

THE FLORIDA LEGISLATURE

OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH



ANDY GARDINER  
President of the Senate

STEVE CRISAFULLI  
Speaker of the House of  
Representatives

October 28, 2016

The Honorable Pamela Jo Bondi, Attorney General  
Office of Attorney General  
State of Florida  
The Capitol PL-01  
Tallahassee, Florida 32399-1050

Dear Attorney General Bondi:

Section 100.371(5)(a), F.S., requires that the Financial Impact Estimating Conference submit a financial impact statement to the Attorney General and Secretary of State within 45 days after receipt of an initiative petition from the Secretary of State.

By this letter, the Financial Impact Estimating Conference is submitting the attached financial impact statement for the initiative petition titled *Voting Restoration Amendment*, Serial Number 14-01.

Amy J. Baker, Coordinator  
Office of Economic and Demographic Research

Katie Cunningham, Policy Coordinator  
Executive Office of the Governor, Office of  
Policy and Budget, Public Safety Unit

Kristin P. Gusky, Budget Chief  
House Justice Appropriations Subcommittee

Jose Diez-Arguelles, Staff Director  
Senate Finance and Tax Committee



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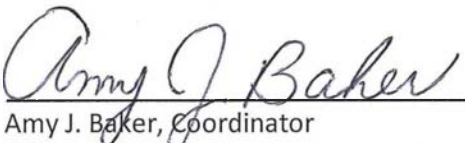
October 28, 2016


The Honorable Ken Detzner, Secretary of State  
Florida Department of State  
R. A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:


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**FINANCIAL IMPACT ESTIMATING CONFERENCE**

***FINANCIAL IMPACT STATEMENT  
VOTING RESTORATION AMENDMENT (14-01)***

The precise effect of this amendment on state and local government costs cannot be determined, but the operation of current voter registration laws, combined with an increased number of felons registering to vote, will produce higher overall costs relative to the processes in place today. The impact, if any, on state and local government revenues cannot be determined. The fiscal impact of any future legislation that implements a different process cannot be reasonably determined.

## **FINANCIAL IMPACT ESTIMATING CONFERENCE**

### ***SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT VOTING RESTORATION AMENDMENT (14-01)***

Under the current voter registration process, a felon who registers to vote must affirm that his or her voting rights have been restored. The Department of State must identify when this is not the case and work with the supervisor of elections to remove the felon's name from the statewide voter registration system. This process is primarily outlined in Chapter 98 of the Florida Statutes. The Conference believes existing law accommodates implementation of the amendment.

Assuming the amendment is implemented under current law, the Conference determined that, at a minimum, this results in:

1. Additional costs to the Department of State due to a higher volume of felons registering to vote, and greater administrative responsibilities. These costs will be even higher if research on financial obligations is required.
2. Reduced costs to the Board of Executive Clemency and the Florida Commission on Offender Review as some felons who would have previously sought to restore their civil rights are diverted to the new process for voter registration and do not pursue restoration of their remaining civil rights.
3. Increased costs to the Department of Corrections due to the high volume of felons registering to vote who would not have sought restoration of their civil rights.
4. Increased costs to the clerks of the circuit court due to the high volume of felons registering to vote who would not have sought restoration of their civil rights. There will also be decreased record production costs for the clerks of the circuit court as some persons who would have previously applied for the restoration of civil rights are diverted to the new process for voter registration and do not pursue restoration of their remaining civil rights. The increased costs will likely outweigh the savings.

Taking all of the increased and reduced costs into consideration, it is probable that the amendment will result in increased costs to state and local governments due to the higher volume of felons registering to vote; however, the specific dollar amount cannot be determined. The Conference notes that the increased costs will be higher in the earlier years of implementation due to the amendment's retroactive application.

Alternatively, the Legislature may decide to change the current process. What direction the Legislature would take in lieu of the current-law scenario is uncertain. Given the many possible avenues that additional legislation could take, the fiscal impact of any future action by the Legislature is unknown in regard to direction (increased or reduced costs) or magnitude (amount of savings or costs relative to the existing clemency process).

Currently, a felon seeking restoration of civil rights does not pay a fee, and the amendment will not change this.

It is unclear whether the phrase "terms of sentence" includes payment of court-ordered restitution, fines, and court costs. If these payments are not included, there will be a potential loss of revenues. However, if these payments are included, it will result in additional revenues to state and local governments. The revenue impact, if any, cannot be determined.

**FINANCIAL IMPACT ESTIMATING CONFERENCE**  
**COMPLETE INITIATIVE FINANCIAL INFORMATION STATEMENT**  
**VOTING RESTORATION AMENDMENT (14-01)**

**SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

Under the current voter registration process, a felon who registers to vote must affirm that his or her voting rights have been restored. The Department of State must identify when this is not the case and work with the supervisor of elections to remove the felon's name from the statewide voter registration system. This process is primarily outlined in Chapter 98 of the Florida Statutes. The Conference believes existing law accommodates implementation of the amendment.

