITTED TO PROTECTING THE PUBLIC

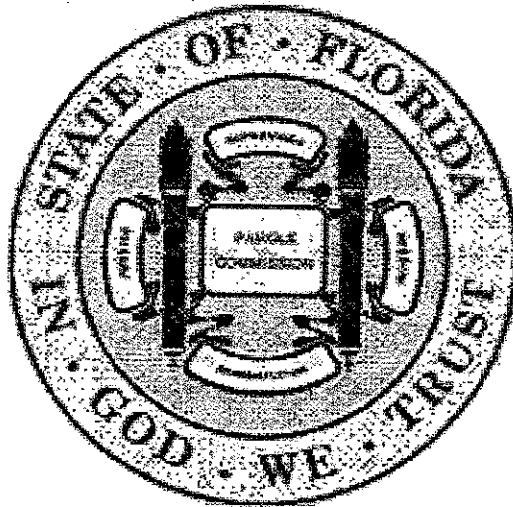
OFFICE OF THE CHAIR

4070 ESPLANADE WAY, TALLAHASSEE, FL 32399-2450 • (850) 922-0000

<http://fpc.state.fl.us/>

# FLORIDA PAROLE COMMISSION

A Governor and Cabinet Agency Created in 1941



**STATUS UPDATE:  
RESTORATION OF CIVIL RIGHTS' (RCR) CASES GRANTED  
2009 AND 2010**

**PRESENTED TO THE  
FLORIDA BOARD OF EXECUTIVE CLEMENCY  
JULY 1, 2011**

**THE FLORIDA CABINET  
AS  
THE BOARD OF EXECUTIVE CLEMENCY**



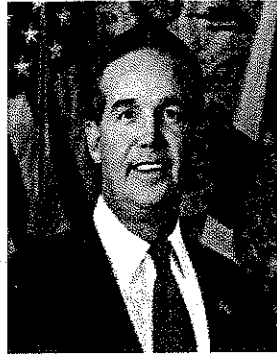
**Rick Scott**

*Governor*



**Pam Bondi**

*Attorney General*



**Jeff Atwater**

*Chief Financial  
Officer*



**Adam Putnam**

*Commissioner  
Of Agriculture*

---

**THE  
FLORIDA PAROLE COMMISSION**

**~ACTS AS THE INVESTIGATIVE AND ADMINISTRATIVE ARM  
OF THE BOARD OF EXECUTIVE CLEMENCY~**

**TENA M. PATE, CHAIR**

**MONICA DAVID, COMMISSIONER/VICE CHAIR  
(VACANT), COMMISSIONER/SECRETARY**

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**JULIA McCALL, COORDINATOR, OFFICE OF EXECUTIVE CLEMENCY  
STEPHEN HEBERT, DIRECTOR OF CLEMENCY INVESTIGATIONS**

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## TABLE OF CONTENTS

<b>BOARD OF EXECUTIVE CLEMENCY.....</b>	<b>2</b>
<b>COMMISSIONERS AND SENIOR CLEMENCY STAFF.....</b>	<b>2</b>
<b>INTRODUCTION .....</b>	<b>4</b>
<b>CLEMENCY RULE EIGHTEEN, RULES OF EXECUTIVE CLEMENCY.....</b>	<b>4</b>
<b>OVERVIEW: CURRENT RCR CLEMENCY PROCESS .....</b>	<b>4</b>
<b>OVERVIEW: RCR CLEMENCY PROCESS: APRIL 5, 2007 – MARCH 9, 2011.....</b>	<b>6</b>
<b>OVERVIEW: 2009 FLORIDA PRISON RECIDIVISM STUDY.....</b>	<b>6</b>
<b>METHODOLOGY.....</b>	<b>8</b>
<b>RCR CASES GRANTED .....</b>	<b>9</b>
<b>OFFENDERS RETURNED TO DEPARTMENT CUSTODY.....</b>	<b>10</b>
<b>FINDINGS AND CONCLUSIONS .....</b>	<b>12</b>
<b>AGENCY MISSION STATEMENT .....</b>	<b>14</b>
<b>CONTACT INFORMATION .....</b>	<b>15</b>

## **I. INTRODUCTION**

On March 9, 2011, Governor Rick Scott and Cabinet Members' Attorney General Pam Bondi, Chief Financial Officer (CFO) Jeff Atwater, and Commissioner of Agriculture Adam Putnam, sitting as the Board of Executive Clemency, adopted changes to the Rules of Executive Clemency (hereinafter referred to as Rules), which became effective immediately.<sup>1</sup> As a result, the Office of Executive Clemency, the Parole Commission (Commission), and the Department of Corrections (Department) were directed to provide annually, beginning July 1, 2011, a report on the status of individuals whose rights were restored for the previous two calendar years, including recidivism statistics and evaluative data (see Rule Eighteen below).

## **II. RULE EIGHTEEN RULES OF EXECUTIVE CLEMENCY**

Rule Eighteen of the newly adopted March 9, 2011, Rules states:

### **"18. Collection of Statistics and Evaluation of Clemency Action**

"The Office of Executive Clemency, in conjunction with the Florida Parole Commission and (the) Department of Corrections, shall collect and submit to the Clemency Board an annual written report providing statistics and evaluations regarding the status of those individuals whose rights were restored during the previous two calendar years. The first report shall be filed on July 1, 2011."<sup>2</sup>

To this end, this report is an overview of the processing and granting of restoration of civil rights (RCR) cases for calendar years 2009 and 2010, along with data indicating the number of these individuals that have reoffended and been returned to the custody of the Department with a new prison commitment or period of supervision.

## **III. OVERVIEW – CURRENT RCR CLEMENCY PROCESS: ADOPTED MARCH 9, 2011**

On March 9, 2011, Governor Rick Scott and members of the Cabinet, sitting as the Board of Executive Clemency, voted unanimously to amend the Rules, which eliminated automatic restoration of rights for convicted felons and were effective immediately. The Board's action was based on their belief that it is appropriate to grant the restoration of civil rights only to individuals who have demonstrated over a period of time that they are committed to living a crime-free life. The Board reasoned that this waiting period provides them with the opportunity to determine whether, in fact, the person has made that commitment.

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<sup>1</sup> Meeting of the Florida Cabinet, Thursday, March 9, 2011.

<sup>2</sup> Rule 18, Rules of Executive Clemency, p. 16; Rules revised March 9, 2011, effective March 9, 2011.

Under the new Rules, felons seeking to have their rights restored must complete a five year waiting period to become eligible and must submit an application along with the accompanying court documents to the Office of Executive Clemency before the restoration of civil rights can occur. Applicants are not required to be represented by an attorney. If a person is adjudicated guilty of a felony offense in Florida, civil rights cannot be restored until all sentences or supervision periods have been completed; all restitution owed to current or prior victim(s) is paid in full; there are no pending criminal charges, warrants, or detainers; and established waiting periods have been met.

Restoration of Civil Rights cases are divided into two categories: *Without a Hearing* (Rule 9.A.) and *With a Hearing* (Rule 10.A.).

Without a Hearing: Eligible for consideration only after five (5) years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions, and if no crimes have been committed and have not been arrested for a misdemeanor or felony for the five (5) years prior to the date the application is being reviewed.

With a Hearing: Eligible for consideration only after seven (7) years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions.

The type of clemency investigation conducted by the Florida Parole Commission primarily depends on the severity and nature of the offense as designated by the Rules of Executive Clemency. The Commission's website provides detailed information regarding the list of offenses that determine which category a case will be processed. The depth and scope of each investigation varies by type, and each type has a different waiting period after completion of sentence.

Persons who have been granted or denied any form of executive clemency may not apply for further executive clemency for at least 2 years from the date that such action became final.

Also, under the previous rules, there was no requirement that individuals provide certified copies of court documents when applying for restoration of civil rights. That policy has been reinstated under the new Rules, and all appropriate forms and accompanying instructions are currently available online at the Commission's website: <https://fpc.state.fl.us/Clemency.htm>. An application may also be requested by calling the Office of Executive Clemency at (850) 488-2952.



#### **IV. OVERVIEW - RCR CLEMENCY PROCESS: APRIL 5, 2007 – MARCH 9, 2011**

To better understand the process governing the granting of requests for restoration of civil rights during these calendar years, the following is a brief overview of the Rules of Executive Clemency in place during the reporting period.

On April 5, 2007, the Executive Clemency Board amended the Rules and implemented an automatic approval process (Level I) for the restoration of civil rights for felons convicted of specific offenses. Felons were eligible if they had completed their sentences or supervision, had paid all restitution, and had no pending criminal charges, outstanding detainers, or warrants. Persons eligible for Level I automatic approval were those convicted of less serious offenses such as Grand Theft, Burglary of a Dwelling, Possession of Firearm by Convicted Felon, Robbery (No Deadly Weapon), Felony DUI, and Sale of a Controlled Substance. The cases were reviewed for eligibility and placed on an executive order for signature of the Clemency Board. Once the order was signed, certificates were mailed to the persons granted restoration of civil rights.

Individuals, who were convicted of more serious offenses such as Aggravated Battery/Assault, Trafficking in Cocaine, Aggravated Stalking, Kidnapping/False Imprisonment, or who were designated as a Three-Time Violent Felony Offender, were eligible for a Level II review for restoration of civil rights *without a hearing*. A more in-depth investigation was required for these cases, with the information then provided to the Clemency Board for a 30-day review. At the end of the review period, if the Clemency Board approved, the names of the eligible individuals were then placed on an executive order for signature of the Clemency Board and restoration of civil rights certificates were mailed to those persons once the order was signed.

Persons convicted of the most serious offenses such as Murder/Manslaughter, Sexual Battery, Aggravated Child Abuse, or persons designated as Sexual Predators, were investigated for restoration of civil rights *with a hearing* as a Level III case. These in-depth field investigations required a personal interview and an advisory Commission recommendation.

A notification letter was mailed to those individuals determined by the Commission to be ineligible for restoration of civil rights without a hearing. This letter provided information to the recipient on how to proceed with the request for restoration of civil rights *with a hearing* or how to resolve any issues such as outstanding restitution or pending criminal charges.

#### **V. 2009 FLORIDA PRISON RECIDIVISM STUDY**

Since this report focuses on those individuals having had their civil rights granted during calendar years 2009 and 2010, and their subsequent success (did not reoffend) or failure (return to incarceration or community supervision), it is relevant to acknowledge the findings of the study on Florida offender recidivism issued May 2010, by the Florida Department of Corrections.

This "2009 Florida Prison Recidivism Study" is the first report to be produced annually examining the issue of recidivism among Florida's released inmate population. The report states that recidivism as a performance indicator of the state's rehabilitative efforts can be debated, but the analysis itself "is of vital public importance," since 88% of inmates in Florida's prisons today will one day be released back into our communities.<sup>3</sup> They further emphasized that releasees' success or failure "comes at a cost to public order and public safety."

This report defines recidivism as "a **return to prison**, either because of a new conviction or a violation of post prison supervision," and the follow-up periods (typically reported as three years) are calculated from prison release date to the date of readmission to prison. The overall three-year recidivism rate based on all released inmates from 2001 to 2008 was **33.1%**.<sup>4</sup>

The report examined two key questions: What is the likelihood that an inmate being released today will come back to prison? This question was determined to be important for the state in terms of planning and budgeting, but more importantly to the public and state officials in terms of public safety. The second question asked: What factors influence recidivism rates and do age, gender, and racial groups show differences in recidivism rates? These answers were deemed important because they allow the identification of groups most likely to fail upon release, which is useful when determining where to devote scarce correctional and community resources.

The study found that the factors that influence an inmate's likelihood of recidivism included:

- ☐ prior prison commitments (more priors → higher recidivism);
- ☐ whether the inmate has a supervision term after release (supervised → higher recidivism);
- ☐ their age at release (younger → higher recidivism);
- ☐ their behavior while in prison (more disciplinary reports → higher recidivism);
- ☐ their tested education level (higher grade level → lower recidivism); and
- ☐ number of theft/fraud offenses in criminal history (more offenses → higher recidivism).<sup>5</sup>

Summarily, the report noted that "inmates who completed education programs while in prison were determined to have lower recidivism rates than inmates who do not complete programs," but cautioned that this conclusion should not be given the weight of a "rigorous program evaluation."<sup>6</sup>

The report concluded that "since those with supervision after release recidivate more often than those without supervision upon release, it is important to keep in mind that Florida's recidivism rate may be lower than other states due to this difference in release mechanisms."<sup>7</sup>

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<sup>3</sup> The "2009 Florida Prison Recidivism Study," Florida Department of Corrections, Bureau of Research and Data Analysis, May 2010, 2.

<sup>4</sup> Ibid., 4.

<sup>5</sup> Ibid., 4.

<sup>6</sup> Ibid., 4.

<sup>7</sup> Ibid., 4.

The report further states that “results for Florida were generally consistent with existing research of the factors that influence recidivism,” and noted that Florida paroles very few inmates, with only about a third of released inmates having any community supervision sanction at all.<sup>8</sup>

## VI. METHODOLOGY

Due to the minimal turn-a-round time allotment between the adoption of Rule 18 on March 9, 2011, and July 1, 2011, the due date of this report, certain limitations exist for obtaining data related to the recidivism of individuals granted restoration of civil rights during calendar years 2009 and 2010. For example, the issue arises as how to properly define “recidivism” and/or capture data related to the re-offender status of this group of individuals, as “recidivism” can be defined in many ways. Therefore, determining the recidivism rate for 30,000 plus individuals whose rights were restored during the past two calendar years could possibly require a significant amount of time and research.

Research would require searching databases to see if these individuals have reoffended by (1) actually being arrested, or (2) committing any new crime subsequent to the date their civil rights were granted. An “arrest” may include both felonies and misdemeanors, regardless of disposition, even if a charge was dropped or dismissed. And to obtain this data, a manual review of multiple criminal justice data systems by parole examiners would need to be done. This review could potentially involve thousands of investigative hours from the same examiners who currently conduct RCR investigations for the Clemency Board. Thus, obtaining this data through the methods described above would seriously impact the number of clemency cases presented to the Board, and may not be an efficient use of resources.

Alternatively, working collaboratively with the Florida Department of Law Enforcement (FDLE) and/or the Florida Association of Court Clerks (FACC) will require cross-referencing databases and involve considerable coordination of data resources between agencies. This will involve programming and/or coding, along with extensive manual data integrity checks, and more time is needed to determine if this option may be considered for future reports.

For this report, an individual’s Department of Corrections ID number (DC Number) is a common identifier that can be used to cross-reference individuals in the Florida Parole Commission’s Management of Application for Clemency (MAC) database and the Department of Corrections database. Ninety-eight percent (98%) or 30,672 of the 31,260 individuals granted RCR in 2009-2010, have a DC Number identified in the MAC database. However, some individuals do **not** have a DC Number as they may have a felony conviction which resulted in service of a county jail sentence, an out-of-state conviction, or a federal conviction, which resulted in a prison or supervision sentence in federal custody. Therefore, the population measured in this report includes only those individuals whose civil rights were granted during the reporting period and are identified by a DC Number in the MAC clemency database. The

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<sup>8</sup> Ibid., 4.

methodology used to define “reoffend” for this report is any individual who has returned to the custody of the Florida Department of Corrections through May 31, 2011, subsequent to the date the civil rights were granted by the Clemency Board.

An individual may return to the Department’s custody in one of two ways: (1) a prison commitment as a result of a new felony conviction; or (2) a period of community supervision including but not limited to probation, community control, or pre-trial intervention. Individuals placed on community supervision will primarily have new offenses involving felony convictions; however, some felony offenses may have had adjudication of guilt withheld, or some felony offenses may have been reduced to misdemeanor offenses but are still under the Department’s supervision.

## VII. RCR CASES GRANTED CALENDAR YEARS 2009-2010

Table 1 includes the number of individuals who were granted Restoration of Civil Rights in the State of Florida between January 1, 2009 and December 31, 2010. This includes all types of Restoration of Civil Rights cases including formerly designated Level 1, 2 and 3 investigations regardless of whether a hearing was required. Restoration of Alien Status Under Florida Law cases are also included, which are defined in the Rules as follows: The Restoration of Alien Status Under Florida Law restores to an applicant who is not a citizen of the United States such rights enjoyed by him or her, under the authority of the State of Florida, which were lost as a result of a conviction of any crime that is a felony or would be a felony under Florida law, except the specific authority to own, possess, or use firearms. However, restoration of these rights shall not affect the immigration status of the applicant (i.e., a certificate evidencing Restoration of Alien Status Under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

**TABLE 1:  
RESTORATION OF CIVIL RIGHTS’ CASES GRANTED  
CALENDAR YEARS 2009 AND 2010<sup>9</sup>**

**PERSONS GRANTED RCR BY MATCHING DC NUMBERS**

CLEMENCY TYPE	GRANTED IN 2009	GRANTED IN 2010	TOTAL
Restoration of Civil Rights (Level 1)	24,375	5,582	29,957
Restoration of Civil Rights (Level 2)	149	23	172
Restoration of Civil Rights (Level 3)	13	22	35
Restoration of Alien Status under Florida Law (Level 1)	411	89	500
Restoration of Alien Status under Florida Law (Level 2)	5	1	6
Restoration of Alien Status under Florida Law (Level 3)	1	1	2
<b>TOTAL</b>	<b>24,954</b>	<b>5,718</b>	<b>30,672</b>

<sup>9</sup> Table 1 Data Source: RCR Granted Data, Calendar Years 2009-2010, Florida Parole Commission, Clemency “MAC” Database

## VIII. OFFENDERS RETURNED TO DEPARTMENT CUSTODY

**TABLE 2:  
OFFENDERS RETURNED TO DEPARTMENT CUSTODY  
BY TIMEFRAMES<sup>10</sup>**

CALENDAR YEAR GRANTED	OFFENDERS RETURNING TO DC CUSTODY AS OF MAY 31, 2011 IN 90 DAY INCREMENTS FROM THE DATE RCR WAS GRANTED										TOTAL
	0- 90	91- 180	181- 270	271- 360	361- 450	451- 540	541- 630	631- 720	721- 810	811- 900	
2009	312	383	439	418	422	379	335	230	150	27	3,095
2010	52	78	75	65	37	4	0	0	0	0	311
Total	364	461	514	483	459	383	335	230	150	27	3,406
PERCENTAGE	11%	14%	15%	14%	13%	11%	10%	7%	4%	1%	100%

### BY CALENDAR YEAR

CALENDAR YEAR GRANTED	OFFENDERS RETURNING TO DC CUSTODY AS OF MAY 31, 2011 IN 90 DAY INCREMENTS FROM THE DATE RCR WAS GRANTED										TOTAL
	0- 90	91- 180	181- 270	271- 360	361- 450	451- 540	541- 630	631- 720	721- 810	811- 900	
2009	312	383	439	418	422	379	335	230	150	27	3,095
PERCENTAGE	10%	12%	14%	14%	14%	12%	11%	7%	5%	1%	100%

### BY CALENDAR YEAR

CALENDAR YEAR GRANTED	OFFENDERS RETURNING TO DC CUSTODY AS OF MAY 31, 2011 IN 90 DAY INCREMENTS FROM THE DATE RCR WAS GRANTED										TOTAL
	0- 90	91- 180	181- 270	271- 360	361- 450	451- 540	541- 630	631- 720	721- 810	811- 900	
2010	52	78	75	65	37	4	0	0	0	0	311
PERCENTAGE	17%	25%	24%	21%	12%	1%	0%	0%	0%	0%	100%

<sup>10</sup> Table 2 Data Source, Ibid.