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## **FINANCIAL IMPACT STATEMENT**

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## **SUBSTANTIVE ANALYSIS**

### **A. Proposed Amendment**

#### **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.

#### **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.

## **B. Effective Date**

Article XI, Section 5(e), of the Florida Constitution states that, unless otherwise specified in the constitution or in the proposed amendment, the amendment will become effective on the first Tuesday after the first Monday in January following the election. Assuming the proposed amendment passes in 2018, the effective date will be January 8, 2019.

## **C. Substantive Effect of Proposed Amendment**

### *Input Received from Proponents and Opponents*

The Conference sought input from those groups who were on record as supporting or opposing the petition initiative. The sponsor presented at the Conference on October 5, 2016, and followed-up by forwarding a written fiscal argument in addition to a copy of a Florida Parole Commission report, dated July 1, 2011, entitled *Status Update: Restoration of Civil Rights' (RCR) Cases Granted 2009 and 2010*. No written materials or testimony were received from persons identifying themselves as opponents.

## **D. Background**

### *Current Voting Status of Felons in Florida*

The Florida Constitution currently states that: "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>1</sup> Section 944.292, F.S., provides: "Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution." According to s. 8, Art. IV, "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."<sup>2</sup>

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<sup>1</sup> Art VI, § 4, Fla. Const.

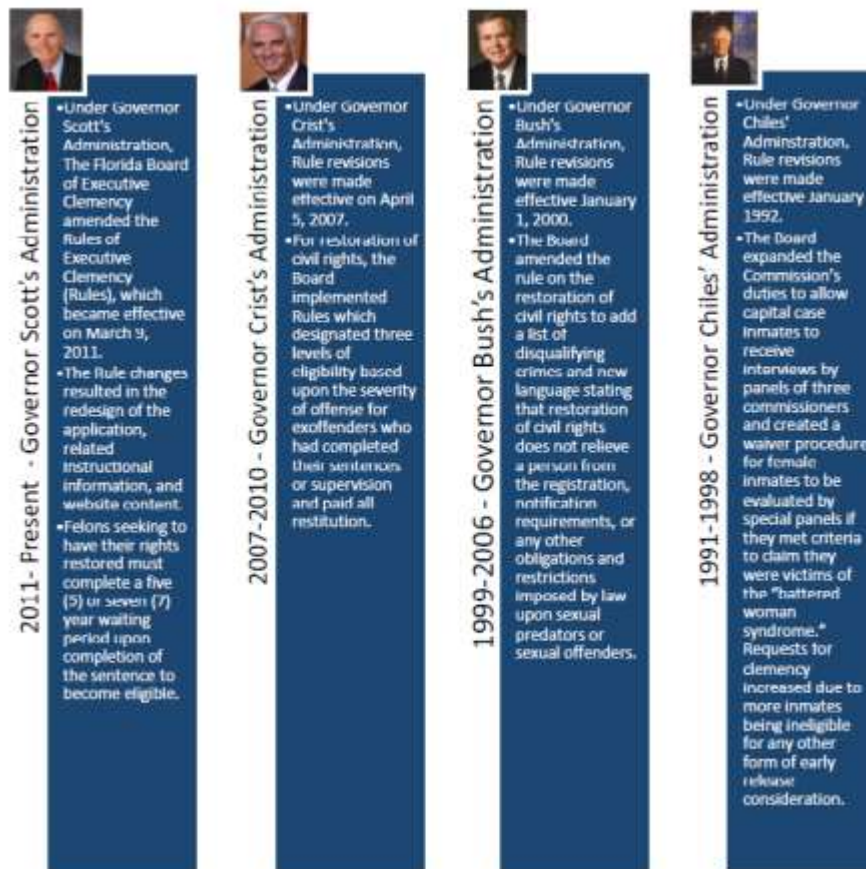
<sup>2</sup> Art IV, § 8, Fla. Const.

This language permanently removes a felon’s civil rights, including the right to vote, until the Florida Board of Executive Clemency restores such rights. According to the Florida Commission on Offender Review’s 2015 Annual Report:

*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.<sup>3</sup>*

In Florida, clemency rules have changed between and during different gubernatorial administrations. A synopsis is shown in the following chart, which was excerpted from the Florida Commission on Offender Review, Executive Clemency Timeline 1991-2015.

### Executive Clemency Timeline: 1991-2015



<sup>3</sup> Florida Commission on Offender Review, 2015 Annual Report, Page 15.