**TABLE 3:  
OFFENDERS RETURNED TO DEPARTMENT CUSTODY  
BY TYPE OF SENTENCE<sup>11</sup>**

**BY CALENDAR YEARS 2009 AND 2010**

CALENDAR YEAR GRANTED	DC STATUS AFTER RCR GRANT DATE	TOTAL OFFENDERS RETURNED TO DC CUSTODY	PERCENTAGE OFFENDERS RETURNED TO DC CUSTODY
2009	Supervision	1,839	54.0%
2009	Prison	1,256	36.9%
2010	Supervision	177	5.2%
2010	Prison	134	3.9%
<b>TOTAL</b>		<b>3,406</b>	<b>100.0%</b>

**BY CALENDAR YEAR 2009**

CALENDAR YEAR GRANTED	DC STATUS AFTER RCR GRANT DATE	TOTAL OFFENDERS RETURNED TO DC CUSTODY	PERCENTAGE OFFENDERS RETURNED TO DC CUSTODY
2009	Supervision	1,839	59.4%
2009	Prison	1,256	40.6%
<b>TOTAL</b>		<b>3,095</b>	<b>100.0%</b>

**BY CALENDAR YEAR 2010**

CALENDAR YEAR GRANTED	DC STATUS AFTER RCR GRANT DATE	TOTAL OFFENDERS RETURNED TO DC CUSTODY	PERCENTAGE OFFENDERS RETURNED TO DC CUSTODY
2010	Supervision	177	56.9%
2010	Prison	134	43.1%
<b>TOTAL</b>		<b>311</b>	<b>100.0%</b>

**COMBINED CALENDAR YEARS 2009 AND 2010**

DC STATUS AFTER RCR GRANT DATE	TOTAL OFFENDERS RETURNED TO DC CUSTODY	PERCENTAGE OFFENDERS RETURNED TO DC CUSTODY
Supervision	2,016	59.2%
Prison	1,390	40.8%
<b>TOTAL</b>	<b>3,406</b>	<b>100.0%</b>

<sup>11</sup> Table 3 Data Source: Ibid.

**TABLE 4:  
SUMMARY OF OFFENDERS RETURNED TO DEPARTMENT CUSTODY<sup>12</sup>**

- 11% of individuals whose civil rights were restored during calendar years 2009 and 2010 had reoffended and been returned to Department custody by May 31, 2011.
  - Of these 11%, 59% were returned to Department custody and placed on community supervision.
  - Of these 11%, 41% were returned to Department custody and sentenced to prison.

**SUMMARY OF OFFENDERS RETURNED TO DC CUSTODY**

CALENDAR YEAR GRANTED	TOTAL OFFENDERS GRANTED RCR	TOTAL OFFENDERS RETURNED TO DC CUSTODY	PERCENTAGE OFFENDERS RETURNED TO DC CUSTODY
2009	24,954	3,095	12.4%
2010	5,718	311	5.4%
Total	30,672	3,406	11.1%

**IX. FINDINGS AND CONCLUSIONS**

- A total of 30,672 Florida felons were granted their civil rights by the Board of Executive Clemency for Calendar Years (CY) 2009 and 2010.<sup>13</sup>
  - A total of 24,954 felons were granted their civil rights in CY 2009.
  - A total of 5,718 felons were granted their civil rights in CY 2010.

<sup>12</sup> Table 4 Data Source: Ibid.

<sup>13</sup> Data Source: The population measured in this report includes only those individuals whose civil rights were granted during the reporting period and are identified by a DC number in the MAC clemency database.

- Of the 24,954 felons granted their civil rights in CY 2009, 3,095 were returned to DC custody with 1,839 offenders placed on community supervision and 1,256 offenders returned to prison.
- Of the 5,718 felons granted their civil rights in CY 2010, 311 were returned to DC custody with 177 offenders placed on community supervision and 134 offenders returned to prison.
- Of the 3,406 felons reoffending in CYs 2009 and 2010, the following is a breakdown by percents of offenders returning to DC custody, either to community supervision or to prison:
  - 54.0% were returned to DC custody under community supervision (CY 2009 grants);
  - 36.9% were returned to DC custody with a prison sentence (CY 2009 grants);
  - 5.2% were returned to DC custody under community supervision (CY 2010 grants);
  - 3.9% were returned to DC custody with a prison sentence (CY 2010 grants).
- **Of the 30,672 felons granted their civil rights in CYs 2009 and 2010, 11.1% or 3,406 had reoffended and been returned to Department custody by May 31, 2011.**
- **27,266 of the 30,672 felons granted their civil rights in CYs 2009 and 2010 had not reoffended by having returned to Department custody as of May 31, 2011.**



# **MISSION STATEMENT**

**"TO ENSURE PUBLIC SAFETY AND PROVIDE VICTIM ASSISTANCE THROUGH THE  
POST PRISON RELEASE PROCESS"**

**TALLAHASSEE OFFICES  
OF THE  
FLORIDA PAROLE COMMISSION AND OFFICE OF EXECUTIVE CLEMENCY**



**4070 ESPLANADE WAY**

## **CONTACT INFORMATION**

For information concerning the contents of this report, contact Julia McCall at 850-488-2952 or Stephen Hebert at 850-487-1175. Persons seeking information on the Restoration of Civil Rights process should contact the Florida Parole Commission, Office of Executive Clemency, at the numbers or websites listed below:

Clemency Toll Free Phone Number: 1-800-435-8286

Office of Executive Clemency Phone Number: 850-488-2952

Office of Executive Clemency Fax: 850-488-0695

Email at: Clemencyweb@fpc.state.fl.us

Website at: <https://fpc.state.fl.us/clemency.htm>

or

[www.FLrestoremyrights.com](http://www.FLrestoremyrights.com)

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Public Information, Public Records Requests, and Media Inquiries should be directed to Jane Tillman, Director of Communications, at 850-921-2816 or [JaneTillman@fpc.state.fl.us](mailto:JaneTillman@fpc.state.fl.us), or FAX at 850-921-2827, or by mail at:

**FLORIDA PAROLE COMMISSION  
4070 ESPLANADE WAY  
TALLAHASSEE, FLORIDA 32399-2450**

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**ION SANCHO**  
**Supervisor of Elections**  
**Leon County, Florida**

**Article 1**

**Mailing Costs:**

Voter Registration Card within the 323 zip code area: \$0.131

Voter Registration Card outside of the 323 zip code area: \$0.192

Certified letter (all eligibility notices are required per statute to be certified): \$5.115

*\* The voter registration card in Leon County qualifies for the nonprofit postal rate.*

FLORIDA DEPARTMENT OF STATE/DIVISION OF ELECTION



**Certification of Eligibility Records Maintenance**

This form is to be used to certify that the Supervisor of Elections conducted activities as required under section 98.075, F.S. to identify and remove ineligible voters from the voter registration rolls.

I, Karen Williams, Supervisor of Elections or designee, for Leon County, certify the following for the period January 1, 2016 to June 30, 2016, OR July 1, \_\_\_\_\_ to December 31, \_\_\_\_\_ :

A. ACTIVITY: NOTICE OF POTENTIAL INELIGIBILITY ( provide total number for each category)	
340	Notices mailed (s. 98.075(7)(a)1., F.S.)
149	Notices published (A notice is published ONLY if the mailed notice came back undeliverable which includes unclaimed, refused, or otherwise marked as undeliverable). For notices including voters, provide the number as if it were a notice per voter) (s. 98.075(7)(a)2., F.S.)
B. ACTIVITY: RESPONSES TO NOTICES (MAILED OR PUBLISHED)	
3	Voters who responded to mailed notices
0	Voters who responded to published notices
0	Number of hearings conducted (this should be the same as the number of voters who responded to either a mailed or published notice and requested a hearing (such hearing can only be requested by and held for persons who deny ineligibility)
C. ACTIVITY: NUMBER OF VOTERS REMOVED BASED ON REASONS FOR REMOVAL	
230	Convicted felon with no civil rights restored/no clemency.
5	Mentally incapacitated without voting rights restored (Refers to voters whom the court has declared to be mentally incapacitated AND taken away their voting rights/civil rights)
720	Deceased (Refers to deceased voters removed with or without notice based on death data match identified by the state, receipt of in-state death certificates or information received from other source)
0	Not of legal age to register
0	Not a U.S. citizen
1	Listed a residence that is not his or her legal residence (Refers to voters who listed someone else's legal residence, or who listed a residence that is not a valid legal residence)
0	Fictitious person (Includes registered voters with fake names and/or date of birth or who use someone else's residence, name or date of birth to register)

Karen Williams 7/12/16  
 Supervisor of Elections or designee (signature) Date

Please submit by deadline [July 31 for Jan-Jun] or by January 31 for Jul-Dec) to: Chief, Bureau of Voter Registration Services, Fla. Dept. of State, Division of Elections, R.A. Gray Building, 500 S. Bronough Street Tallahassee, Florida 32399; 850/245-6290 (phone) 850/245-6291 (fax)

**Tab 7**

# **Agency Responses**

The following databases are used to determine eligibility status in the following categories:

- Felony Offenses - Verifying the number of felonies and specifics of each
- Pending Charges – Local, State, Out-of-State, Federal charges
- Warrants- Local, State, Out-of-State, Federal charges
- Detainers- Local, State, Out-of-State, Federal charges
- Restitution-Unpaid restitution remaining with Dept. of Corrections prior to release, civil judgements

**MACNet** (Management of Application for Clemency) - data repository of all clemency applications received and processed.

**CDC** (Corrections Data Center) - Offender Based Information System (OBIS) which maintains prison and supervision records for the Florida Department of Corrections, including court costs, fines and restitution.

**CCIS** (Comprehensive Case Information System) - provides statewide court information on criminal cases and traffic which may include court dockets, dispositions, warrants, judgement and sentencing information and documents as well as financial obligations, fines restitution. Not all counties enter their information systematically.

**Individual County Clerks Databases** – Same as above with CCIS. May be able to obtain more complete information.

**eAgent**- requires Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) certification through the Florida Department of Law Enforcement (FDLE) and provides a history of the Florida (FCIC) and National (NCIC) criminal record. Used to verify stated felony offenses/misdemeanors and locate additional offenses not indicated by applicant, can determine court costs and restitution within Florida and other States. A component of this database permits alien status inquires.

**OnBase** (Inmate Records Imaging System/IRIS) – scanned inmate files/documents relating to an offender's prison record. Does not include probationers. Original court documents can many times be found which speak of restitution, etc.

**D.A.V.I.D.** (Driver and Vehicle Information Database) – provides traffic records including fine status and driver license activity of an applicant in Florida as well as past and current residences.

**PACER/PACER PRO** (Public Access to Court Electronic Records) – electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party/Case Index.

**Inactive Offender File Search**- Similar to OnBase, an imaging database for supervision cases that terminated after November 2010.

**JIS** (Judicial Inquiry System) – technology initiative by the State Courts which offers Judiciary and other criminal justice entities access to a streamlined dashboard in which a user may query multiple data sources though a single point of entry proving a summary of records obtained from sources such as CCIS, FDLE, DAVID, and the Department of Corrections.

**Internal FCOR Agency** page for Official Records and RCR searches by State- query portals or internet links available to help search document located in different counties and provide brief summaries of laws and practices in other states.

## 2. Automatic Approval of Restoration of Civil Rights or Alien Status under Florida Law

### A. Criteria for Eligibility

A person shall have his or her civil rights or alien status under Florida Law immediately restored by automatic approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, if the following requirements are met:

1. The person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
2. The person has no outstanding detainers or pending criminal charges;
3. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;
4. The person has never been convicted of one of the following crimes:
  - a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);
  - b. DUI manslaughter (F.S. 316.193(3));
  - c. sexual battery, attempted sexual battery (F.S. 794.011)
  - d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (F.S. Chapter 800);
  - e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);
  - f. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
  - g. aggravated child abuse (F.S. 827.03);
  - h. failure to register as a sexual predator (F.S. 775) or sexual offender ( F.S. 943.0435);
  - i. computer pornography, transmission of computer pornography, buying or selling of minors (F.S. Chapter 847);
  - j. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (F.S. Chapter 787);
  - k. aggravated battery, attempted aggravated battery (F.S. 784.045);
  - l. armed robbery, attempted armed robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (F.S. Chapter 812);
  - m. poisoning of food or water (F.S. 859.01);
  - n. abuse of a dead human body (F.S. 872.06);
  - o. first degree burglary or attempted first degree burglary (F.S. 810.02);
  - p. arson or attempted arson (F.S. 806.01);
  - q. aggravated assault (F.S. 784.021);
  - r. aggravated stalking (F.S. 784.048);
  - s. aggravated battery or aggravated assault on a law enforcement officer or other specified officer (F.S. 784.07);
  - t. first degree trafficking in illegal substances (F.S. 893.135);
  - u. aircraft piracy (F.S. 860.16);
  - v. unlawful throwing, placing, or discharging of a destructive device or bomb (F.S. 790.161);

- w. facilitating or furthering terrorism (F.S. 775.31);
- x. treason (F.S. 876.32); or
- y. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.

5. The person has not been declared to be one of the following:
- a. Habitual Violent Felony Offender under F.S. 775.084(1)(b);
  - b. Three-time Violent Felony Offender under F.S. 775.084(1)(c);
  - c. Violent Career Criminal under F.S. 775.084;
  - d. Prison Releasee Reoffender under F.S. 775.082(9)(a);
  - e. Sexual Predator under F.S. 775.21;



6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.



# FCOR - MACNet 2.0.6

RCR Search

Search | RegionalAssignment | Reports | Help

October 13, 2016

Report    Notify Summary    Reset

Person: <input checked="" type="radio"/> Organization: <input type="radio"/> Person#: <input type="text"/> ConvLastName: <input type="text"/> EC#: <input type="text"/> ConvFirstName: <input type="text"/> DC#: <input type="text"/> Gender: <input type="text"/> Begin DOB: <input type="text"/> Race: <input type="text"/> End DOB: <input type="text"/> Reoffend: <input type="checkbox"/> City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/> Begin Release Date: <input type="text"/> End Release Date: <input type="text"/> Begin Receive Date: <input type="text"/> End Receive Date: <input type="text"/> Begin Entry Date: <input type="text"/> End Entry Date: <input type="text"/> Begin Review Date: <input type="text"/> End Review Date: <input type="text"/> Begin Notify Date: <input type="text"/> End Notify Date: <input type="text"/> Region: <input type="text"/> Office: <input type="text"/> Reviewer: <input type="text"/> Type: <input type="text"/> Eligibility: <input type="text"/> View: <input type="text"/> With Name    Version: <input type="text"/> 2007 April Organization Name: <input type="text"/> DC#    ^ DOB    v EC# Sort: Eligibility    ==>>    <<==    Selected:	2007 April Value Rule1 <input type="checkbox"/> Rule2 <input type="checkbox"/> Rule3 <input type="checkbox"/> Rule4a <input type="checkbox"/> Rule4b <input type="checkbox"/> Rule4c <input type="checkbox"/> Rule4d <input type="checkbox"/> Rule4e <input type="checkbox"/> Rule4f <input type="checkbox"/> Rule4g <input type="checkbox"/> Rule4h <input type="checkbox"/> Rule4i <input type="checkbox"/> Rule4j <input type="checkbox"/> Rule4k <input type="checkbox"/> Rule4l <input type="checkbox"/> Rule4m <input type="checkbox"/> Rule4n <input type="checkbox"/> Rule4o <input type="checkbox"/> Rule4p <input type="checkbox"/> Rule4q <input type="checkbox"/> Rule4r <input type="checkbox"/> Rule4s <input type="checkbox"/> Rule4t <input type="checkbox"/> Rule4u <input type="checkbox"/> Rule4v <input type="checkbox"/> Rule4w <input type="checkbox"/> Rule4x <input type="checkbox"/> Rule4y <input type="checkbox"/> Rule5a <input type="checkbox"/> Rule5b <input type="checkbox"/> Rule5c <input type="checkbox"/> Rule5d <input type="checkbox"/> Rule5e <input type="checkbox"/> Rule6a <input type="checkbox"/> <input type="text"/> Rule6b <input type="checkbox"/> Rule7 <input type="checkbox"/> Rule8 <input type="checkbox"/>
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**FCOR/OFFICE OF CLEMENCY INVESTIGATIONS/ELIGIBILITY REVIEW FORM**

ECNUM:      DCNUM:      NAME:      RACE:      GENDER:      DOB:

**CLEMENCY TYPES**

Restoration of Civil Rights/Alien Status Without a Hearing	<input type="checkbox"/>	Restoration of Civil Rights/Alien Status With a Hearing	<input type="checkbox"/>
Full Pardon/Firearm Authority	<input type="checkbox"/>	Remission of Fine or Forfeiture	<input type="checkbox"/>

Date(s) RCR Granted:	Ineligible/RCR already granted for same conviction? Yes <input type="checkbox"/> No <input type="checkbox"/>
Last Felony Completion Date:	Last Arrest Date:
FCIC/NCIC History Review Date:	Last Overall Completion Date:

**RULES BELOW RELATE TO ALL COUNTY, STATE, FEDERAL, OR OUT OF STATE JURISDICTIONS**

	Yes	No
<b>Rule 9A(1), 5 &amp; 10A(1):</b> Is the applicant imprisoned, jailed or on any type of supervision?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(2) &amp; 5:</b> Are there any outstanding detainers, warrants, capiases, or pending criminal charges?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(3), 5 &amp; 10A(2):</b> Is there any outstanding restitution? Amount: \$ _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(4):</b> Has the applicant been convicted of any of the crimes listed under Rule 9A (4) for which the applicant's rights have not been granted?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(5):</b> Has this applicant been designated a Habitual Violent Felony Offender (HV) <input type="checkbox"/> , or Three-time Violent Felony Offender (TS) <input type="checkbox"/> , or Violent Career Criminal (VC) <input type="checkbox"/> , or Prison Release Re-offender (RA) <input type="checkbox"/> , or Sexual Predator (SX) <input type="checkbox"/> for which the applicant's rights have not been granted?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(6a) &amp; 10A(3):</b> Is this applicant a US citizen? Alien#: _____ Naturalized Date: _____ Derived? <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(6b) &amp; 10A(3):</b> If convicted in a court other than a Florida court, is this applicant a legal resident of FL?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A(7) &amp; 10A(4):</b> In the case of restoring alien status, is the applicant residing in Florida?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 9A: RCR/Alien Without a Hearing Only</b> - Has the applicant been crime and arrest free for 5 years from the date of completion of all sentences and conditions of supervision? N/A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 10A: RCR/Alien With a Hearing Only</b> - Has it been 7 years since the date of completion of all sentences and conditions of supervision in the applicant's last felony conviction? N/A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other Ineligible Reasons:</b> Has no felony convictions <input type="checkbox"/> , Illegal alien <input type="checkbox"/> , Rights were Restored/Other state <input type="checkbox"/> , Non-Compliance <input type="checkbox"/> , Withdrawal <input type="checkbox"/> , Deceased <input type="checkbox"/> , No Court Documents <input type="checkbox"/> , or Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

**(If applicable) FULL PARDON/FIREARM (FOR FLORIDA OFFENSES ONLY)**

	Yes	No
<b>Rule 5A:</b> Does the applicant have at least one Florida conviction and/or adjudication withheld for a misdemeanor or felony for which the applicant is seeking a pardon? - Note: Requests for a pardon, including firearm authority, will not be considered for applicants convicted in federal, military, or out-of-state cases.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 5A:</b> Has it been at least 10 years since the completion of all sentences and conditions of supervision for all offenses which the applicant is seeking a full pardon?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 5D:</b> Has the applicant been convicted of any felony, or a misdemeanor involving domestic violence? - Note: If yes, the applicant has lost the right to own, possess, or use a firearm, but may be eligible to apply for this right.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 5D:</b> Has it been at least 8 years since the completion of all sentences and conditions of supervision for all offenses which the applicant is seeking specific authority to own, possess, or use firearms?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rule 5A &amp; 5D:</b> Are there any outstanding pecuniary penalties or liabilities totaling more than \$1,000.00 resulting from any felonies, misdemeanors, criminal traffic, or traffic infractions? Amount: \$ _____	<input type="checkbox"/>	<input type="checkbox"/>

**RESOURCES**

<b>CDC</b>	PP01 <input type="checkbox"/> OP03 <input type="checkbox"/> OP04 <input type="checkbox"/> OP14 <input type="checkbox"/> OP23 <input type="checkbox"/> PP79 <input type="checkbox"/> OT10 <input type="checkbox"/> OT22 <input type="checkbox"/> OT03 <input type="checkbox"/> OT20 <input type="checkbox"/> OT23 <input type="checkbox"/> IM03 <input type="checkbox"/> OT70 <input type="checkbox"/> OT21 <input type="checkbox"/> DC28 <input type="checkbox"/>
	DC12 <input type="checkbox"/> OP13 <input type="checkbox"/> OP05 <input type="checkbox"/> OP10 <input type="checkbox"/> OT40 <input type="checkbox"/> OT41 <input type="checkbox"/> OT45 <input type="checkbox"/> OT46 <input type="checkbox"/> OT49 <input type="checkbox"/> OT71 <input type="checkbox"/> DC32 <input type="checkbox"/> DC46 <input type="checkbox"/> Other: _____
<b>eAgent</b>	FC <input type="checkbox"/> QR <input type="checkbox"/> QWI <input type="checkbox"/> FQI <input type="checkbox"/> IAQ <input type="checkbox"/> FS <input type="checkbox"/> FQ <input type="checkbox"/> TQ <input type="checkbox"/> DNQ <input type="checkbox"/> QPO <input type="checkbox"/> Other: _____
<b>Other Resources</b>	MAC <input type="checkbox"/> CCIS <input type="checkbox"/> Official Records <input type="checkbox"/> OnBase <input type="checkbox"/> SSDI <input type="checkbox"/> FDLE <input type="checkbox"/> BOP <input type="checkbox"/> PACER <input type="checkbox"/> CJIS <input type="checkbox"/> JIS <input type="checkbox"/> Docket Notes <input type="checkbox"/> DAVID <input type="checkbox"/> Clerk of Court County:      Phone/Fax/Email:      Other:

<b>Supporting Information Required:</b> State/County, Case #, Offense, Next Court Date, Restitution Amount, Birth Place, etc.	<b>Ineligible Resource(s)</b> (if applicable)

<b>ELIGIBLE for:</b>	<b>INELIGIBLE for:</b>	<b>CONVERT to:</b>
<i>By indicating Eligible, I acknowledge that all relevant databases and screens have been reviewed and no disqualifying factors have been found.</i>		
Reviewer Signature & Date	Supervisor Signature & Date	Quality Assurance Signature & Date

## Reasons RCR Applications Determined Ineligible

CALENDAR YEAR 2015

In 2,913 Applications, there were 3,082 Disqualifying Reasons

DISQUALIFIER	INELIGIBLE REASONS		PERCENT OF TOTAL
	RCR	*TOTAL	
Restitution Outstanding	663	21.5	
Missing Court Documents	402	13.0	
Seven Year Rule (Does not meet minimum timeframe)	358	11.6	
Failed to Comply/Unable to Locate or Contact	295	9.6	
Transfer to Another Region	172	5.6	
Five Year Rule (Does not meet minimum timeframe)	151	4.9	
Pending Criminal Charge(s)	113	3.7	
RCR Granted for Same Conviction(s)	109	3.5	
No Felony Convictions	108	3.5	
Active Probation/Community Supervision	102	3.3	
Clemency Type Change	89	2.9	
Five Year Rule (Arrested in past five years)	78	2.5	
Deceased	76	2.5	
Withdrawn	74	2.4	
Active Prison or Jail	67	2.2	
Active Warrant/Capias	53	1.7	
Alien Illegal/Adm. Warrant/ICE Supervision/Deported	34	1.1	
Disqualifying conviction pursuant to Rule 9(A)(4)	31	1.0	
Naturalized Citizen After Conviction	30	1.0	
Non-FL Resident & No FL Felony Convictions	23	0.7	
Other	20	0.6	
Rights Restored in Another State	19	0.6	
Alien Non-FL Resident	9	0.3	
Active Diversion Program	4	0.1	
Two Year Rule (Granted or Denied Board Action Waiting Period)	2	0.1	
Pardon/firearms owes in excess of \$1,000.00	0	0.0	
Ten Year Rule (Pardons)	0	0.0	
Eight Year Rule (Firearms)	0	0.0	
Pardon/firearms federal/out-of-state convictions only	0	0.0	
<b>Total</b>	<b>3,082</b>	<b>100.0</b>	

\*May not sum to total due to rounding

**RESTORATION OF CIVIL RIGHTS APPLICATIONS RECEIVED BETWEEN CALENDAR YEARS 2003 AND 2015 as of 10/10/16**

CLEMENCY TYPE	CALENDAR YEAR													TOTAL
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
APPLICATION RCR WITH	6,160	5,624	2,704	1,788	3,323	6,151	4,186	5,865	1,709	2,631	1,723	1,467	1,511	44,842
APPLICATION RCR WITHOUT	5,214	8,679	6,024	5,143	8,406	9,192	4,910	5,573	1,781	1,463	678	746	790	58,599
FDC TOS/EOS RCR	32,953	33,932	38,299	38,466	185,850	49,768	51,006	43,361	9,397	0	0	0	0	483,032
<b>TOTAL</b>	<b>44,327</b>	<b>48,235</b>	<b>47,027</b>	<b>45,397</b>	<b>197,579</b>	<b>65,111</b>	<b>60,102</b>	<b>54,799</b>	<b>12,887</b>	<b>4,094</b>	<b>2,401</b>	<b>2,213</b>	<b>2,301</b>	<b>586,473</b>

Restoration of Alien Status is not included.

	COL A03	COL A04	COL A05	
	AGY REQUEST	AGY REQ N/R	AG REQ ANZ	
	FY 2009-10	FY 2009-10	FY 2009-10	
POS	AMOUNT	POS	AMOUNT	POS
				AMOUNT
				CODES
PAROLE COMMISSION				78000000
PGM: PST-INCAR ENF/VIC RTS				78010000
PUBLIC PROTECTION				12
ADULT PRISONS				1206.00.00.00
COMMISSION OPERATIONS				4000000
GOVERNOR AND CLEMENCY BOARD'S				
CLEMENCY INVESTIGATION WORKLOAD				4000810
SALARY RATE				000000
SALARY RATE.....	717,930			
SALARIES AND BENEFITS				010000
GENERAL REVENUE FUND -STATE	20.00			
	1,015,625			1000 1
EXPENSES				040000
GENERAL REVENUE FUND -STATE	198,810	67,358	131,452	1000 1
OPERATING CAPITAL OUTLAY				060000
GENERAL REVENUE FUND -STATE	20,000	20,000		1000 1
SPECIAL CATEGORIES				100000
TR/DMS/HR SVCS/STW CONTRCT				107040
GENERAL REVENUE FUND -STATE	8,020		8,020	1000 1
TOTAL: GOVERNOR AND CLEMENCY BOARD'S				4000810
CLEMENCY INVESTIGATION WORKLOAD				
TOTAL POSITIONS.....	20.00			
TOTAL ISSUE.....	1,242,455	87,358	139,472	
TOTAL SALARY RATE.....	717,930			

\*\*\*\*\*

AGENCY ISSUE NARRATIVE:

2009-2010 BUDGET YEAR NARRATIVE:

IT COMPONENT? NO

On April 5, 2007, Governor Crist and the Cabinet, in their capacity as the Board of Executive Clemency made significant changes to the Rules of Executive Clemency. These changes greatly expanded the number of offenders eligible to have their Civil Rights restored without a hearing. Under the old rules, approximately 26% of offenders were eligible, based on their crime, for Restoration of Civil Rights (RCR) without a hearing. The new rules expanded this to 80% eligible for automatic restoration (Level 1), which ensures RCR restoration provided no restitution is owed and there are no pending charges. Level 2 cases require a short investigation but are eligible for RCR without a hearing. Level 3 cases require a hearing and are for the most serious offenses (murder, sex offenses).

	COL A03	COL A04	COL A05	
	AGY REQUEST	AGY REQ N/R	AG REQ ANZ	
	FY 2009-10	FY 2009-10	FY 2009-10	
POS	AMOUNT	POS	AMOUNT	POS
				AMOUNT
				CODES
PAROLE COMMISSION				78000000
PGM: PST-INCAR ENF/VIC RTS				78010000
PUBLIC PROTECTION				12
ADULT PRISONS				1206.00.00.00
COMMISSION OPERATIONS				4000000
GOVERNOR AND CLEMENCY BOARD'S				
CLEMENCY INVESTIGATION WORKLOAD				4000810

Based on cases processed during FY 2007-08, Level 1 cases averaged .8 hours per case, Level 2 cases averaged 2.6 hours per case and Level 3 cases averaged 20 hours per case. Level 3 cases also included the other forms of clemency - right to carry a firearm, pardons, waivers, commutation of sentence, etc. Seaport security waiver investigations averaged 38 hours per case and capital cases (death penalty case investigations) averaged 372 hours per case.

Clemency, including RCR, is a constitutionally authorized process and the Parole Commission operates as the investigative arm of the Board of Executive Clemency by statute. Additionally, the Parole Commission processes seaport security waiver investigations for the Florida Department of Law Enforcement and capital cases (death penalty investigations) for the Governor's Office, both of which are also included in this workload.

On June 30, 2008, there were 59,918 pending cases (does not include 10,848 historical cases that were completed but not yet approved by the Clemency Board.) With 60,768 new cases projected for 2008-09, pending cases on June 30, 2009 are projected to be 55,089. To substantially decrease the backlog of cases and decrease the time it takes to fully process Levels 1 and 2 cases, twenty new positions are requested. This staffing will allow Level 1 cases to be completed in six months, Level 2 cases within 12 months and a sufficient number of Level 3 cases for four quarterly Board of Executive Clemency hearings. This will allow cases processed to meet this standard by FY 2010-11, ensuring individuals have their requests for civil rights restoration processed in a reasonable period of time. In addition to the 20 positions, this issue requests \$263,280 for travel and supporting expenses for the Parole Examiners and Parole Examiner Supervisors.

REQUIRED RESOURCES:

Salaries:

Class Code 8133 Parole Examiner Supervisor = 2.0 FTE  
 Class Code 0712 Administrative Assistant II = 2.0 FTE  
 Class Code 8127 Parole Examiner = 16.0 FTE

Expenses:

Travel = \$36,450

Expense, Operating Capital Outlay and Human Resource Services Assessments Package:

Category	Standard	Non-Recurring	Recurring
Expense	18 @ \$10,112 = \$182,016	18 @ \$3,412 = \$61,416	18 @ \$6,700 = \$120,600
Expense	2 @ \$ 8,397 = \$ 16,794	2 @ \$2,971 = \$ 5,942	9 @ \$5,402 = \$ 10,852
OCO	20 @ \$ 1,000 = \$ 20,000	20 @ \$1,000 = \$20,000	
Human Resource	20 @ \$ 401 = \$ 8,020		20 @ \$ 401 = \$ 8,020

\*\*\*\*\*

	COL A03	COL A04	COL A05	
	AGY REQUEST	AGY REQ N/R	AG REQ ANZ	
	FY 2009-10	FY 2009-10	FY 2009-10	
POS	AMOUNT	POS	AMOUNT	POS
				AMOUNT
				CODES
PAROLE COMMISSION				78000000
PGM: PST-INCAR ENF/VIC RTS				78010000
PUBLIC PROTECTION				12
ADULT PRISONS				1206.00.00.00
COMMISSION OPERATIONS				4000000
GOVERNOR AND CLEMENCY BOARD'S				
CLEMENCY INVESTIGATION WORKLOAD				4000810

POSITION DETAIL OF SALARIES AND BENEFITS:

	FTE	BASE RATE	ADDITIVES	BENEFITS	SUBTOTAL	LAPSE %	LAPSED SALARIES AND BENEFITS
A03 - AGY REQUEST FY 2009-10							
NEW POSITIONS							
0712 ADMINISTRATIVE ASSISTANT II							
N0001 001	2.00	58,690		27,157	85,847	0.00	85,847
8127 PAROLE EXAMINER							
N0002 001	10.00	351,150		146,005	497,155	0.00	497,155
N0007 001	3.00	105,345	13,923	46,268	165,536	0.00	165,536
N0008 001	3.00	105,345	5,703	44,811	155,859	0.00	155,859
8133 PAROLE EXAMINER SUPERVISOR - SES							
N0000 001	2.00	77,774		33,454	111,228	0.00	111,228
TOTALS FOR ISSUE BY FUND							
1000 GENERAL REVENUE FUND							1,015,625
	20.00	698,304	19,626	297,695	1,015,625		1,015,625

\*\*\*\*\*

RESTORATION OF CIVIL RIGHTS TOLL							
FREE INFORMATION LINE							4000850
OTHER PERSONAL SERVICES							030000
GENERAL REVENUE FUND	-STATE	22,391		22,391			1000 1
EXPENSES							
GENERAL REVENUE FUND	-STATE	3,000		3,000			040000





# FLORIDA PAROLE COMMISSION

---

FREDERICK B. DUNPHY, CHAIRMAN  
TENA PATE, VICE CHAIRMAN  
MONICA DAVID, SECRETARY

CHARLIE CRIST, GOVERNOR  
BILL McCOLLUM, ATTORNEY GENERAL  
ALEX SINK, CHIEF FINANCIAL OFFICER  
CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE