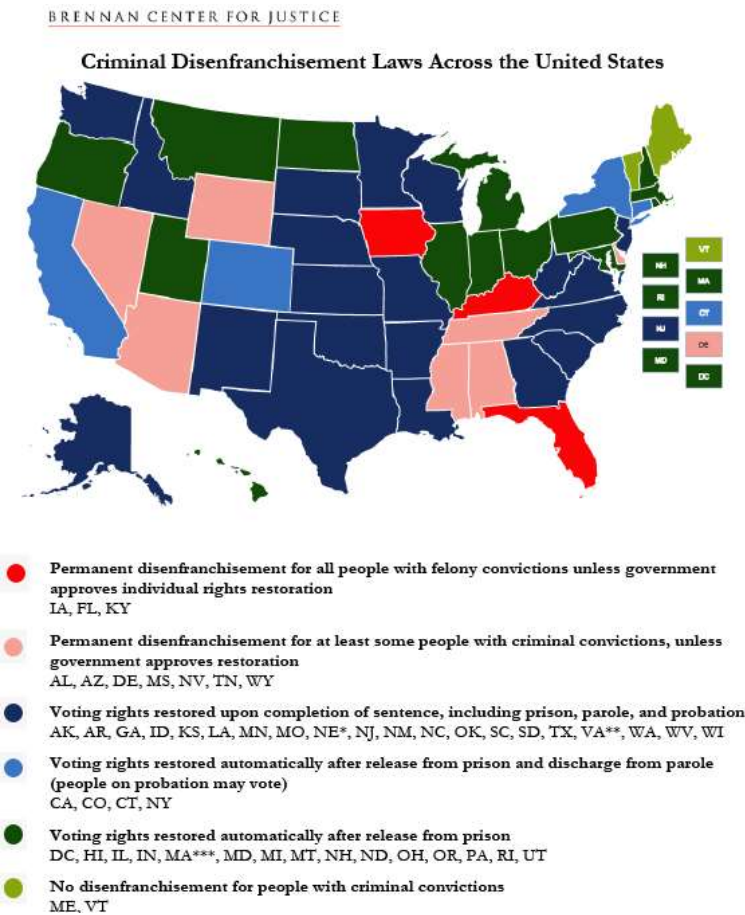


Florida’s civil rights restoration process for felons restores the rights to vote, serve on a jury and hold public office. There is not a separate process that solely restores a felon’s right to vote.

*Felon Voting Rights in Other States*

Florida, along with Kentucky and Iowa, are the three states with permanent disenfranchisement for all felony offenders. There are seven additional states with permanent disenfranchisement for specific criminal convictions. Further, a large number of states disenfranchise felons only while they are serving their sentences. In the latter case, the ease of how the rights are restored varies across states. Two states, Maine and Vermont, do not disenfranchise people with criminal convictions.

The following map, from the Brennan Center for Justice, shows how criminal disenfranchisement laws vary across the United States.



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.

### *Voting Restoration Amendment*

The proposed amendment would provide for the restoration of voting rights to felons who have completed all terms of their sentences, including parole or probation, except for those convicted of murder or felony sexual offenses. Therefore, if the proposed amendment is approved, eligible felons will not be required to seek an act of clemency in order to lawfully register to vote. Those felons that are not eligible (i.e. those convicted of murder and felony sexual offenses) will continue to need an act of clemency in order to lawfully register to vote.

### **E. Fiscal Impact of Proposed Amendment**

Section 100.371(5)(a), F.S., requires that the Financial Impact Estimating Conference "...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."

As part of determining the fiscal impact of this proposed amendment, the Conference held five public meetings:

- Public Workshop on October 5, 2016
- Principals' Workshop October 17, 2016
- Formal Conference on October 26, 2016
- Formal Conference on October 27, 2016
- Formal Conference on October 28, 2016

### *Requested Information from State Entities and Other Organizations*

<b>Presenter</b>	<b>Date</b>	<b>Summary of Information</b>
David Ensley Florida Department of Corrections, Bureau of Research and Data Analysis	9/21/2016	Provided data on the percentage of inmates released in August 2016 who either had a Florida ID or were ID prepared.
Ion Sancho Leon County Supervisor of Elections	10/5/2016	Discussed the possible financial savings to county supervisors of elections from reducing the number of notices of potential ineligibility that are mailed and provided supplemental materials showing the large number of mailed forms and the average price to mail each form (approximately \$5.12).
Desmond Meade Floridians for a Fair Democracy, Inc.	10/5/2016	Discussed the impact of lower recidivism rates among those who have had their rights restored and argued that it would lead to fewer prison beds, which would save the state money. He also provided a fiscal analysis using 3 years of FDOC recidivism data and 1 year of FCOR recidivism data.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/5/2016	Presented information regarding the current process for clemency and explained the two types of restoration of civil rights. Also pointed out that there are many subsets of murder and no definition of felony sexual offenses, such that the definitions of what is excluded under the amendment may need clarification.
David Ensley Florida Department of Corrections, Bureau of Research and Data Analysis	10/6/2016	Provided recidivism rate data for inmates released in each calendar year between 2006 and 2014, displaying recidivism rates for inmates released from and returning to DOC prisons for each year following release up to five years.