## Proviso Report to the Legislature

**A Report on the Status of the  
Processing of Restoration of Civil Rights' Clemency Cases  
For FY 2008-09  
Per Proviso Language in SB 2600  
2009 Legislative Session**

**October 1, 2009  
Frederick B. Dunphy, Chairman**

**The Florida Parole Commission**

**Frederick B. Dunphy, Chairman**  
**Tena Pate, Commissioner Vice-Chairman**  
**Monica David, Commissioner Secretary**

~

**Mission Statement:**

**To Ensure Public Safety and Provide  
Victim Assistance Through the  
Post Prison Release Process**

~

**The Florida Cabinet as  
*The Board of Executive Clemency***



**Charlie Crist**

*Governor*



**Bill McCollum**

*Attorney General*



**Alex Sink**

*Chief Financial  
Officer*



**Charles Bronson**

*Commissioner  
Of Agriculture*

# Proviso Report

## TABLE OF CONTENTS

Agency Mission Statement .....	2
Board of Executive Clemency .....	2
Transmittal Letter.....	4
Executive Summary.....	6
History of the Proviso Report.....	6
Clemency RCR Data for FY 2008-09.....	8
Response to Issue 1 .....	9
1. RCR Pending Cases .....	9
2. Method of Calculation .....	9
3. RCR Cases Received, Completed & Pending .....	10
Response to Issue 2 .....	11
1. Utilization of Existing Automated Systems .....	11
2. Effects of April 5, 2007 Rules Change .....	12
3. Forms/Data Worksheet .....	12
Response to Issue 3 .....	13
1. Staffing & Funding.....	13
2. Position Descriptions.....	13
3. Legislative Budget Request.....	14
Response to Issue 4 .....	15
1. RCR Cases: Levels I, II, and III.....	15
2. Terminology.....	15
3. Process for Receiving RCR Cases.....	16
4. Average Time to Process Cases.....	16
5. Process for an Ex-offender to Seek RCR.....	17
6. RCR Outreach Activities .....	17
7. Summary of Current RCR Practices .....	17

### ATTACHMENTS

- A. RCR Contact Information Sheet
- B. RCR Outreach Activities
- C. Position Descriptions: Executive Clemency
- D. Position Descriptions: Clemency Administration
- E. Commission’s Response to Audit Report No. 2010-010



## FLORIDA PAROLE COMMISSION

FREDERICK B. DUNPHY, CHAIRMAN  
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MONICA DAVID, SECRETARY

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BILL McCOLLUM, ATTORNEY GENERAL  
ALEX SINK, CHIEF FINANCIAL OFFICER  
CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE

October 1, 2009

The Honorable Charlie Crist, Governor  
The Honorable Jeff Atwater, President, Florida Senate  
The Honorable Larry Cretul, Speaker, Florida House of Representatives

Dear Governor Crist, President Atwater, & Speaker Cretul:

Attached is the Parole Commission's Proviso Report to the Legislature on the Status of the Clemency Restoration of Civil Rights' function for FY 2008-09 per proviso language contained in SB 2600ER from the 2009 Legislative Session.

These "Proviso Reports" were begun in 2002 as a result of a lawsuit filed against the Department of Corrections in 2001, which resulted in an additional 124,000 clemency/RCR *Without a Hearing* cases (today referred to as RCR Level 1 automatic cases) being added to the Commission's pending caseload. As a result of the increased volume of pending cases carried forward each fiscal year and the annual increase in the number of applications being received, the Legislature directed the Commission to provide annual status reports on the following information for the past five years: the number of pending RCR clemency cases and the methodology used to determine that number; the number of RCR cases received; the number of RCR cases processed; the number of RCR cases pending but not processed; a continuation plan for simplifying the administrative RCR process; identification of the existing resources supporting the RCR process; and the identification of RCR cases by type and the time frames to process such cases.

I recently responded to **Auditor General Report No. 2010-010** and have included the Commission's response in this report as Attachment E. Further, I have initiated the following immediate measures to address these issues:

- Appointed an internal Ad Hoc Committee to review the Commission's current practices regarding the processing of RCR clemency cases and report their findings and recommendations to me by November 2, 2009;

- Required supervisors to conduct additional Quality Assurance reviews; and
- Submitted temporary programmatic changes to the current clemency database to ensure that all processes are completed accurately.

Later in November, I will brief the Governor's Office, Cabinet Members, and the Legislature on the progress of the above-referenced activities. At the December 10, 2009 meeting of the Board of Executive Clemency, I will update the Board on the status of these and any additional implemented changes. If you have any questions or need additional information, please contact me at 850-488-0764, or Jane Tillman, Communications and Legislative Affairs Director, at 850-921-2816.

Frederick B. Dunphy  
Chairman

Cc: The Honorable J.D. Alexander, Chair, Senate Ways & Means Committee  
 The Honorable David Rivera, Chair, House General Government & Health Care  
 Appropriations Council  
 The Honorable Victor Crist, Chair, Senate Criminal & Civil Justice Appropriations  
 Committee  
 The Honorable Sandra Adams, Chair, House Criminal & Civil Justice Appropriations  
 Committee  
 The Honorable Paula Dockery, Chair, Senate Criminal Justice Committee  
 The Honorable Will Snyder, Chair, House Safety & Security Council  
 The Honorable Kevin Ambler, Chair, House Public Safety & Domestic Security  
 Committee  
 Eric Eikenberg, Chief of Staff, Executive Office of the Governor  
 Dave Foy, Deputy Chief of Staff, Executive Office of the Governor  
 Randy Ball, Policy Chief, Office of Policy & Budget, Executive Office of the Governor  
 Cynthia Kelly, Staff Director, Senate Ways & Means Committee  
 JoAnn Leznoff, Director, House General Government & Healthcare Appropriations Council  
 Tim Sadberry, Staff Director, Senate Criminal & Civil Justice Appropriations Committee  
 Greg Davis, Staff Director, House Criminal & Civil Justice Appropriations Committee  
 Randy Havlicak, Staff Director, House Safety and Security Council  
 Amanda Cannon, Staff Director, Senate Criminal Justice Committee  
 Trina Kramer, Staff Director, House Homeland Security and Public Safety Committee

~EXECUTIVE SUMMARY~

On April 5, 2007 the Clemency Board adopted rule changes making 80% of former felons potentially eligible for automatic restoration of their civil rights (RCR). Since April 5, 2007 the Commission has processed 271,000 cases with 146,549 persons having been granted or on an Executive Order to be granted as of September 2009. Forty-four (44) FTEs, in whole or in part, currently support the clemency function, which represents 43% of the Commission's workload. In FY 2008-09, there were:

63,881 Total RCR Cases pending on July 1, 2008  
67,168 Total New RCR Cases Received FY 2008-09;  
74,255 Total RCR Cases Completed FY 2008-09; and  
56,794 Total RCR Cases Pending on June 30, 2009.

The Commission's budget for FY 2009-10 is \$8,078,668 and 128 FTEs.

**HISTORY OF THE ANNUAL "PROVISO REPORT": 2002-2009**

The Florida Parole Commission (hereinafter referred to as "Commission") began submitting an annual "Proviso Report" to the Legislature on its Restoration of Civil Rights' (RCR) clemency function and relevant data in October 2002. This was done to provide the Legislature and the Office of Policy and Budget a status report on the number of pending RCR clemency cases, the RCR clemency application process currently in use, and the number of FTEs and funds dedicated to support the RCR clemency issue. The following is a chronological history of events that have impacted the RCR clemency process for the past 8 years:

**2001** A lawsuit filed against the Florida Department of Corrections regarding the Department's failure to assist inmates with the RCR application process as required by law (s. 944.293, F.S.) resulted in 150,000 cases being added to the Parole Commission's pending RCR clemency workload as part of an agreement with the ACLU, the Department of Corrections, and other parties. These "lawsuit" cases were given priority and placed ahead of other cases for processing.

**2002** In March of 2002, the Clemency Board authorized the Commission and the Office of Executive Clemency to streamline the application process for restoration of civil rights. This resulted in a more "user friendly" one-page form requiring the most basic of information: name, address, and date of birth and directed the forms to be placed on the Commission's website: [www.state.fl.us/fpc/exclem.html](http://www.state.fl.us/fpc/exclem.html).

**2002-03** The Governor recommended 14 new Parole Examiner positions to help in reducing the backlog of pending RCR *Without a Hearing* cases (today referred to as RCR *Level 1 Automatic* cases). These positions were approved by the Legislature in the 2002 Regular Session for FY 2002-03. During that period, over 120,000 offender files were reviewed for

restoration of civil rights without a hearing eligibility. Having the additional Parole Examiner positions contributed significantly toward reducing the pending cases.

**2003-04** The growth of clemency pending cases continued as a result of processing **over 250,000 lawsuit and electronic applications** over the past six years (1998-2004). **Media attention** and numerous **RCR workshops** held around the State were factors, along with the changes made to simplify the application process. These contributed to the increase in applications, while staffing of the Office of Executive Clemency remained unchanged.

**2004** Beginning in 2004, a large volume of applications for all types of clemency continued to be submitted directly on-line through our website. Clemency Administration began notifying all individuals found ineligible for RCR *Without a Hearing* and provided information on how to proceed with the hearing process.

In June 2004, Governor Bush praised the Commission and the Department of Corrections for their efforts in completing the review of the 124,000 “lawsuit” clemency cases and in reducing the backlog of restoration of civil rights cases. These cases were processed through a monumental effort by Commission staff and a new streamlined application process, which included electronic applications submitted by DOC for individuals terminating supervision and ending prison terms. Governor Bush further noted, “As of June 1, 2004, the team has completed its work on 80% of these cases.” As the lawsuit cases were completed, the pending “restoration of civil rights cases **with a hearing**” continued to grow. These cases require a more extensive review referred to as a “full investigation” and the Commission sought additional funding for FTEs to handle these cases, which was denied.

In December 2004, the Rules of Executive Clemency were revised again to allow individuals convicted of certain crimes to be considered for Restoration of Civil Rights (RCR) *without a hearing* if the person has remained crime and arrest free for either five to fifteen years depending on the severity of the offense. **These revisions were applied to all pending investigations and allowed for the conversion of many investigations which had previously required a hearing.** Clemency Administration worked closely with Field Services and Information Services to provide training and database enhancements to ensure the implementation of these revisions.

**2005** The 2005 Legislature directed OPPAGA to conduct a review of the Commission’s major functions and to evaluate options for reducing the backlog in processing executive clemency applications (OPPAGA Report No. 06-15).

**2006-07** Clemency Staff worked with the Commission’s Information Technology staff over a six-month period to re-design the clemency database (Management Application of Cases “MAC” database) to be completed in late 2006. The 2006 Legislature added duties for clemency investigative staff in HB 7415 on seaport security when it gave the Commission the responsibility to investigate seaport security waivers for the Florida Department of Law Enforcement. This is the only statutory language requiring mandated timeframes to be met by clemency staff.

**April 5, 2007** On April 5, 2007, Governor Crist and the Cabinet, acting as the Board of Executive Clemency, made significant changes to the Rules. These changes greatly expanded the number of ex-felons eligible to have their civil rights restored. Since April 5, 2007, the Commission has processed over 200,000 RCR cases, with 146,549 individuals having their rights granted or on an Executive Order to be granted as of September 2009. This was accomplished in partnership with the Department of Corrections, whose staff pre-screened almost 300,000 historical offender cases prior to the Commission's final RCR eligibility determination. For FY 2007-08, the Commission requested funding for 14 FTEs and \$839,349 from the Legislature to address the increased pending clemency cases. No funding was granted.

**2008** The Commission requested 42 FTEs and \$2.3 million in funding from the Legislature to process the increased number of eligible ex-felons and to reduce the increasing pending clemency cases. No funding was granted.

**2009** The Commission requested 20 FTEs and \$1.2 million in funding from the Legislature to fund the Governor and Clemency Board's clemency investigation workload and to address the pending clemency cases. No funding was granted.

## **Clemency/RCR Data for Fiscal Year 2008-2009**

The following reflects proviso language contained in SB 2600ER, 2009 Regular Session:

***From the funds in Specific Appropriation 1293C, the Parole Commission shall conduct a study and provide the following to the Governor's Office of Policy and Budget, the President of the Senate and the Speaker of the House of Representatives by October 1, 2009:***

***1. A valid determination of the exact number of pending Restoration of Civil Rights (RCR) cases existing on July 1, 2009, along with a full explanation of the methodology used to determine the pending number of cases. Data must include total cases received for each of the past five years, the total number of cases processed for each of the past five years, and the total number of cases received or pending but not processed for each of the past five years;***

***2. A continuation plan including measures that continue to simplify application forms and processes by using readily available data from existing automated systems;***

***3. Identification of all existing resources, workload, job descriptions, and internal business procedures for clemency activities. This information must be reported in a manner that allows for isolation of resources allocated to the RCR process. The information must also be sufficient to account for each step in the process to complete the review of RCR without a hearing; and***

***4. Proposed criteria, developed by case type, to use in defining and***



*classifying case backlogs which shall be based upon a reasonable length of time for the normal processing of cases.*

In response to the above, the following is the relevant information and support data for the RCR clemency-related activities administered by the Commission during Fiscal Year 2008-09.

**ISSUE ONE**

**1. RCR PENDING CASES**

The number of RCR cases pending action on July 1, 2009 was 62,924. This number includes 33,816 Level 1 cases; 22,978 Level II cases; and 6,130 Level III cases. The 56,794 Levels I and II cases included 29,052 offenders who completed their sentences and were being released by the Department of Corrections and whose cases were forwarded electronically to the Office of Clemency Administration (Commission) and 27,742 former offenders who requested restoration of their civil rights through the Office of Executive Clemency during the reporting period. As of June 30, 2009, there were 113 pending investigations for Level III cases and 9,780 *RCR Without a Hearing* cases were completed and awaiting official Board action.

**2. METHOD OF CALCULATION**

The methodology used to calculate “pending cases” is based on the number of cases in the clemency database that did not have a completion date and cases in the Office of Executive Clemency that have not been entered into the database as of June 30, 2009, thus pending cases currently means cases not yet completed. Pending cases include: prior year pending cases, plus new cases received, less those completed during the applicable fiscal year.

All data is captured in the Commission’s Management Application of Clemency (MAC) database. **Table 1** referenced below shows the number of cases pending on June 30 each year for the past 5 fiscal years. This number includes the 29,052 offenders whose terms of supervision ended or whose sentence expired in FY 2008-09 and were forwarded electronically to the Commission, and the 27,742 former offenders who requested directly through the Office of Executive Clemency for rights restoration.

**TABLE 1: RCR PENDING CASES  
FISCAL YEARS 2004/05 – 2008/09**

RESTORATION OF CIVIL RIGHTS CASES 2004-2009: LEVELS I AND LEVEL II*							
PENDING	2004-05	2005-06	2006-07	2007-08	2008-09	2008-09 Level 1	2008-09 Level 2
PENDING JULY 1	16,804	22,223	22,935	82,504	63,881	47,353	16,528
PENDING 6/30	22,223	22,935	82,504	63,881	56,794	33,816	22,978

\* Prior to April 2007, RCR cases were not designated as Levels I, II, or III.

\*\*Previous proviso language only addressed Levels I and II RCR cases.



### 3. RCR CASES RECEIVED, COMPLETED, AND PENDING

The clemency/RCR function caseload for the past five years is reflected below. These figures include all Levels I and II RCR cases, which represent 97% of all clemency cases received.

**TABLE 2: RESTORATION OF CIVIL RIGHTS' CASES FYS 2004-05 – 2008-09: LEVELS I AND II\***

RESTORATION OF CIVIL RIGHTS CASES 2004-2009: LEVELS I AND II					
RCR CASES	FY2004/05	FY2005/06	FY2006/07	FY2007/08	FY2008/09
CASES PENDING JULY 1 (CARRIED FORWARD FROM THE PREVIOUS FY)	16,804	22,223	22,935	82,504	63,881 (47,353 RCR 1 and 16,528 RCR 2)
CASES RECEIVED	45,563	44,571	113,638	133,200	67,168 (58,644 RCR 1 and 8,524 RCR 2)
CASES COMPLETED	40,142	43,856	53,586	151,823	74,255 (70,584 RCR 1 and 3,671 RCR 2)
CASES PENDING 6/30	22,223	22,935	82,504	63,881	56,794 (33,816 RCR 1 and 22,978 RCR 2)

\* Previous proviso language only addressed Levels I and II RCR cases.

**TABLE 3: RCR RECEIVED CASES  
FISCAL YEARS 2004/05 – 2008/09**

Restoration of Civil Rights Cases Received 2004-2009: Level I and Level II*					
RCR CASES	2004/05 Total	2005/06 Total	2006/07 Total	2007/08 Total	2008/09 Total
RECEIVED	45,563	44,571	113,638	133,200	67,168

\* Previous proviso language only addressed Level I and Level II RCR cases.

**TABLE 4: RCR COMPLETED CASES  
FISCAL YEARS 2004/05 – 2008/09**

Restoration of Civil Rights Cases 2004-2009: Level I and Level II					
RCR CASES	2004/05	2005/06	2006/07	2007/08	2008/09
	Total	Total	Total	Total	Total
<b>COMPLETED</b>	<b>40,142</b>	<b>43,856</b>	<b>53,856</b>	<b>151,823</b>	<b>74,255*</b>

\* Reflects 70,584 Level I Cases completed and 3,671 Level II Cases completed

\*\* Previous proviso language only addressed Level I and Level II RCR cases.

## ISSUE TWO

### **1. UTILIZATION OF EXISTING AUTOMATED SYSTEMS**

The current review process utilizes many automated computer systems (Department of Corrections, Clerks of Court, the Internet, Department of Law Enforcement, Department of Highway Safety and Motor Vehicles, local law enforcement agencies, out-of-state boards and agencies, etc.). In addition, the Commission uses the Comprehensive Case Information System (CCIS), a secured Internet Portal maintained by the Florida Association of Court Clerks, providing a single point of access for statewide court case information as an automated tool. The referral, assignment, and approval of cases within the Commission are all processed through the Commission’s Management Application of Clemency (MAC) database. The notification letter, automatically generated by the MAC database, is mailed to those individuals who are determined by the Commission to be ineligible for restoration of civil rights. This letter provides information on how to proceed with the process for restoration of civil rights, which may include a hearing.

Persons seeking to have their civil rights restored can now call, fax, e-mail, send a letter to the Office of Executive Clemency, or fill out a request form (application) directly online at the Commission’s website: [www.FLrestoremyrights.com](http://www.FLrestoremyrights.com) or <https://fpc.state.fl.us/clemency.htm>. In August of 2007, the Commission’s Restoration of Civil Rights’ toll-free number, 1-800-435-8286, was activated. On June 30, 2008, funds for the two bi-lingual contract employees answering these lines were discontinued. To compensate for the loss of these part-time employees, and to keep the phones covered to the extent possible, the phone-tree was reconfigured to allow calls to roll over to other clemency staff.

Most importantly, by Executive Order of the Governor dated August 27, 2008, the Commission unveiled a new search engine on its website, wherein individuals can verify whether their rights were restored, and if so, can print the clemency certificate immediately.

## **2. EFFECTS OF APRIL 5, 2007, RULES CHANGE**

The Board of Executive Clemency (Board) establishes the Rules of Executive Clemency by mutual consent. The Board is comprised of the Governor and the three additional members of the Cabinet: the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

On April 5, 2007, the Board adopted new rules, which implemented an “automatic” approval process, **Level I**, for the Restoration of Civil Rights (RCR) for felons convicted of specific offenses who have completed their sentences and paid their debt to society. The persons eligible for Level I automatic approval have been convicted of less serious offenses such as Grand Theft, Burglary of a Dwelling, Possession of Firearm by Convicted Felon, Robbery (No Deadly Weapon), Felony DUI and Sale of Controlled Substance. These cases are reviewed for eligibility and placed on an executive order for signature of the Clemency Board. Once the executive order is signed, certificates are mailed to the persons having their rights restored. On August 27, 2008, by Executive Order of Governor Charlie Crist, the Commission began including a voter registration application when mailing the certificate.

Individuals convicted of more serious offenses such as Aggravated Battery/Assault, Trafficking in Cocaine, Aggravated Stalking, Kidnapping/False Imprisonment, or designated as a Three-Time Violent Felony Offender, are eligible for a **Level II** review for restoration of civil rights without a hearing. A more in-depth investigation is required on these cases and the information is provided to the Clemency Board for a 30-day review. At the end of the review period, if the Clemency Board approves, the names of the eligible individuals are then placed on an executive order for signature of the Board and restoration of civil rights certificates are mailed to those persons once the order has been signed. In these cases, the Commission also includes a voter registration application when mailing the certificate to persons having their rights restored.

Persons convicted of the most serious offenses such as Murder/Manslaughter, Sexual Battery, Aggravated Child Abuse, or persons designated as Sexual Predators, must be investigated for restoration of civil rights with a hearing as a **Level III** case. Level III cases require a full investigation, a Commission recommendation, and a hearing before the Board of Executive Clemency.

## **3. FORMS/DATA WORKSHEET**

The Commission uses a one-page hardcopy restoration of civil rights data worksheet form, which is available on line at: <https://fpc.state.fl.us/clemency.htm>.or [www.FLrestoremyrights.com](http://www.FLrestoremyrights.com). This form has been redesigned to require less information and eliminates the requirement that individuals provide certified copies of court documents when applying for restoration of civil rights. The mailing of a copy of the request form to the sentencing judge and State Attorney has been eliminated in all types of clemency requests.

## ISSUE THREE

### **1. STAFFING AND FUNDING FOR THE CLEMENCY FUNCTION**

Currently, the Office of Executive Clemency and Clemency Administration are staffed with six (6) and eleven (11) FTEs, respectively. In addition, the equivalent of twenty-seven (27) FTE field staff currently work on clemency cases, including assisting victims, for a total of 44 FTEs dedicated, either wholly or in part, to the support of the clemency function. Positions supporting the clemency function include 29% clerical staff and 71% professional staff, with the base annual salary set at \$23,483 and \$35,114 respectively for a Staff Assistant and Parole Examiner. The staff supporting the clemency function has been reduced a minimum of ten full or part-time employees since the rules changes. Most positions are hired at the base. Persons employed in the Tampa and Miami offices have applicable CAD's.

Since the 20% cut to the Commission's budget in FY 2008-09, the ability of the Commission to respond to citizens, citizen activist organizations, and Legislators has been compromised, although the expectation is the same or higher than prior years when the Commission received, at a minimum, a continuation budget. However, the Commission continues to request the necessary resources to focus on its core mission of public safety and to enable the Commission to respond to its stakeholders within a reasonable timeframe.

### **2. POSITION DESCRIPTIONS**

Attachments E and F contain the following position descriptions currently utilized in the Office of Executive Clemency, the Office of Clemency Administration, and for staff in the field (Parole Examiners) who conduct investigations for the clemency process:

#### **OFFICE OF EXECUTIVE CLEMENCY**

Clemency Coordinator (1)  
Parole Examiner (1)  
Administrative Secretary (1)  
Administrative Assistant II (1)  
Staff Assistant (2)

TOTAL FTEs: 6

#### **OFFICE OF CLEMENCY ADMINISTRATION**

Director of Clemency Administration (1)  
Administrative Analyst (Capital Punishment Research Specialist) (1)\*  
Operations & Planning Coordinator (1) (Clemency Supervisor & Research Analyst)\*

Executive Secretary (1)  
Parole Examiner (5)

Parole Examiner (2) Part-time  
Staff Assistant (1)  
TOTAL FTEs: 11

### **DIVISION OF OPERATIONS' FIELD STAFF**

Parole Examiners equivalent to (27)

### **3. LEGISLATIVE BUDGET REQUEST**

For the past five years, new positions have been requested annually in the Commission's Legislative Budget Request, but have never been funded, while the caseload has increased significantly. The clemency function has not been funded sufficiently to keep current with its workload demands or its caseload. For the past two years, the Commission has continued to process cases, while being faced with an increasing workload and a reduction in resources, including the loss of 24 employees/positions. Other activities, including outreach and the toll free RCR "800" number, were discontinued after only one year.

Simplifying the RCR process has resulted in an increase in the number of persons requesting to have their civil rights restored. To address the escalating workload, the Commission is requesting 20 FTEs in its FY 2010-11 Legislative Budget Request to counter the workload demands generated by the policy changes and to ensure that cases are reviewed and classified correctly, and to ensure that persons found eligible receive their rights as expeditiously as possible. Further, given adequate staffing resources, enhanced quality assurance procedures, and increased training, the errors acknowledged in the Commission's response to the Auditor General's Audit Report No. 2010-010 published September 2009 should be eliminated.

The Parole Commission established a toll-free number during FY 2007-08, which provided an information line for persons seeking information on the restoration of civil rights. The Commission is also requesting reinstatement of this funding so that this vital service can be maintained. The phone line and two part-time bilingual operators were funded from within a \$50,000 appropriation provided that year for Restoration of Civil Rights' outreach activities. This funding was non-recurring and was deleted in FY 2008-09. Currently, clemency staff are being rotated away from processing cases to answer this information line. The number of calls received to the toll free clemency line for FY 2008-09 was 47,872.

During the Crist administration the Parole Commission has processed more restoration of civil rights requests and more persons have had their civil rights restored than in any previous administration. Further, by Executive Order of the Governor August 2008, the Commission created a search engine on its Internet website to research an individual's RCR status and print a certificate, if granted. Also, by Executive Order August 2008, voter registration applications are now included in mailings to persons receiving a RCR certificate. These efforts assisted in making 123,000 more Florida citizens eligible to vote in the November 2008 Presidential General Election.

**TABLE 5: FTEs & Funding for Clemency Function  
Fiscal Years 2002-03 – 2008-09**

<b>Fiscal Year</b>	<b>Total FTEs*</b>	<b>Total Clemency Appropriation</b>
<b>04-05</b>	<b>67 FTEs*</b>	<b>\$4,247,173</b>
<b>05-06</b>	<b>62 FTEs *</b>	<b>\$4,493,285</b>
<b>06-07</b>	<b>58 FTEs *</b>	<b>\$5,177,495</b>
<b>07-08</b>	<b>55 FTEs *</b>	<b>\$4,343,718</b>
<b>08-09</b>	<b>44 FTEs *</b>	<b>\$3,820,976</b>

\* The number of FTEs supporting the clemency function either wholly or in part.

The Commission’s Performance Based Budgeting (PBB) System captures work hours for each major activity within the Commission. Data from PBB indicates that clemency represents 43% of the Commission’s workload.

#### **ISSUE FOUR**

#### **1. RCR CASES: LEVELS I, II, and III**

Criteria for developing clemency workload priorities is based upon the amount of time it takes to process cases from the shortest time (RCR case eligibility reviews) to the longest (full investigations). To this end, workload priorities have been adjusted to process RCR cases as follows: First, process RCR cases that do not require a hearing (**Levels I and II**); Second, process RCR cases with a hearing and requiring full investigations (**Level III**); and third, process full investigations for other forms of clemency cases, i.e., full pardons and firearm authority. All cases are processed in the order in which they are received unless otherwise directed by the Board.

#### **2. TERMINOLOGY**

The following are common terms used in the clemency process for Restoration of Civil Rights. Also included are explanations of the various stages in the process.

**Received Cases:** Requests that have been received in the Office of Executive Clemency by phone, facsimile, regular mail, e-mail, or Internet, and cases which are sent electronically by the Department of Corrections to the Office of Clemency Administration.

**Completed Cases:** Cases that are closed, cases where the eligible individual is mailed a RCR certificate, and cases when the ineligible individual has been mailed notification of further action they must take to obtain their rights.



**Pending Cases:** Requests that have been received in the Office of Executive Clemency and awaiting preliminary review and cases that are moving through some stage of the eligibility determination process. A pending case includes: a case awaiting Board action where the investigation is completed and the case has been submitted to the Board; a case awaiting action of the Board (no investigation required); or a case that has been approved by the Board. As of June 30, 2009, there were 113 investigations in this status and 9, 780 RCR *Without a Hearing* cases that had been completed and were awaiting official Board action.

### **3. PROCESS FOR RECEIVING RCR CASES**

#### **A. "List" Cases Sent Electronically from the Department of Corrections**

1. The Commission's Office of Clemency Administration receives cases electronically from the Department of Corrections.
2. Commission Parole Examiners conduct eligibility reviews.
3. If eligible, a case is submitted to the Clemency Board, and the Office of Executive Clemency (OEC) notifies the person of the Board's decision. If granted, OEC mails a certificate and a voter registration application. If ineligible, the person is notified by Clemency Administration.

#### **B. Request/Application Cases**

1. The Commission receives clemency requests by phone, facsimile, regular mail, e-mail, or Internet.
2. The Office of Executive Clemency (OEC) conducts a brief review to determine eligibility for clemency type requested.
3. If eligible, the OEC refers the request to Clemency Administration for investigation. If ineligible, OEC notifies the person and advises him/her on how to proceed with a hearing or what is needed to resolve their ineligible status.
4. Clemency Administration distributes investigations to appropriate FPC regional offices to conduct eligibility/background investigation.
5. Completed/approved investigations are received in Clemency Administration.
6. If eligible, the investigation is submitted to the Clemency Board, and OEC notifies the person of the Board's decision. If granted, OEC mails a certificate and a voter registration application. If ineligible, the person is notified by OEC.

### **4. AVERAGE TIME FOR PROCESSING CASES**

For FY 2008-09, the average time to conduct a *RCR without a hearing* review was **.6 hours** for **Level I** cases and **3.2 hours** for **Level II** cases. The average time to conduct a **Level III** full investigation was **20 hours**. The Commission's Performance Based Budgeting (PBB) System captures work hours for each major activity within the Commission. For FY 2008-09, data from PBB indicates that the clemency function represents 43% of the Commission's workload. Since

April 5, 2007, the Commission has processed over 271,000 RCR cases, with 138,880 individuals having their rights granted as of June 30, 2009. As of September 1, 2009, this number increased to 146,549.

## **5. PROCESS FOR EX-OFFENDERS TO SEEK RCR**

**A. List Cases:** Pursuant to s. 944.293, Florida Statutes, upon expiration of sentence, the Department of Corrections (DC) electronically submits to the Clemency Administration Office within the Commission an application for individuals who may be eligible for restoration of civil rights upon release. These offenders do not need to request restoration of their civil rights because this is done for them by the Department of Corrections. Subsequently, the Commission's Parole Examiners/Clemency Administration Office make a determination of eligibility for consideration.

**B. Application Cases:** Individuals convicted in federal, military, or out-of state courts, or persons being released from county jails, must make a request for restoration of civil rights without a hearing to the Office of Executive Clemency.

## **6. RCR OUTREACH ACTIVITIES**

The Commission regularly provides CDs to the media, the public, and private community/non-profit organizations containing the most current list of all individuals in the clemency database who have been granted their civil rights. The Rules of Executive Clemency are provided to the public upon request in brochure form and are also available on the Commission's website.

In August of 2008, the Commission launched a RCR search capability on its Internet site wherein individuals can verify if their rights have been restored and print a certificate directly from the database. By Executive Order dated August 27, 2008, the Commission now includes a copy of the voter registration application when mailing a certificate to persons having their rights restored. The Commission also provides an electronic file to the Department of State/Division of Elections on a bi-monthly basis, which includes the names of all persons whose civil rights have been restored for that time period.

The toll free number for RCR information is 1-800-435-8286.

## **7. SUMMARY OF CURRENT RCR POLICIES:**

The Rules of Executive Clemency, as adopted by the Board of Executive Clemency, guide the Commission in conducting all reviews of RCR requests to determine in which Level each ex-offender will be processed.

There are 3 Levels of RCR cases based upon the nature of the felony offense:

**Level I** - least severe offenses that are not specifically designated per the Rules of Executive Clemency as violent/sexual offenses.

<u>Level 1:</u> <b>Expedited restoration of civil rights for non-violent ex-offenders</b>	
<u>Old Process</u>	<u>New Process</u>
<ol style="list-style-type: none"> <li>1. Complete sentence</li> <li>2. Complete supervision</li> <li>3. Pay victim restitution</li> <li>4. Verify eligibility and no pending charges</li> <li>5. Placement on Clemency Board preliminary review list</li> <li>6. If two objections – full hearing and investigation</li> <li>7. Approval requires vote of Governor plus two</li> <li>8. Restoration of rights certificate issued</li> </ol>	<ol style="list-style-type: none"> <li>1. Complete sentence</li> <li>2. Complete supervision</li> <li>3. Pay victim restitution</li> <li>4. Verify eligibility with fewer disqualifying offenses and no pending charges</li> <li>5. Expedited Executive Order signed by Clemency Board without hearing</li> <li>6. Restoration of rights certificate issued</li> </ol>

**If never convicted of one of the following crimes:**

- murder, attempted murder, attempted felony murder, manslaughter
- DUI manslaughter
- sexual battery, attempted sexual battery
- lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition
- lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person
- sexual performance by a child, attempted sexual performance by a child
- aggravated child abuse
- failure to register as a sexual predator or sexual offender
- computer pornography, transmission of computer pornography, buying or selling of minors
- kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child
- aggravated battery, attempted aggravated battery
- armed robbery, attempted armed robbery, carjacking, attempted carjacking, home invasion, attempted home invasion
- poisoning of food or water
- abuse of a dead human body

- first degree burglary or attempted
- first degree burglary arson or attempted arson
- aggravated assault
- aggravated stalking
- aggravated battery or aggravated assault on a law enforcement officer or other specified officer
- first degree trafficking in illegal substances
- aircraft piracy
- unlawful throwing, placing, or discharging of a destructive device or bomb
- facilitating or furthering terrorism
- treason
- any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in Florida

**and not declared to be a:**

- Habitual Violent Felony Offender
- Three-time Violent Felony Offender
- Violent Career Criminal
- Prison Releasee Reoffender
- Sexual Predator

**Level II Cases:** RCR Level II cases are the more severe offenses, including violent and drug trafficking offenses, but not murder/sexual offenses.

<b><u>Level 2:</u></b>	
<b>Expedited review and approval of civil rights for violent offenses, except murder and sex offenses</b>	
<p><b><u>Old Process</u></b></p> <ol style="list-style-type: none"> <li>1. Complete sentence</li> <li>2. Complete supervision</li> <li>3. Pay victim restitution</li> <li>4. Verify eligibility and no pending charges</li> <li>5. Complete 5-year waiting period for specific offenses</li> <li>6. Placement on Clemency Board preliminary review list</li> <li>7. If two objections – full hearing and investigation</li> <li>8. Approval requires vote of Governor plus two</li> <li>9. Restoration of rights certificate issued</li> </ol>	<p><b><u>New Process</u></b></p> <ol style="list-style-type: none"> <li>1. Complete sentence</li> <li>2. Complete supervision</li> <li>3. Pay victim restitution</li> <li>4. Verify eligibility (investigation) and no pending charges</li> <li>5. Placement on Clemency Board preliminary review list</li> <li>6. 30 days for approval – requires vote of Governor plus two, if not approved full hearing and investigation</li> <li>7. Restoration of rights certificate issued</li> </ol>

**And never convicted of one of the following crimes:**

- murder, attempted murder, attempted felony murder, manslaughter
- DUI manslaughter
- sexual battery, attempted sexual battery
- lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition
- lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person
- sexual performance by a child, attempted sexual performance by a child
- aggravated child abuse
- failure to register as a sexual predator or sexual offender
- facilitating or furthering terrorism
- treason
- any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.