<b>Presenter</b>	<b>Date</b>	<b>Summary of Information</b>
Susan Burton, Florida Department of Law Enforcement, Office of Planning, Policy and Data Analysis	10/6/2016	Provided data on the number of individuals arrested since 2000 under s. 104.011, F.S. There were 78 individuals arrested from July 2000, through June 2016, for falsely swearing to or submitting false voter registration information.
Susan Burton, Florida Department of Law Enforcement, Office of Planning, Policy and Data Analysis	10/7/2016	Provided a link to the FDLE website that discusses Voter Felony Conviction Verification Procedures.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/12/2016	Provided a list of databases with descriptions (see Appendix A) that are currently used by the Office of Executive Clemency to determine eligibility status.
Stephen E. Hebert, Office of Clemency Investigations, Florida Commission on Offender Review	10/12/2016	Provided three tables with information on the following: Restoration of Civil Rights Applications Received (2003 through 2015), Restoration of Civil Rights Granted by Year (2003 through 2015), and the number of restoration of civil rights applications granted for those offenders released by FDOC in 2008.
Stephen E. Hebert, Office of Clemency Investigations, Florida Commission on Offender Review	10/13/2016	Provided an additional table showing the recidivism rates through June 1, 2016, for those felons granted civil rights restoration in 2009 and 2010.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/14/2016	Provided a checklist that is used by FCOR for clemency investigations/eligibility review, in addition to data for calendar year 2015 indicating the reasons RCR applications were determined ineligible.
Susan Burton, Florida Department of Law Enforcement, Office of Planning, Policy and Data Analysis	10/14/2016	Elaborated on the 78 individuals arrested under s. 104.011, F.S., stating that only 28 of these individuals had prior felony convictions.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/17/2016	Presented information indicating that level 1 cases reviewed during the mid-2000 time period took approximately 0.8 of an hour to review on average, which might be reflective of what is anticipated by the amendment. Also provided data on the number (377,149) of civil rights restorations on record for the Office of Executive Clemency.
David Ensley Florida Department of Corrections, Bureau of Research and Data Analysis	10/17/2016	Database goes back to the 1980's, however it is more reliable from the early 1990's. The database has information on inmates completing sentence and offenders completing supervision. This was used by Governor Crist's Administration to review prior felons.
Maria Matthews Department of State, Division of Elections	10/17/2016	Fiscal impact will depend upon what enabling statutes may be enacted. Discussed the current and historical processes. Section 98.093, F.S., lists the sources used to identify and obtain the documentation necessary to make a credible and reliable match of potentially ineligible voters. The 2006 law was very specific as to the process for noticing ineligible voters.
Jennifer Cook Pritt, Joe White, Charles Schaeffer Florida Department of Law Enforcement	10/17/2016	Indicated that they would work with all partners to ensure data are up-to-date. Provided an overview of how matches are done currently.