**And not declared to be:**

- Habitual Violent Felony Offender
- Three-time Violent Felony Offender
- Violent Career Criminal
- Prison Releasee Reoffender
- Sexual Predator

**RCR Level III:** These are the most severe offenses including habitual violent felon offenders; three-time violent felony offenders; violent career criminals; prison release reoffenders; murderers; and sexual predators.

<b>Level 3:</b> <b>Full investigation and hearing process for murder and sex offenses</b>	
<b><u>Old Process</u></b> <b>1. Complete sentence</b> <b>2. Complete supervision</b> <b>3. Pay victim restitution</b> <b>4. Verify eligibility and no pending charges</b> <b>5. Full investigation and hearing, including victim statement and</b>	<b>NO CHANGE</b>

<p>Commission recommendation</p> <p>6. Approval requires vote of Governor plus two</p> <p>7. Restoration of rights certificate issued</p>	
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**15 year rule:**  
**15 year arrest and crime free expedited review for all offenses**

<u>Old Process</u>	<u>New Process</u>
1. Complete sentence	1. Complete sentence
2. Complete supervision	2. Complete supervision
3. Pay victim restitution	3. Pay victim restitution
4. Verify eligibility and no pending charges	4. Verify eligibility (investigation) and no pending charges
5. 15 years crime and arrest free	5. 15 years crime and arrest free
6. Placement on Clemency Board preliminary review list	6. Placement on Clemency Board preliminary review list
7. Approval requires vote of Governor plus two	7. 30 days for approval – requires vote of Governor plus two, if not approved full hearing and investigation
8. Restoration of rights certificate issued	8. Restoration of rights certificate issued

**Attachment A:  
RCR CONTACT INFORMATION**

## RCR CONTACT INFORMATION THE FLORIDA BOARD OF EXECUTIVE CLEMENCY



**Charlie Crist**  
*Governor*



**Bill McCollum**  
*Attorney General*



**Alex Sink**  
*Chief Financial  
Officer*



**Charles Bronson**  
*Commissioner  
Of Agriculture*

Anyone needing information on the restoration of rights process should contact the Office of Executive Clemency:

The Office of Executive Clemency  
2601 Blair Stone Road, Building C  
Tallahassee, FL 32399-2450

Toll Free at: 1-800-735-8286  
Phone at: 850-488-2952  
Fax at: 850-488-0695

Email at: [Clemencyweb@fpc.state.fl.us](mailto:Clemencyweb@fpc.state.fl.us)  
Website at: <https://fpc.state.fl.us/clemency.htm>

or

[www.FLrestoremyrights.com](http://www.FLrestoremyrights.com)

Public Information, Public Records Requests, and Media Inquiries should be directed to Jane Tillman at 850-921-2816 or [JaneTillman@fpc.state.fl.us](mailto:JaneTillman@fpc.state.fl.us).



## **Attachment B: RCR Outreach Activities 2007-2009**

**Note: Commission employees working nights and weekend events were reimbursed for their travel, if applicable. However, employees volunteered their personal time to staff these events and were not compensated for work performed on nights and weekends.**

<b>APRIL 30, 2007</b>	<b>TALLAHASSEE</b> Commission holds first RCR “Train the Trainer” Session for Senate and House staff of the Florida Legislature
<b>MAY 23, 2007</b>	<b>SANDESTIN</b> Clemency Coordinator Janet Keels and Clemency Administration Director Steve Hebert train Florida’s 67 Supervisors of Elections on new clemency rule process
<b>JUNE 23, 2007</b>	<b>ORLANDO 1<sup>st</sup></b> RCR workshop with Senator Gary Siplin and the Orange County legislative delegation and staff
<b>JULY 20, 2007</b>	<b>ORLANDO Conduct RCR Rule</b> and Outreach training for members of the Florida Felons’ Rights Coalition at their Annual Conference
<b>JULY 25, 2007</b>	<b>FT. LAUDERDALE Commission Staff</b> conduct RCR rules and outreach training session at invitation of Broward Sheriff’s Office
<b>AUGUST 15, 2007</b>	<b>FLORIDA CITY</b> RCR workshop at City Hall, Florida City with State Senator Larcenia Bullard & State Representative Ed Bullard
<b>AUGUST 18, 2007</b>	<b>DELAND</b> RCR workshop in Deland, Florida, with State Representative Joyce Cusack, and State Senator Evelyn Lynn,
<b>AUGUST 25, 2007</b>	<b>ST. AUGUSTINE</b> RCR workshop with State Senator Tony Hill and staff
<b>AUGUST 25, 2007</b>	<b>TALLAHASSEE</b> Clemency Coordinator Janet Keels and RCR Outreach Coordinator Jane Tillman, conduct outreach training for community activists and volunteers at Florida A & M University
<b>SEPTEMBER 8, 2007</b>	<b>MIAMI, Little Haiti</b> RCR Outreach Event with State Senator Frederica Wilson & State Representatives Yolly Roberson, Tee Holloway, and staff
<b>OCT. 13, 2007</b>	<b>TALLAHASSEE</b> RCR Outreach event with State Senator Al Lawson and State Representative Curtis Richardson, Tallahassee Community College
<b>OCT. 18, 2007</b>	<b>GAINESVILLE</b> RCR Workshop for Community Leaders and Activists at the Alachua County Courthouse
<b>NOVEMBER 1, 2007</b>	<b>COCOA BEACH</b> FPC staff work Community Outreach event in <b>Cocoa Beach</b> , Florida
<b>NOVEMBER 3, 2007</b>	<b>ORLANDO</b> Commission staff works 3 <sup>rd</sup> Orlando area RCR event in 2007 at <b>Eatonville</b>
<b>DECEMBER 1, 2007</b>	<b>MIAMI</b> Commission staff work 3 <sup>rd</sup> Miami area RCR workshop at <b>Miami-Dade Junior College</b> , Wolfson Campus, December 1
<b>DECEMBER 8, 2007</b>	RCR Workshop with State Representative Perry Thurston at the Joseph P. Carter Center, West Sunrise Boulevard, Ft. Lauderdale

<b>DECEMBER 15, 2007</b>	RCR/Redemption Workshop at <b>Miami's Orange Bowl</b>
<b>JULY 12, 2007</b>	RCR Event, Macedonia Church, Historic Eatonville, Florida
<b>AUGUST 2008</b>	<b>Commission launches Internet search capability where individuals can verify if their rights have been restored and print a certificate</b>
<b>AUGUST 2008</b>	<b>Commission began enclosing a copy of the voter's registration application when mailing a RCR certificate to persons who have had their rights restored.</b>
<b>AUGUST 2008</b>	<b>Additional rollover phone lines added for the toll free RCR 1-800 number.</b>
<b>SEPTEMBER 2008</b>	<b>Examiner (Field staff) adjusted their work schedules to process as many RCR cases prior to the October 6<sup>th</sup> voter registration deadline</b>
<b>SEPTEMBER 2008</b>	<b>Central Office staff worked additional hours after 5pm to assist with the mailing of 6,000 Certificates and Notification Letters</b>
<b>NOVEMBER 2008</b>	<b>Field staff participated in DC Re-Entry Seminars held at prisons statewide</b>
<b>MARCH – JUNE 2009</b>	<b>Field staff represented the Commission at Inmate Transition Fairs and Re-entry Coalition Workshops in Pasco, Citrus, and Broward Counties</b>

**ATTACHMENT C: POSITION DESCRIPTIONS  
OFFICE OF EXECUTIVE CLEMENCY**

Clemency Coordinator (1)  
Parole Examiner (1)  
Administrative Secretary (1)  
Administrative Assistant II (1)  
Staff Assistant (2)

TOTAL FTEs: 6



DEPARTMENT OF MANAGEMENT  
SERVICES

STATE OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES  
**SELECTED EXEMPT SERVICE**  
POSITION DESCRIPTION

<b>POSITION LOCATION INFORMATION</b>		Position Exempt Under 110.205( X ), F.S.	
NAME OF AGENCY: Florida Parole Commission		Organization Level: 780301 02096	
DIVISION/COMPARABLE: Executive Clemency		MANAGERS - ALL OTHER Position Number: 2096 11-9199-2	
BUREAU/COMPARABLE: Office of Executive Clemency		08/0919 Class Title: Executive Clemency Coordinator EXECUTIVE CLEMENCY COORDINATOR-FPC	
INCUMBENT: Janet Keels		DEPARTMENT OF MANAGEMENT SERVICES USE ONLY	
		Agency Code 78	Class Code 0919
		Approved By/Effective Date Keels 3/21/09	
		APPROVED CLASS TITLE: Executive Clemency Coordinator	
1. This position reports directly to:		Chairman Title of Position	
2. Class title, position number, and headquarters location of each position which reports directly to this position:			
<u>Class Title</u>		<u>Position Number</u>	
Administrative Assistant II (1)		03031	
Staff Assistant (3)		02094, 02095, 03051	
Administrative Secretary		03031	
3. Current budget for which this position is accountable:			
Salaries & Benefits	O.P.S.	Expenses	
F.C.O	Data Processing	TOTAL ALLOTMENT	
If the current budget includes other areas of accountability include them in the Total Allotment and provide a brief explanation.			
4. What statutes establish or define the work performed?			
Florida Constitution of 1968, Article IV, Section 8			



STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

CAREER SERVICE SYSTEM  
POSITION DESCRIPTION

POSITION NUMBER 2034

ORGANIZATIONAL CODE  
PRESENT 7803000000  
PROPOSED

PERSONNEL OFFICE USE ONLY

Class Code	Type of Transaction	Effective Date	Approved By
8127	Updates	9/27/12	JJHms
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

1. Department	Florida Parole Commission	Class Code	8127	Class Title	Parole Examiner
2. Division	Clemency Administration	Class Code	8127	Class Title	Parole Examiner
3. Bureau		Class Code	8127	Class Title	Parole Examiner
4. Section/Subsection		Class Code	8127	Class Title	Parole Examiner
5. Duties and Responsibilities					

- | % of time for each | Duties and Responsibilities   |
|--------------------|---|
|                    | Under limited direction, assists the Director in reviewing and certifying accuracy of Confidential Case Analyses, and other investigations and correspondence received from the field staff for submission to the Clemency Board. Compiles legal data, record checks, and personal data on applicants living in other states, into a Confidential Case Analysis for submission to the Board. Coordinates and manages special initiatives by the Governor or Clemency Board. At the direction of the Clemency Administration Director, researches data for the Commission or the Clemency Board. |
| 30                 | Analyzes, organizes, and ensures accuracy of existing case information developed by field staff, identifies and requests needed additional needed information from other states, the Florida Parole Commission field offices, the courts, law enforcement and the Department of Corrections probation, field, and medical services departments for submission to the Clemency Board.  |
| 30                 | Assists the Clemency Administration Director in the review and processing of the general clemency case workload and special initiatives of the Board of Executive Clemency.   |
| 25                 | Monitors Commission advisory recommendations, compiles available information, and prepares comprehensive reports for the Clemency Board on each case being considered for a waiver of the rules.  |
| 10                 | Responds to requests for procedural explanations from Commissioners and Clemency Aides and performs other duties as assigned by the Director and Capital Punishment Research Specialist. Provides backup to the Capital Punishment Research Specialist for capital case interviews and case submissions as well as the Parole Examiner responsible for the Waiver process and the Parole Examiner responsible for the Restoration of Civil Rights process.  |
| 5                  | Responds to questions and correspondence from the Clemency Aides, state attorneys, judges, defense attorneys, victims, victim advocate groups, applicants and applicants' families.   |

Attach additional sheets if necessary to describe the position

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(Rev. 7/96)



STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

POSITION NUMBER 03031

PRESENT 780301  
PROPOSED 780301

**CAREER SERVICE  
SYSTEM  
POSITION DESCRIPTION**

**PERSONNEL OFFICE USE ONLY**

Class Code	Type of Transaction	Effective Date	Approved by/Date
0108	Update	9/17/01	[Signature]
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

Florida Parole Commission
Executive Clemency
Executive Clemency

0108	Administrative Secretary
0108	Administrative Secretary

% of time for each	Description
	This incumbent in this position acts as a secretary and personal assistant to the Executive Clemency Coordinator by performing a variety of administrative and technical duties of a complex nature relating to clemency.
30	Composes letters and memorandums from rough drafts on general correspondence and on case files.
20	Researches files and prepares certificates for Coordinator's signature and distribution to the State Attorney's Office and law enforcement agencies regarding the restoration of civil rights.
10	Acts as the receptionist for this office and greets and routes visitors in a courteous and pleasant manner. Answers incoming telephone calls, routes calls to the proper staff person, and provides routine information to callers.
10	Receives and distributes all incoming mail.
10	Researches files and prepares correspondence for the Supervisor of Elections relating to the restoration of civil rights.
5	Maintains the Coordinator's calendar, schedules appointments and conferences, and makes travel arrangements. Maintains alphabetical and chronological files and records of correspondence, documents, reports, and other materials.
5	Orders and maintains office supplies necessary for the effective operation of the office. Maintains directory information on Commission employees and other agency offices.
5	Distributes applications and clemency rules, as requested.
5	Performs other related duties as required.

Attach additional sheets if necessary to describe the position

ORIGINAL to Agency

COPY to employee and DMS

(Rev. 4/94)



STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

CAREER SERVICE SYSTEM  
POSITION DESCRIPTION

POSITION NUMBER 2095

ORGANIZATION  
PRESENT 78030100000  
PROPOSED 78030100000

PERSONNEL OFFICE USE ONLY

Class Code	Type of Transaction	Effective Date	Approved By
0120	Update	9/27/02	J. J. [Signature]
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

Agency	Class Code	Class Title
Florida Parole Commission	0120	Staff Assistant
Office of Executive Clemency	0120	Staff Assistant

% of time for each	Duties and Responsibilities
25	The incumbent in this position is responsible for preparing preliminary review lists, executive orders and distribution of certificates of restoration of civil rights; advising applicants when objections are filed by Board Members; typing and filing of additional correspondence; assists Administrative Secretary with processing of mail.
25	Makes copies of memos of eligibility received from Clemency Administration and files in applicants' files. Issues executive order number and records it in record book. Types names into database and processes preliminary review list for submission to the Clemency Board for 20 day review. Enters names into database from DC4-322 forms and Department of Corrections computer printouts after Clemency Administration has certified all names as eligible. Prints list and proofreads for errors. Keeps track of number of objections received on each case and ensures that all are received within the 20 day review period.
25	Once the 20 day review is complete, this employee prepares executive order and list of names which were not objected to, and submits to the Clemency Board for signature. Keeps track of executive orders by contacting Clemency Aides to Board Members, and ensures that requisite number of signatures are received by the date the order is to be filed. When order has been signed, types transmittal letters and certificates for Coordinator's signature and mails to applicant with copy to Clemency Administration. Enters information into database. Sends executive order, with cover letter, to Secretary of State for filing, keeps copy for office. Files cards and closes files. Checks names of individuals which Department of Corrections has determined ineligible and submits letters to Secretary of State's Office for removal from executive order.
20	Processes request for waiver applications. Refers case to Clemency Administration for recommendation, sends copies to Clemency Board, enters information into database, makes files, updates waiver list. Prepares correspondence for Coordinator's signature advising applicants/attorneys when waiver requests have been granted or denied. Sends copies to Clemency Administration and Clemency Board. Enters disposition of case into database, transfers cases granted waiver to pending investigation file, closes files on those cases denied waiver. Notifies victims and state attorneys of disposition of cases.
15	Personally handles telephone calls regarding policy and procedures for applying for waiver of rules. Advises applicants and attorneys of status or disposition of cases as requested. Screens individuals and calls for the Coordinator by providing requested information. Advises Clemency Aides of status of cases and provides additional information as requested. Provides information on clemency granted to supervisors of elections, state attorneys, law enforcement, licensing agencies and individuals.
10	Acknowledges correspondence regarding waiver cases and provides copies to Clemency Board and Clemency Administration. Prepares letters and memoranda from rough drafts on general correspondence and on case files for the Coordinator.
5	Performs other related duties as required or requested by the Coordinator or Clemency Board.
	Notes: In the absence of the Administrative Secretary, retrieves mail from mailroom, and then opens, sorts and distributes to appropriate employee. Independently prepares routine correspondence for Coordinator's signature. Independently reviews applications for completion and proper documentation then prepares correspondence requesting additional information if required.

Attach additional sheets if necessary to describe the position

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(Rev. 7/96)

**ATTACHMENT D: POSITION DESCRIPTIONS  
OFFICE OF CLEMENCY ADMINISTRATION**

Director of Clemency Administration (1)  
Administrative Analyst (Capital Punishment Research Specialist) (1)\*  
Operations & Planning Coordinator (1) \*  
Executive Secretary (1)  
Parole Examiner (5)  
Parole Examiner (2) Part-time  
Staff Assistant (1)

TOTAL FTEs: 11





STATE OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES  
**SENIOR MANAGEMENT SERVICE**  
 POSITION DESCRIPTION

POSITION LOCATION INFORMATION		Position Exempt Under 110.205( ) , F.S.	
NAME OF AGENCY: Florida Parole Commission		Organization Level: 7803	
DIVISION/COMPARABLE: Clemency Administration		Position Number: 00037	
BUREAU/COMPARABLE:		Class Title: Director, Clemency Administration	
INCUMBENT: Carolyn W. Tibbets		<b>DEPARTMENT OF MANAGEMENT SERVICES USE ONLY</b>	
		Agency Code 7800	Class Code 8180
		Approved By/Effective Date	
APPROVED CLASS TITLE:			
1. This position reports directly to:		Chairman, Florida Parole Commission Title of Position	
2. Class title, position number, and headquarters location of each position which reports directly to this position: Staff Assistant, Position 01780, 02057, 03049, 00043 - Tallahassee Executive Secretary, Position 00021--Tallahassee Parole Examiner, Position 02081, 02034, 02080, 03075, 03076, 03077, 03078, 03079, 03082, 03083, 03084, 03085, Parole Examiner, 03086, 03087, 03088 - Tallahassee Capital Punishment Research Specialist, Position 01799--Tallahassee			
3. Current budget for which this position is accountable:			
Salary & Benefits	O.P.S.	Expenses	
F.C.O.	Data Processing	TOTAL ALLOTMENT	
If the current budget includes other areas of accountability include them in the Total Allotment and provide a brief explanation.			
4. What statutes establish or define the work performed? 947.04, F.S. 947.03, F.S. Rules of Executive Clemency			



STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

CAREER SERVICE SYSTEM  
POSITION DESCRIPTION

POSITION NUMBER 01799

ORGANIZATIONAL CODE  
PRESENT 7803000000  
PROPOSED 7803000000

PERSONNEL OFFICE USE ONLY

Class Code	Type of Transaction	Effective Date	Approved By
8123	Replch	9/27/02	PAW
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

1. Department	Florida Parole Commission	5.	Class Code	Class Title
2. Division	Clemency Administration	Pres	8123	Capital Punishment Research Specialist
3. Bureau				
4. Section/Subsection		Prop	8123	Capital Punishment Research Specialist
6. Duties and Responsibilities				
% of time for each				
25	Researches and conduct an in-depth study of the Department of Corrections files, as well as the Circuit, Supreme and Federal Court files, reviewing all of the criminal and social history information available, legal documents, trial transcripts, appeals (before and after a death warrant is signed), motions, petitions and responses filed in the courts concerning capital punishment (death row) cases and their co-defendants.			
25	Evaluates and monitors the appeals filed by all capital punishment inmates and determine if an investigation is to be initiated for presentation to the Executive Clemency Board.			
10	Provides direction and guidelines to the field for the conduct of confidential investigations of capital punishment cases. Evaluates the complete researched information and assemble the comprehensive investigation packet containing the collection of detail information, summarization of the legal data and circumstances of the offense for the presentation to the Executive Clemency Board. Ensures that the Commissioner is completely briefed with all information prior to the interview and assisting in various informational and procedural matters.			
10	Coordinates the scheduling and conduct of an interview, at the prison, by the commission with the inmate and his attorney. Provides notice to the prison personnel and to the court reporter to record the proceeding. This interview is the inmate's opportunity to advance any argument or mitigation for commuting the death sentence to life imprisonment.			
10	Assists with the complete critique of the field investigation packet before the submission of the report to the Commission and Executive Clemency, as well as, coordination of work in the absence of the Director.			
10	Brief and maintain informational data regarding capital punishment cases to assist the Governor's Special Legal Counsel on capital punishment cases investigated and interviewed prior to presentation to the Executive Clemency Board. Initiate and direct correspondence and or personal contact with all criminal justice and other governmental agencies i.e., attorneys, judiciary, and the general public to develop information needed in the general clemency and capital punishment cases. Also, attend and assist the Chairman of the Commission at the Capital Punishment Hearings before the Executive Clemency Board as arguments regarding commutation are presented.			
5	Prepare monthly recap statistics for capital punishment cases interviewed and investigation completed.			
5	Perform other duties as required.			
Attach additional sheets if necessary to describe the position				

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(Rev. 7/96)

STATE OF FLORIDA  
**POSITION DESCRIPTION**

<b>CAREER SERVICE</b> <input type="checkbox"/> <b>SELECTED EXEMPT SERVICE</b> <input checked="" type="checkbox"/> <b>SENIOR MANAGEMENT SERVICE</b> <input type="checkbox"/> <b>OTHER</b> <input type="checkbox"/>			
<b>POSITION LOCATION INFORMATION</b>		Position Exempt Under 110.205(2)(N)(1A), F.S. Managerial <input type="checkbox"/> Confidential <input type="checkbox"/> Supervisory <input type="checkbox"/> Other <input checked="" type="checkbox"/>	
NAME OF AGENCY: Parole Commission		Organization Level: Current: 78010000000      Proposed: 78040000000	
DIVISION/COMPARABLE: Administration		Position Number: 03008	FTE: 1.00
BUREAU/COMPARABLE: Director's Office		Current Broadband Level Code: 11-1021-2	Current Class Title: Operations & Planning Coordinator-FPC Current Class Code: 8050
SECTION/SUBSECTION:		Proposed Broadband Level Code:	Proposed Class Title:
HEADQUARTERS/COUNTY CODE: Tallahassee/37		Type of Transaction: Add/Delete	
INCUMBENT: Fernando Sanchez		<b>APPROVAL AUTHORITY USE ONLY</b>	
<b>POSITION ATTRIBUTES:</b> EEO: 01 <input checked="" type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> CBU: 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 18 <input type="checkbox"/> 80 <input type="checkbox"/> 81 <input type="checkbox"/> 86 <input type="checkbox"/> 87 <input type="checkbox"/> 89 <input checked="" type="checkbox"/> 99 <input type="checkbox"/> Other <input type="checkbox"/> Special Risk: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Overtime: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> CAD: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Broadband Level Code 11-1021-2	Class Code 8050
		Approved By BD	Effective Date 4/12/04
		<b>APPROVED BROADBAND OCCUPATION:</b> General and Operations Managers	
		<b>APPROVED CLASS TITLE:</b> Operations & Planning Coordinator-FPC	
1. This position reports directly to: Position Number <u>01195</u> Broadband Level Code <u>10-3011-1</u> Broadband Occupation <u>Adm. Serv. Mgrs.</u> Class Code <u>7931</u> Class Title <u>Director of Administration-FPC</u>			
2. Broadband level code, class title, class code, position number, and headquarters location of each position which reports directly to this position:			
3. What statutes establish or define the work performed?			
4. This position has financial disclosure responsibility in accordance with Section 112.3145, F. S.: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
5. Current budget for which this position is accountable (if applicable):			
Salaries & Benefits	O.P.S.	Expenses	
F.C.O.	Data Processing	TOTAL ALLOTMENT	
If the current budget includes other areas of accountability include them in the TOTAL ALLOTMENT and provide a brief explanation.			



STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

**CAREER SERVICE SYSTEM  
POSITION DESCRIPTION**

POSITION NUMBER 00021

ORGANIZATIONAL CODE  
PRESENT 7803000000  
PROPOSED 7803000000

**PERSONNEL OFFICE USE ONLY**

Class Code	Type of Transaction	Effective Date	Approved By
0114	update	9/27/02	J. [Signature]
Class Title			

Information to be furnished to DMS - Read instructions on the back **BEFORE** completing this form.

1. Department	Florida Parole Commission	Class Code	Class Title
2. Division	Clemency Administration	0114	Executive Secretary
3. Bureau			
4. Section/Subsection		0114	Executive Secretary
6. Duties and Responsibilities			
% of time for each	This position performs independent, varied, and extremely confidential secretarial and clerical duties related to the work of Executive Clemency. Heavy emphasis is placed on relieving the Clemency Director of as much clerical detail as possible. This position acts as a personal assistant to the Clemency Director.		
25	Transcribes Confidential Case Analyses dictated by Clemency Director, duplicates completed form, and prepares file carts for Commission voting, along with an agenda for each Commissioner. Monitors cases being voted. Following votes, adds the Commission's recommendation of report directs copying and forwards to the Office of Executive Clemency.		
15	Upon receipt of requests from the Coordinator, Office of Executive Clemency, for investigation and report, supervises logging the request, obtaining additional information from DC, preparing formal request to field, preparing copies of application, legal documents and any other information which will assist the field staff in their preparation of the required report. Also insures entries on kardex and computer are accurately maintained in order for cases to be monitored for timely reply or action.		
15	Compiles, types, and transmits a list of eligibles to the Office of Executive Clemency of those applicants who have been determined eligible for restoration of Civil Rights and Alien Status following investigation by the field offices. Also, prepares notice of those applicants who are not eligible, along with an explanation of their ineligibility. Researches inmate case files and closed clemency files for specific information requested by the Governor, Cabinet members, and their Aides, assembles compels and transmits information and documentation for use by the Clemency Director		
10	Monitors in-coming mail, screening items which can be handled personally, composes routine correspondence under Clemency Director's signature then submitting the remainder to the Clemency Director, along with back-ground material which may be available either through closed Clemency files or DC files.		
10	Maintains and supervises the computer and kardex system on all active and inactive clemency cases, alphabetical files and records of office correspondence, documents, report and other materials. Monitors and reports clemency statistical data on a monthly reporting system for agency and compiles same for fiscal year.		
10	Telephonic and personal contact with parole examiners, Department of Corrections, Office of Executive Clemency, Governor's office, Clemency Aides, Attorneys, Judges, State Attorneys, applicants and members of an applicant's family. Responds to telephone calls relative to interpretation of policies, eligibility of applicants to receive degree of clemency requested, explains procedures, greets, announces visitors.		
5	Attends Clemency Board meetings, takes notes, and assists in securing any requested supplemental information assuring availability to the Chairman and Director.		
5	Assists in expediting and monitoring case load in the Clemency Administration Office Cross trains and distributes work to other clerical staff to assure compliance with time frames. Coordinates storage of closed files with Record Management, and retrieval of stored files when necessary. Coordinates breaks and lunch hours to assure full time phone coverage		
5	Performs other duties as required.		

Attach additional sheets if necessary to describe the position

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STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

CAREER SERVICE SYSTEM  
POSITION DESCRIPTION

POSITION NUMBER 2034

ORGANIZATIONAL CODE

PRESENT 7803000000

PROPOSED

PERSONNEL OFFICE USE ONLY

Class Code	Type of Transaction	Effective Date	Approved By
8127	Updates	9/27/12	JJHms
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

1. Department	Florida Parole Commission	Class Code	8127	Class Title	Parole Examiner
2. Division	Clemency Administration	Class Code	8127	Class Title	Parole Examiner
3. Bureau		Class Code	8127	Class Title	Parole Examiner
4. Section/Subsection		Class Code		Class Title	
5. Duties and Responsibilities					
% of time for each	<p>Under limited direction, assists the Director in reviewing and certifying accuracy of Confidential Case Analyses, and other investigations and correspondence received from the field staff for submission to the Clemency Board. Compiles legal data, record checks, and personal data on applicants living in other states, into a Confidential Case Analysis for submission to the Board. Coordinates and manages special initiatives by the Governor or Clemency Board. At the direction of the Clemency Administration Director, researches data for the Commission or the Clemency Board.</p> <p>30 Analyzes, organizes, and ensures accuracy of existing case information developed by field staff, identifies and requests needed additional needed information from other states, the Florida Parole Commission field offices, the courts, law enforcement and the Department of Corrections probation, field, and medical services departments for submission to the Clemency Board.</p> <p>30 Assists the Clemency Administration Director in the review and processing of the general clemency case workload and special initiatives of the Board of Executive Clemency.</p> <p>25 Monitors Commission advisory recommendations, compiles available information, and prepares comprehensive reports for the Clemency Board on each case being considered for a waiver of the rules.</p> <p>10 Responds to requests for procedural explanations from Commissioners and Clemency Aides and performs other duties as assigned by the Director and Capital Punishment Research Specialist. Provides backup to the Capital Punishment Research Specialist for capital case interviews and case submissions as well as the Parole Examiner responsible for the Waiver process and the Parole Examiner responsible for the Restoration of Civil Rights process.</p> <p>5 Responds to questions and correspondence from the Clemency Aides, state attorneys, judges, defense attorneys, victims, victim advocate groups, applicants and applicants' families.</p>				
Attach additional sheets if necessary to describe the position					

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STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

**CAREER SERVICE SYSTEM  
POSITION DESCRIPTION**

POSITION NUMBER 00043

ORGANIZATIONAL CODE

PRESENT 7803000000

PROPOSED 7803000000

**PERSONNEL OFFICE USE ONLY**

Class Code	Type of Transaction	Effective Date	Approved By
0120	update	9/27/02	Jal-1
Class Title			

Information to be furnished to DMS - Read instructions on the back BEFORE completing this form.

1. Department	Florida Parole Commission	5.	Class Code	Class Title
2. Division	Clemency Administration	6.	0120	Staff Assistant
3. Bureau		7.		
4. Section/Subsection		8.	0120	Staff Assistant
6. Duties and Responsibilities:				
% of time for each	<p>The staff assistant performs varied and extremely confidential supervisory support as well as secretarial and clerical duties relating to the work of Clemency Administration. Also, the assistant performs duties to assist the Director and Executive Secretary in management controls of work-load, investigations, tracking, confidential report preparation, data input relating to investigations, and work production recaps. Emphasis is placed on assisting the Parole Examiner in tracking and processing the Waiver Reports</p> <p>30 Types analysis of clemency cases, letters to inmates, superintendents, field offices, attorneys, Governor's office and Cabinet Members, which requires understanding of court, police, corrections and medical terminology.</p> <p>25 Composes correspondence of a routine nature. Assists in informational research and prepares miscellaneous correspondence, memorandums, reports, etc., as directed by the Parole Examiners, the Capital Research Specialist, and the Clemency Administration Director. Prepares finished typing from rough notes and types clemency investigations combining information obtained from other states with in-state investigations. Also, prepares lists of Restoration of Civil Rights cases that are submitted to the office.</p> <p>15 Copies correspondence, Capital Case Briefs, confidential case analyses, and other clemency materials and files.</p> <p>10 Assists in the maintenance of alphabetical files and records of office correspondence document reports, and other material pertaining to clemency cases. Retrieves and/or summarizes information in files as needed and/or requested.</p> <p>5 Assists the Executive Secretary in receiving, opening, and routing incoming and out going mail. Answers the telephone and serves as office receptionist.</p> <p>5 Writes locator cards and secures files from Department of Corrections Central Records on all appropriate cases:  (a) Reviews files and matches up files from Form DC-4-322, preparing cases for Parole Examiner Review.  (b) Distribute files on capital punishment and general clemency cases.  (c) Copies confidential case analyses, capital punishment case briefs, packets, and general correspondence.  (d) Monitors movement of DC case files within central office of those cases needed for clemency purposes and returns the Department of Corrections files to their Records Department. Assists in the security of clemency files.</p> <p>5 Sets up and retrieves clemency files from clemency file room and Records Management storage while maintaining the clemency file system. Prepare inactive case files for transfer to Records Management storage.</p> <p>5 Assists in recording and recapping workload statistics. Performs other duties as required.</p>			
Attach additional sheets if necessary to describe the position				

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(Rev. 7/96)

**ATTACHMENT E:**  
**COMMISSION'S RESPONSE TO**  
**AUDITOR GENERAL REPORT No. 2010-010**



## FLORIDA PAROLE COMMISSION

FREDERICK B. DUNPHY, CHAIRMAN  
TENA PATE, VICE CHAIRMAN  
MONICA DAVID, SECRETARY

CHARLIE CRIST, GOVERNOR  
BILL McCOLLUM, ATTORNEY GENERAL  
ALEX SINK, CHIEF FINANCIAL OFFICER  
CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE

September 2, 2009

Mr. David Martin  
Auditor General  
111 West Madison Street  
Tallahassee, Florida 33299-1450

**Re: Florida Parole Commission: - Operational Audit Preliminary Findings  
Restoration of Civil Rights' Clemency Process  
Audit Period: beginning July 1, 2007 and ending February 28, 2009**

Dear Mr. Martin:

The Florida Parole Commission is in receipt of your July 9, 2009, report of preliminary and tentative findings and recommendations resulting from your audit of the Clemency Board's (Board) Restoration of Civil Rights' (RCR) process for the review period beginning July 1, 2007 and ending February 28, 2009.

The Commission serves as the investigatory and administrative arm of the Clemency Board. The review, eligibility determination, and processing of all clemency requests are strictly adhered to pursuant to Board direction and rule. The RCR review process currently followed by the Parole Commission was adopted by the Board on April 5, 2007. Further, the Parole Commission does not make decisions or recommendations regarding policy on any part of the clemency process.

Since the adoption of these rules, the Parole Commission's budget was reduced by 20% for FY 2008-09, with staff reductions being made primarily in the clemency area. The Commission's critical mission is public safety and administers programs with statutorily mandated timeframes, which must be met. When asked to prioritize its spending by the Legislature, the agency's funding resources were directed to programs where critical timeframes are mandated before funding clemency functions, which have no mandated timeframes. Thus, funding to the clemency function has suffered during the current economic downturn.

During the review period, other policy directives were made either administratively or by Executive Order that enhanced the RCR process for the stakeholders. Beginning October 31, 2007, clemency applicants receive a copy of their investigative report prior to a Board hearing and by Executive Order dated August 2008, the Commission now mails a voter registration form together with the certificate granting an individual their civil rights. Also, as a result of this order, the Commission added a search capability to its public website, allowing an individual or



their designee to check to see if their rights have been restored and, if granted, allows for the immediate printing of the certificate.