<b>Presenter</b>	<b>Date</b>	<b>Summary of Information</b>
Molly Kellogg-Schmauch and Fred Baggett Florida Clerks of Courts and Comptrollers	10/17/2016	Stated that the clerks currently provide information to felons applying for clemency at no charge to the felon. The amendment would increase workload and would have an indeterminate cost impact. Currently, they estimate it costs about \$5 per request for a medium-sized county in the state.
Thomas A. David Office of the State Courts Administrator (OSCA)	10/17/2016	Explained that OSCA currently has very little involvement in the restoration of civil rights process. However unless there is a process change, there would not be a large effect on the judicial branch.
Matt Dunagan Florida Sheriffs Association	10/17/2016	Confirmed that the clerks have data indicating when a person completes a jail sentence. Also indicated that some jails are run by the county, while others are run by the sheriffs.
Jennifer Pritt Florida Department of Law Enforcement, Public Safety Services	10/17/2016	Provided the total number (1,111,706) of individuals with felony convictions from January 1, 1950, through October 15, 2016.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/18/2016	Elaborated further on how many restorations (1,818) of civil rights were granted before 1950.
David Ensley Florida Department of Corrections, Bureau of Research and Data Analysis	10/18/2016	Provided inmate and supervision release information from Fiscal Year 2013-14 through Fiscal Year 2015-16.
David Ensley Florida Department of Corrections, Bureau of Research and Data Analysis	10/19/2016	Provided inmate and supervision release information from Fiscal Year 2010-11 through Fiscal Year 2012-13.
Toshia Brown Florida Department of State, Division of Elections Bureau of Voter Registration Services	10/20/2016	Provided copies of a form (DS DE #118) containing county data on notices of potential ineligibility from January of 2014 through June of 2016.
Thomas A. David Office of the State Courts Administrator	10/20/2016	Indicated that outstanding court costs and restitution are converted into civil judgments upon sentence completion.
Matt Dunagan Florida Sheriffs Association	10/21/2016	Explained how voting works for those in jail for misdemeanors or awaiting trial.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/24/2016	Explained that for someone with his or her civil rights restored, a subsequent felony conviction does not invalidate the restoration of civil rights certificate since it represents felony offenses prior to the date granted. The person would still need to apply regarding the subsequent felony in order to be able to vote, serve on a jury, and hold public office.
Howard Simon American Civil Liberties Union of Florida	10/25/2016	Presented their opinion that the proposed amendment will result in cost savings and provided a draft financial impact statement to that effect.
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/26/2016	Provided budget numbers related to the clemency process.
Kenneth A. Kent Florida Court Clerks and Comptrollers	10/26/2016	Clarified the capability of the CCIS database.
Jose Diez-Arguelles Florida Senate, Finance and Tax Committee	10/26/2016	Provided an article that has an overview of types of criminal sentences: "Types of sentences include probation, fines, short-term incarceration, suspended sentences, which only take effect if the convict fails to meet certain conditions, payment of restitution to the victim, community service, or drug and alcohol rehabilitation for minor crimes."
Julia McCall Office of Executive Clemency, Florida Commission on Offender Review	10/27/2016	Corrected a previous email on how many restorations of civil rights were granted before 1950. The number (1,818) was actually from the 1960's and 1970's.

I. *Increase or Decrease in State and Local Revenues*

There is currently no application fee imposed on a person seeking restoration of civil rights with the Office of Executive Clemency, nor is there a fee to obtain court documents from a clerk of the circuit court.<sup>4</sup> The proposed amendment does not contemplate any changes to this situation.

Under current practice, one of the requirements a person must meet to be eligible for restoration of civil rights is payment of “all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes.”<sup>5</sup> The proposed amendment restores voting rights upon completion of all terms of sentence including parole or probation.

It is not clear to the Conference whether the phrase “terms of sentence” includes payment of court-ordered restitution, fines, and court costs. If these payments are not included, there may be a potential loss of revenues as some felons who wish to have their voting rights restored will not make these payments when they otherwise would have made them. However, if these payments are included, the potential exists that some felons who wish to have their voting rights restored will make these payments when they otherwise would not have made them, resulting in additional revenues to state and local governments.

The net impact, if any, in state and local government revenues of following current practice cannot be determined, nor can the impact of any future legislation that implements a different approach.

II. *Increase or Decrease in State and Local Costs*

*Summary of the Process*

Section 98.075(5), F.S., requires the Department of State to:

“...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

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<sup>4</sup> The Office of Executive Clemency requires a person applying for restoration of civil rights to provide certified copies of his or her court documents.

<sup>5</sup> Rules 9 and 10, Rules of Executive Clemency.

removal of a registered voter's name from the statewide voter registration system.”  
[emphasis added]

Section 98.075(7), F.S., requires the supervisor of elections to notify a registered voter of his or her potential ineligibility by certified mail first, and then by a public notice in a newspaper if the mailed notice is returned as undeliverable. The affected supervisor must also provide an opportunity for a hearing if the voter denies the accuracy of the information. Once a final determination of ineligibility is made by the supervisor, he or she must remove the name of the registered voter from the statewide voter registration system, and provide notification of this action to the person.

The Conference determined that, absent a law change, these responsibilities will remain intact and not be affected by the proposed amendment. This means that a feasible implementation path consistent with current law would entail the following steps:

1. A person convicted of a felony registers to vote, affirming that his or her right to vote has been restored.
2. The provisions of s. 98.075(5), F.S., become operational as they exist today.
3. The Board of Executive Clemency is limited to responding on the availability of certificates for previously approved restoration of civil rights applications since its investigation process is no longer strictly required by the proposed amendment. The restoration of voting rights pursuant to the proposed amendment is not an act of mercy.
4. For any person who has not had his or her rights previously restored through the clemency process, the Department of State would need to establish new procedures with the clerks of the circuit court and the Department of Corrections in order to determine whether all terms of the sentence have been completed and that the person has never been convicted of murder or a felony sexual offense.
5. If the Department of State determines by credible and reliable information that the person has failed to complete all terms of the sentence or that he or she has been convicted of murder or a felony sexual offense, the provisions of s. 98.075(7), F.S., become operational as they exist today.

At a minimum, the Conference believes that this implementation path would result in:

1. Additional costs to the Department of State due to a higher volume of persons convicted of felonies registering to vote, and greater administrative responsibilities. These costs will be even higher if research on restitution and other financial obligations is required.
2. Reduced costs to the Board of Executive Clemency and the Florida Commission on Offender Review as some felons who would have previously sought to restore their civil rights are diverted to the new process for voter registration and do not pursue restoration of their remaining civil rights.

3. Increased costs to the Department of Corrections due to the high volume of persons convicted of felonies registering to vote who would not have sought restoration of their civil rights.
4. Increased costs to the clerks of the circuit court due to the high volume of persons convicted of felonies registering to vote who would not have sought restoration of their civil rights. There will also be decreased record production costs for the clerks of the circuit court as some persons who would have previously applied for the restoration of civil rights are diverted to the new process for voter registration and do not pursue restoration of their remaining civil rights. The increased costs will likely outweigh the savings.

Taking all of the positive and negative costs into consideration, the Conference has determined that if this path is followed, it is probable that the proposed amendment will result in increased costs to state and local governments due to the higher volume of persons convicted of felonies seeking to register to vote; however, the specific dollar amount cannot be determined. The Conference notes that the increased costs will be higher in the earlier years of implementation due to the proposed amendment's retroactive application.

Alternatively, the Legislature may decide to alter this process. What direction the Legislature would take in lieu of the current-law scenario is uncertain. Given the many possible avenues that additional legislation could take, the fiscal impact of any future action by the Legislature is unknown in regard to direction (added costs or reduced costs) or magnitude (amount of savings or costs relative to the existing clemency process).

Additional explanation of the various aspects of this analysis is provided in the sections below.

- *Retroactive Application of the Process*

The Conference believes that the proposed amendment applies not only to felons exiting the criminal justice system in the future, but to all existing felons who have not had their civil rights restored. According to the Florida Department of Law Enforcement, there have been a total of 1,111,706 individuals convicted of felonies since January 1, 1950. The Office of Executive Clemency has granted the restoration of civil rights to 377,149 individuals, nearly all of whom came from the 1,111,706 felons. Assuming a one-to-one relationship, 734,557 felons in Florida have not had their rights restored through July 2016.<sup>6</sup> However, there are multiple underlying issues with this number that make reliance on it problematic. First, this number may be smaller because a significant number of these people may have died or moved out of the state. Conversely, the number may be bigger to the extent that felons have had their voting rights restored and subsequently lost them due to another felony conviction. It also does not capture those felons who were convicted in other states and remained disenfranchised when they migrated to Florida. Furthermore, it is not known how many of these felons have completed the terms of their sentences, nor what number of these

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<sup>6</sup> Other studies have variously estimated between 600,000 and 1.5 million using different timeframes and methodologies.

felons have been convicted of a murder or sexual offense, which would leave them under the current rules of clemency. All of this means that while the specific number of individuals eligible under the proposed amendment cannot be determined, it is clear that a relatively large number of felons currently live in Florida who would be subject to its provisions.

Depending on the specific approach used to implement the proposed amendment, the size of the likely pool of felons for cost purposes could further change. In the event that the Legislature does not act and the implementation path consistent with current law described above prevails, the pool of relevant felons will further contract through the voter registration process. Prior research has shown that only 23.7% of the newly eligible male felons in Florida may actually register to vote.<sup>7</sup> This percentage is reasonable to provide the lower bound of the estimate. While the maximum percentage registered in a state was 58.9% in Michigan, the other three states in the study averaged 35%, providing the potential upper bound for voter registrations by felons in Florida. Assuming the initial pool of eligible felons equals 736,375 (meaning all other factors were essentially offsetting), the potential one-time voter registration pool of felons with records in need of review ranges between 174,090 and 257,095 individuals.

It should be noted that under Governor Crist's Administration the executive clemency rules were amended to create an automatic restoration of civil rights for felons who had completed their sentences and committed certain nonviolent felonies. The first step resulting from the rule change was a search of the Florida Department of Corrections' database to determine how many felons previously subject to state incarceration and supervision would be eligible for automatic restoration. This search resulted in nearly 300,000 offender cases being reviewed and processed. Florida Commission on Offender Review (FCOR) reports from that time period describe the need for additional positions and funding to account for this growth in workload. Accordingly, a significant one-time funding need may develop from the obligation to investigate the eligibility of several decades-worth of felons registering to vote.