Although adopted in April of 2007, the actual implementation of the new RCR process occurred months later. This initial delay was due to: (1) the clemency database being reprogrammed to reflect the new rule changes; (2) 38,000 pending cases being re-reviewed for eligibility under the new rules; and (3) the Governor's RCR Initiative directive to locate ex-offenders potentially eligible for a Level 1 review under the new rules. This directive resulted in a six-month search and eligibility review effort, which produced hundreds of thousands of cases referred to as "historical" cases.

The Commission is responding to Finding No. 1 on behalf of Ms. Janet Keels, Executive Clemency Coordinator. The fifth and final finding and recommendation fell directly within my purview as Chairman of the Parole Commission, and I have taken the necessary corrective action to comply with your recommendation.

In closing, I have forwarded your audit of the Clemency Board's Restoration of Civil Rights' case review process to them for their review and consideration (Audit Findings 1 through 4). Through the years, the RCR process has been modified by various boards. However, the Parole Commission has remained consistent in its role of dutifully implementing and administering the clemency process. Again, the Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process.

I would like to thank your staff for their flexibility and spirit of cooperation as we explained the issues associated with administering the unique process of clemency.

Sincerely,

  
Frederick B. Dunphy  
Chairman

Attachment

Cc: The Honorable Charlie Crist, Governor  
The Honorable Bill McCollum, Attorney General  
The Honorable Alex Sink, Chief Financial Officer  
The Honorable Charlie Bronson, Commissioner of Agriculture  
Chief Cabinet Aides  
Clemency Aides

## APPENDIX A

### FLORIDA PAROLE COMMISSION RESPONSE TO TENTATIVE AND PRELIMINARY AUDIT FINDINGS CLEMENCY/RESTORATION OF CIVIL RIGHTS AUDIT FOR THE PERIOD BEGINNING JULY 1, 2007 AND ENDING FEBRUARY 28, 2009

#### **Finding No. 1:** Ex-Offender Initiated Requests for RCR

***Finding No. 1:** Ex-offenders convicted of crimes in other states, in Federal courts, and who had not been placed in the custody of the Department of Corrections, must submit requests to initiate the RCR process. Although there is a procedure in place for the receipt of applications from these ex-offenders, 28,428 of the 32,859 (86.5 percent) requests received since January 2006 had not been referred to the Commission's Office of Clemency Administration for review or investigation.*

***Recommendation:** We recommend that the Parole Commission, in conjunction with the Office of Executive Clemency, present for the Clemency Board's consideration, rules establishing processing priorities for RCR requests.*

#### **Commission's Response:**

The Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process. Policy decisions regarding the clemency process fall within the sole purview of the Clemency Board. However, the Parole Commission has remained consistent in its role of dutifully **implementing and administering the clemency process**. Historically, when a reviewing authority (OPPAGA, Auditor General) has made recommendations on the clemency process, the Commission has forwarded to the Clemency Board any findings and recommendations for their review and consideration. The system of processing RCR cases is subject to periodic changes as the Commission receives direction from the Executive Clemency Board regarding case processing priorities.

The lack of sufficient staffing and resources to support the increased caseload created by the newly adopted rules severely impacts the Commission's ability to process cases as quickly as it would like. For the past 6 years, the Commission has informed the Legislature of the funding needs of the clemency process in its annual legislative budget request. Each year these requests have gone unfunded, while the caseload has increased significantly. For the previous fiscal year, the Commission absorbed a 20% budget reduction, which resulted in the loss of 24 staff positions, which has made the Commission unable to keep current with its workload demands or its clemency caseload. As staffing and funding become available, these problems will be rectified, and the Commission will take adequate measures to address this finding.

However, even with its current diminished resources, the Commission can report the following: Since the completion of the special "RCR OPS Project" June 30, 2009, and as of July 21, 2009, the number of ex-offender RCR initiated requests received during the reporting periods January 1, 2006 through February 1, 2009, and not yet referred to Clemency Administration for further processing, has been reduced from 28,428 (86.5 percent) to 21,118 (64.2 percent). Further, as

of July 31, 2009, all 3,686 requests for the same reporting period were entered into the *Management of Application of Clemency* (MAC) database, in addition to all RCR requests received through June 30, 2009.

**Finding No. 2: Eligibility Determination Procedures**

**Finding No. 2:** *The Commission had not established for RCR eligibility determinations a risk-based supervisory review process or quality control procedures. A risk-based supervisory review process could target cases and eligibility criteria prone to error and assist in the more effective and judicious use of resources. Quality control procedures would also increase assurance that eligibility determinations were made in accordance with Clemency Board Rules.*

**Recommendation: (a)** *To provide assurance that only eligible ex-offenders are granted RCR, we recommend that the Commission establish a risk-based supervisory review process. Once established, the Commission should ensure that results of supervisory reviews are documented and analyzed. To provide additional assurances, the Commission should also consider implementing quality control procedures. (b)* *We also recommend that the Commission further investigate the 13 RCR cases referenced in Table 3 of this report and refer the results of such investigation to the Clemency Board for further direction.*

**Commission's Response:**

**Part (a):**

The Commission acknowledges the significance and importance of the Restoration of Civil Rights Process and that adequate quality control procedures should assure that the process is as error-free as possible. Having the responsibility of identifying and determining whether an individual is eligible to have his or her rights restored is a grave responsibility and one that should be carried out with the utmost professionalism and critical attention to detail. The Commission acknowledges that all errors committed during the RCR eligibility review are of concern and will strive for "zero" errors as the ultimate goal. To this end, the Commission's current supervisory review process provides certain quality control measures, which document a supervisor's analysis and oversight of an examiner's eligibility determination review of a case. However, improvement in the error rate for this process will always be a goal of the Commission.

Currently, the majority of the RCR workload is associated with ex-offender initiated RCR requests (Levels 1, 2, or 3). For these requests, RCR procedures require that the Examiner maintain a confidential file including any hardcopy documentation obtained through the investigative process which was used for determining eligibility. This confidential file is maintained by the Commission for five years and then archived and stored off-site at the State Records Center consistent with state records retention policy.

Supervisors review all of the ex-offender initiated RCR requests (Levels 1, 2, or 3) by viewing some of the State and Federal databases used by the Examiner during the eligibility determination. Once they complete the review, they provide written comments and/or corrections on the investigative report to the Examiner.

When an eligibility determination investigation is received in Central Office, quality assurance reviews for ex-offender initiated RCR requests (Levels 1, 2, or 3) are conducted by two full-time employees in the Office of Clemency Administration. Additional quality assurance reviews are conducted by Parole Commissioners on all Level 3 RCR cases being presented to the Clemency Board for hearing. Further, all eligible RCR cases are given a review by the Board's Clemency Aides before making recommendations to their principals and prior to a final decision being made by the Board. If additional information is needed or corrections are to be made to the RCR case, the Supervisor and Examiner are notified by e-mail.

The Commission also processes all RCR EOS/TOS cases received from the Department of Corrections by electronic file. Current clemency procedures do not require the maintenance of a hardcopy file or documentation for these cases since the process migrated to a paperless system, which resulted in cost savings to the State of Florida. Another efficiency gained as a result of streamlining the process now allows Examiners to enter eligibility determination information directly into the MAC database, with Supervisors able to access the database from any location for review and approval of cases. Even though the procedures for the processing of EOS/TOS cases were simplified, quality assurance controls were kept in place which not only provide for a supervisory check but actually require the supervisor to submit the case as "approved" into the database. Also, the Mac database now automatically generates letters to ex-offenders determined ineligible for RCR Level 1 and specifies the reason(s) for such determination.

Through the collection and documentation of Examiner error data and the analysis of quality assurance reviews, the Commission has established a risk-based supervisory review process obtained by expertise gained from years of processing hundreds of thousands of RCR cases. When conducting supervisory reviews, Supervisors are trained to look for the most frequent, common errors made by Examiners. Regularly, administrators, supervisors, and examiners receive feedback on specific eligibility determination issues through e-mails, memoranda, monthly regional staff meetings, and statewide operational conference calls. For training purposes, they are also provided with all final Levels 2 and 3 RCR cases presented to the Clemency Board.

Again, the Commission's ultimate goal is to process as many RCR cases with no errors as possible. To this end, the Commission is committed to working with the Clemency Board to review its current RCR quality assurance procedures and to take any corrective measures which will further reduce the error rate and continue to ensure the integrity and quality of the RCR eligibility determination process.

**Part (b):**

The Commission will confer with the members of the Clemency Board and their respective Clemency Aides and seek their direction for further investigation on the above-referenced cases.

***Finding No. 3: Overrides of Eligibility Determinations***

**Finding No. 3:** *While having the ability to override a parole examiner's determination appears to be a necessary role for supervisors, the Management Application of Clemency (MAC) database*

does not provide the parole examiner or management any notification of a supervisory change to an eligibility determination, nor does it flag the change in the database for later review.

**Recommendation:** *We recommend that the Commission enhance the MAC database to ensure that parole examiners and management are automatically notified of supervisor changes to ex-offender RCR eligibility determinations. We also recommend the Commission periodically analyze supervisor overrides to determine vulnerabilities in the RCR process that require Commission action.*

**Commission's Response:**

Only two Commission employees, the Director of Clemency Administration and the Executive Clemency Coordinator, are empowered to override an eligibility determination on a completed and approved RCR case. A Regional Administrator or a Parole Examiner Supervisor (hereinafter referred to as Supervisor) do not override a Parole Examiner's RCR eligibility determination in the MAC database.

The review of an Examiner's eligibility determination on all RCR cases is the responsibility of the Supervisor. If a Supervisor finds that an Examiner has incorrectly assessed an eligibility determination, the Supervisor and Examiner discuss the review and, if necessary, the Examiner makes the change to the eligibility determination in the MAC database. However, once a case is entered in the MAC database as having been "approved," a Supervisor cannot override the determination made by the Parole Examiner. To effectuate a change to a case determination that has been approved in the MAC database, the Supervisor must notify the Director or Coordinator by e-mail if an override to the database is necessary.

When an override of an eligibility determination is completed, the Director or Coordinator initiating the override notifies both the Supervisor and Examiner by e-mail. Pertinent information justifying this action is documented by the Director or Coordinator in the "Notes Section" of the MAC database.

Further, the Director or Coordinator analyze requests for overrides and routinely provide feedback to the Supervisor and Examiner by phone or e-mail to continually improve the RCR process.

In response to your recommendation, the Commission has formally requested a programming change to the MAC database for an automatic notification (flag) if an override to the database occurs on an eligibility determination. This programming change will be done on behalf of the Commission by the Department of Corrections' Information Technology Unit.

**Finding No. 4: Performance Measures**

**Finding No. 4:** The Commission's performance measures did not provide standards and results for each level of review or investigation and for backlog reduction.

**Recommendation:** *We recommend that, pursuant to Section 216.1827(3) (a), Florida Statutes, the Commission submit a request to the Executive Office of the Governor to amend its*

*performance measures to include measures for each RCR eligibility level and for backlog reduction.*

***Commission's Response:***

The Parole Commission began providing an annual *Proviso Report* to the Legislature on its RCR related clemency function and relevant data October 2002. This report has been mandated each year thereafter in the Commission's approved budget allocation set forth in the General Appropriations Act and the accompanying proviso language. Initially, the report was requested to provide the Legislature and the Governor's Office of Policy and Budget (OPB) with a status report so they could be fully informed on the following information: the number of pending RCR cases, the number of RCR cases processed, the RCR process currently in use, and the cost for processing these cases.

The October 1, 2009, Proviso Report will contain a breakdown of this information by category for Levels 1, 2, and 3 RCR cases. The most recent report provided October 1, 2008, was a 37 page, comprehensive document providing detailed responses to the *exact* information being requested in proviso language by the Legislature. In fact, the data contained in Table 1 and Table 4 of the audit report utilized information taken from the Commission's most recent Proviso Report.

Since the rule changes were adopted April 2007, we have had no directive or request from the Legislature or OPB to modify the Commission's performance measures or we would have responded accordingly. The current proviso language directing the Commission to submit a report for its review on or before October 1, 2009, does not include a request that we amend our performance measures.

Again, the Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process. However, the Parole Commission has remained consistent in its role of dutifully implementing and administering the clemency process. To this end, the Commission has forwarded your recommendations to the Clemency Board for their consideration.

***Finding No. 5: Non-Capitalized Property***

***Finding No. 5: Accountability for Attractive or Sensitive Items***

***Recommendation:*** *To effectively safeguard the Commission's attractive and sensitive items that do not meet the capitalization thresholds, as well as the data stored on these items, we recommend that the Commission document the inventory of such items as well as any efforts to locate any unaccounted for property.*

***Commission's Response:***

In response to your recommendation, the Commission has taken corrective measures, which include a recent inventory by the Department of Corrections (Department) of the Commission's attractive and sensitive items. Effective July 1, 2009, the Department began providing all of

FPC's Information Technology services, which includes conducting future inventories of the Commission's attractive and sensitive information technology equipment and resources.

RCR GRANTED BY YEAR	TOTAL
2003	14,836
2004	24,902
2005	11,638
2006	14,053
2007	38,971
2008	85,088
2009	25,347
2010	5,909
2011	78
2012	342
2013	605
2014	562
2015	428



FDC TOS/EOS RESTORATION OF CIVIL RIGHTS APPLICATIONS RECEIVED

PERIOD: CALENDAR YEAR 2008

POPULATION: 49,768

REPORT DATE: 10/11/2016

CLEMENCY TYPE	RECEIVED	GRANTED								GRANTED TOTAL
		<= 6 MOS	>6 MOS <=1YEAR	>1YEAR <=1.5YEARS	>1.5YEARS <=2YEARS	>2YEARS <=2.5YEARS	>2.5YEARS <=3YEARS			
TOS	23,174	2,613	6,652	317	2	2	2	2	2	9,588
EOS	26,594	3,503	3,530	9		1				7,043
TOTAL	49,768	6,116	10,182	326	2	3	2	2	2	16,631

## Arrests and Dispositions for FS 104.011\*

### July 2000 - June 2016

\* Statute is an optional field in the arrest segment. For July 2000 - June 2016, 21.0% of arrest charges do not include statute reference.

FS 104.011	Frequency	Charge Level/Degree			
		1st Degree Misd	3rd Degree Felony	Unknown Degree Felony	Other Classification
Arrest Charges	97	2	92	9	4
Arrest Events	82				
Individuals Arrested	78				
Guilty/Convicted Counts	21	1	20		
Adjudication Withheld Counts	13	0	13		
Individuals with Guilty/Convicted	18				
Individuals with Adjudication Withheld	11				

Arrest Year	Number Charges
2000	2
2001	5
2002	11
2003	2
2004	4
2005	5
2006	3
2007	5
2008	3
2009	10
2010	7
2011	8
2012	4
2013	11
2014	13
2015	1
2016	3

CCH DATA AS OF 10-01-2016

CAVEAT: Florida's Computerized Criminal History (CCH) is fingerprint-based and, unless prints were taken at a later stage in the criminal justice process, does not include records involving a notice to appear, direct files or sworn complaints where no physical arrest was made. FDLE does not warrant that the records provided are comprehensive or accurate as of the date they are provided; only that they contain information received by FDLE from contributing agencies, and that any errors or omissions brought to FDLE's attention are investigated and, as needed, corrected. Caution should be used in making conclusions about the data provided. CCH data is as of October 01, 2016.



# FLORIDA DEPARTMENT OF LAW ENFORCEMENT

SERVICE ♦ INTEGRITY ♦ RESPECT ♦ QUALITY

Rick Swearingen,  
Commissioner

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## Voter Information

### Voter Felony Conviction Verification Procedures

Florida election law (s.98.075, F.S. ) establishes specific circumstances to be considered by county Supervisors of Elections in determining the eligibility of Florida citizens to vote. Included as one of those factors, a voter who has been CONVICTED OF A FELONY and whose rights have NOT been restored, is not eligible to vote.

In order to assist with the identification of ineligible voters, Florida law provides specifically that the Florida Department of Law Enforcement (FDLE) must provide information to the Florida Secretary of State, Division of Elections, identifying those individuals who have been convicted of a felony who also match to a registered voter in their files. These voters are then notified by the county Supervisor of Elections of their potential ineligibility to vote.

It is important to note that criminal history records maintained by the Florida Department of Law Enforcement are based entirely and exclusively on the submission of fingerprints taken at the time of arrest and booking by law enforcement agencies statewide. Names, dates of birth, social security numbers and other identifying information also provided by individuals at the time of arrest are frequently NOT correct and are often given by the individual as a means to avoid true identification.

Florida voter registration records do not include fingerprints. Instead, voter registration is dependent on the provision of other non-biometric elements, such as name, race, sex, date of birth, etc. These are the identifiers, not fingerprints, that must be used by the Division of Elections to identify Florida's registered voters who may have been convicted of a felony and may therefore be ineligible to vote, pursuant to law.

Florida registered voters who have been notified by their county [Supervisor of Elections](#) that they are potentially ineligible to vote because of an apparent felony conviction, and who wish to appeal that designation, may wish to contact their local Supervisor of Elections or the Department of State's Bureau of Voter Registration Services and provide specific information for review and verification.

Fingerprints are very often the ONLY way in which positive identification of a registered voter in comparison to a convicted felon can be made. Accordingly, voters should know that FDLE staff may require that the voter be fingerprinted by representatives of the local Sheriff's Office, and ask that those fingerprints be provided to FDLE as part of the identification process.

#### Contact Us

FDLE Contacts  
Florida Fusion Center  
Media  
Email FDLE

#### Investigations & Forensics

Computer Crimes  
Domestic Security  
Forensics Section  
Investigations Section

#### Public Safety Services

Criminal Justice Information  
Criminal Justice Professionalism  
Missing Persons  
Officer Training

#### Other Links

Capitol Police  
Legal Information  
Open Government  
Publications