- *Steady State Going Forward*

Once the retroactive impact of the proposed amendment is addressed, there is expected to be a continuous flow of felons released from local, state, and federal custody and control each year. This group forms the basis of the constant or "steady-state" workload flow expected in the future. Between Fiscal Year 2013-14 and Fiscal Year 2015-16, the Florida Department of Corrections released 179,606 offenders from incarceration and supervision, for an average of 59,869 per year. This number represents the majority of the expected workload for voting rights restoration each year. Federal inmates released to Florida during this same time period totaled 8,011,

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<sup>7</sup> See Traci Burch, Turnout and Party Registration among Criminal Offenders in the 2008 General Election, 45(3), LAW AND SOCIETY, 699-730 (2011)



for an average of 2,670 per year.<sup>8</sup> Although data is not available on felons released from jail who were serving sentences of 364 days or less, the average population in Fiscal Year 2014-15 was 7,205 felons incarcerated at the county level with sentences less than a year.<sup>9</sup> Therefore, there are approximately 69,744 individuals released each year. By way of contrast, Florida Commission on Offender Review received 2,301 applications for restoration of civil rights in the 2015 calendar year, and granted 428.

The proposed amendment has a narrower field of exclusion than today's clemency process, including many violent felonies that were previously excluded. However, it is unknown how many of the 69,744 individuals have felonies in the murder and sexual offense categories that would prevent them from receiving voting rights restoration in accordance with the proposed amendment.

Similar to what was discussed for retroactivity, the workload issues will depend on the specific implementation path. In the event that the Legislature does not act and the implementation path consistent with current law described above prevails, the pool of relevant felons will further contract through the voter registration process. Assuming 69,744 total releases, a potential registration pool of felons with records in need of review would range between 16,529 and 24,410 annually.

- *Clerks of the Circuit Court*

The Florida Court Clerks and Comptrollers believe that the proposed amendment could potentially cause a significant increase in workload and produce an indeterminate cost impact on local governments. Today, the clerks provide information and records to felons applying for clemency (restoration of civil rights) at no charge to the felon.<sup>10</sup> They estimate that this service currently costs about \$5 per request for a medium-sized county in the state. They also indicated that the current Comprehensive Case Information System (CCIS) database is updated at irregular intervals by some of the counties.

Regardless of the specific implementation path ultimately chosen, the Conference believes that increased costs to the clerks of the circuit court are likely as they will probably be involved in determining whether a felon has completed the terms of his or her sentence; it is anticipated that the volume of these determinations will be high. Assuming the Legislature does not act and the implementation path consistent with current law described above prevails, there will also be decreased record production costs for the clerks of the circuit court as some persons who would have previously applied for the restoration of civil rights are diverted to the new process for voter registration and do not pursue restoration of their remaining civil rights. The increased costs will likely outweigh the savings.

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<sup>8</sup> Source: [https://www.bop.gov/about/statistics/statistics\\_inmate\\_releases.jsp](https://www.bop.gov/about/statistics/statistics_inmate_releases.jsp)

<sup>9</sup> Source: <http://www.dc.state.fl.us/pub/jails/> Data through June of 2016 is not yet available.

<sup>10</sup> Section 940.04, F.S.

- *Supervisors of Elections*

The Supervisor of Elections for Leon County and the Florida Department of State's Division of Elections noted the impact of the proposed amendment on notices of potential ineligibility. The supervisor of elections said that this proposed amendment would decrease the number of notices sent to felons, reducing the cost to send the letters. Currently the average cost of mailing the notice by certified mail is approximately \$5.12. The representative for the Division of Elections added at a later meeting that if a notice is not deliverable, the supervisor of elections must publish the notice in a newspaper, which costs upwards of \$27.00 per name. Many counties will publish these notices in batches to save on cost. Data retrieved from the Division of Elections shows a yearly average of 25,285 notices of ineligibility mailed between Fiscal Year 2014-15 and Fiscal Year 2015-16, and a yearly average of 13,893 notices published during that same time period.<sup>11</sup> This amounts to a potential mailing cost of \$129,459.20 across all counties each fiscal year. The potential cost for publishing cannot be estimated due to the practice of batching multiple notices in newspapers.

Although it has been argued that these costs could be reduced by having fewer non-qualifying felons registering to vote who would receive these notices of ineligibility, it could be that more notices will be generated if the Legislature does not act and the implementation path consistent with current law described above prevails. In this case, the process of seeking "credible and reliable" information from very old records by the Department of State and the various supervisors may generate additional notices. There might also be a bidirectional effect, where both types of actions occur and result in the same cost for counties. The net result is unclear.

- *The Effect on Recidivism*

The sponsor indicated that there would be a savings to the state due to lower recidivism rates among felons who have their voting rights restored. For example, with lower recidivism rates, the state could expect to fund fewer prison beds. However, the reports published by the Florida Commission on Offender Review (FCOR) show that recidivism rates among felons receiving civil rights restoration in 2009 through 2010 have generally followed the same growth patterns as inmates released by the Florida Department of Corrections (FDOC) across a similar time period (See Appendix B). Of note is that while FDOC recidivism rates continue to steadily increase, FCOR recidivism begins to level out by the second or third year after receiving civil rights restoration. Unfortunately, due to peculiarities in the data provided by FCOR, actual comparisons between the two datasets cannot be made. This is because felons receiving civil rights restoration have been released at different time periods and from different types of sentences. Additionally, FDOC only includes prison inmate releases in their recidivism numbers, while FCOR includes both prison and supervision releases. These

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<sup>11</sup> One county report was missing for the last six months of Fiscal Year 2014-15. Three county reports were missing for the first six months of Fiscal Year 2015-16 and one county report was missing for the last six months of that fiscal year.

dissimilarities in the data could have an effect on any differences found between FDOC and FCOR recidivism rates.

Only one peer-reviewed article was found that analyzed the effects of disenfranchisement on recidivism.<sup>12</sup> The authors looked at felon recidivism in states with permanent disenfranchisement, comparing them to states without such laws in the 1994 to 1997 time period. Felons living in states with permanent disenfranchisement were 10% more likely to recidivate than those living in states without these restrictions. It is unknown how much Florida differed from other states in the effects of permanent disenfranchisement during that time period. Also, this study focused on the restoration of all civil rights, and in Florida's case included a time period before laws were passed that intended to eliminate employment discrimination for those felons who did not have their rights restored.

Given these findings, it is impossible to quantify the financial impact (if any) of the proposed amendment on prison bed needs. The potential impact is considered to be an indeterminate savings, with the likelihood that any effects related to the reduction in the number of prison beds would take many years to develop and be minimal at best.

- *Florida Commission on Offender Review's Clemency Function*

The largest portion of the budget currently associated with the clemency process lies with Florida Commission on Offender Review (FCOR). Of FCOR's \$9.8 million appropriation for Fiscal Year 2015-16, only \$5.5 million supports the clemency process.

The American Civil Liberties Union of Florida (ACLU) has suggested that the proposed amendment would significantly decrease the workload of the Office of Executive Clemency and FCOR, thereby producing cost savings. While the Conference agrees that workload will decrease, the extent to which it will decrease is unknown. This is because many of the clemency functions will not be affected by the proposed amendment. These include: restoring the civil rights of felons convicted of murder or certain sexual offenses, pardons, commutation of sentence, relief from fines and forfeitures, firearm authority, capital case review, restoration of firearm authority, and alien status under Florida law. In addition, FCOR will continue to process requests to restore the remaining civil rights of those whose voting rights have been restored by the proposed amendment.

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<sup>12</sup> See Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA LAW JOURNAL. 407, 408-10 (2012)

## Appendix A

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 any entity 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.

## Appendix B

### Five Year Recidivism Rates

		Followup in Months After Release				
		12	24	36	48	60
Calendar Year of Release	2006	12%	24%	32%	37%	41%
	2007	12%	23%	31%	35%	39%
	2008	10%	21%	28%	32%	36%
	2009	10%	19%	26%	31%	35%
	2010	9%	18%	26%	31%	35%
	2011	8%	18%	26%	31%	
	2012	8%	18%	25%		
	2013	9%	18%			
	2014	8%				

Source: Florida Department of Corrections, Bureau of Research and Data Analysis, received October 6, 2016

#### GRANTED RESTORATION OF CIVIL RIGHTS AND RETURNED TO CUSTODY

CALENDAR YEAR	GRANTED	RETURNED TO CUSTODY as of 06/01/2016								TOTAL	PERCENT
		2009	2010	2011	2012	2013	2014	2015	2016		
2009	24,954	894	1,634	1,293	1,057	755	609	491	131	6,864	27.5%
2010	5,718		182	336	337	257	185	142	37	1,476	25.8%
<b>TOTAL</b>	<b>30,672</b>	<b>894</b>	<b>1,816</b>	<b>1,629</b>	<b>1,394</b>	<b>1,012</b>	<b>794</b>	<b>633</b>	<b>168</b>	<b>8,340</b>	<b>27.2%</b>

Source: Florida Commission on Offender Review, Office of Clemency Investigation

Report Date: 10/13/2016

#### GRANTED RESTORATION OF CIVIL RIGHTS AND RETURNED TO CUSTODY

CALENDAR YEAR	GRANTED	RETURNED TO CUSTODY as of 06/01/2016							
		2009	2010	2011	2012	2013	2014	2015	2016
2009	24,954	3.6%	10.1%	15.3%	19.5%	22.6%	25.0%	27.0%	27.5%
2010	5,718		3.2%	9.1%	15.0%	19.4%	22.7%	25.2%	25.8%

Calculations prepared by: Florida Legislature, Office of Economic and Demographic Research

Report Date: 10/13/2016