

STORAGE NAME: h0781.er

DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HB 781

RELATING TO: Rights of Former Felons

SPONSOR(S): Representatives Reddick and Chestnut

TIED BILL(S): HJR 779

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM (PRC)
 - (2) JUDICIARY (CJC)
 - (3) LAW ENFORCEMENT & CRIME PREVENTION (CRC)
 - (4) CRIMINAL JUSTICE APPROPRIATIONS (FRC)
 - (5)
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I. SUMMARY:

The bill provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed." "Completion and satisfaction of all sentences" occurs when:

1. A person is released from incarceration upon expiration of sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
2. A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

The bill provides for mandatory expunction of felony records upon application and completion of certain requirements.

This bill has a fiscal impact.

The provision of this bill affected by the proposed constitutional amendment, HJR 779, shall become effective upon the adoption of such amendment. The remaining provisions shall become effective July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article VI, Section 4 of the Florida Constitution limits the ability of convicted felons to vote as follows:

(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. (Emphasis added).

Section 97.041(2), F.S., provides that the following persons 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. (Emphasis added).

Section 104.15, F.S., makes it a third degree felony for a convicted felon to vote if the person is aware that he or she is not qualified to vote.

The prohibition against voting by convicted felons is further expressed in section 944.292(1), F.S.:

(1) Upon conviction of a felony as defined in section 10, Article 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 section 8, Article IV of the State Constitution.

First time felony offenders who do not commit violent crimes typically receive a withhold of adjudication instead of an adjudication of guilt. A withhold of adjudication is not considered a conviction and does not prohibit a person from voting or possessing a firearm.

Restoration of Civil Rights

Executive Clemency is a power vested in the Governor by the Florida Constitution. Article IV, Section 8(a) of the Constitution establishes the authority for clemency as follows:¹

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, ... with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Under the Florida Rules of Executive Clemency, "Clemency" is an act of grace proceeding from the power entrusted with the execution of the laws and exempts the individual upon whom it is bestowed from all or any part of the punishment the law inflicts for a crime committed. Rule T. 27, App., F.A.C.

The Governor and members of the Cabinet collectively are the Clemency Board.

The Governor has the unfettered discretion to deny any request for clemency. Likewise, the Governor, with the approval of three Cabinet members, has the unfettered discretion to grant the following acts of grace:

- ▶ Full Pardon
- ▶ Conditional Pardon
- ▶ Commutation of Sentence
- ▶ Remission of Fines and Forfeitures
- ▶ Specific Authority To Own, Possess, or Use Firearms
- ▶ **Restoration of Civil Rights in Florida**
- ▶ Restoration of Residence Rights in Florida

Id.

The review process for restoring the civil rights of the majority of felons convicted in Florida is designed to be automatic, and should take place without the need for the individual to file any application or request. Under the Florida Rules of Executive Clemency, upon release of a felon from prison or supervision (i.e., probation), the Department of Corrections is required to submit each individual's name to the Florida Parole Commission. The Parole Commission then reviews specified criteria to determine whether the individual is eligible to have his or her civil rights restored.

¹ Effective January 7, 2003, Article IV, Section 4 of the Florida Constitution is amended to reduce the number of elected Cabinet officers from six to three. In addition, Article IV, Section 8, relating to Clemency, reduces the number of cabinet members from three to two which, along with the Governor, is required to grant clemency.

The specific criteria for eligibility is set forth in Rule 9. A, Florida Rules of Executive Clemency:

- ▶ The applicant has completed service of 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.
- ▶ The applicant does not have an outstanding detainer or any pending criminal charges.
- ▶ The applicant does not have any outstanding pecuniary penalty resulting from a criminal conviction or traffic infraction, including but not limited to, fines, court costs, restitution pursuant to a Court Order, restitution pursuant to > Section 960.17(1) of the Florida Statutes, and unpaid costs of supervision pursuant to > Section 945.30 of the Florida Statutes.
- ▶ The applicant has not been convicted of a capital or life felony.
- ▶ The applicant has not previously had his or her civil rights restored in the State of Florida.
- ▶ The applicant does not have more than two felony convictions. For the purpose of the requirement contained in this subsection only, each felony conviction shall include all related offenses which are those triable in the same court and are based on the same act or transaction or on two or more connected acts or transactions.
- ▶ The applicant is a citizen of the United States, if he or she is requesting restoration of civil rights.
- ▶ The applicant must be a legal resident of the State of Florida, if he or she was convicted in a court other than a Florida state court and is requesting a restoration of civil rights.
- ▶ The applicant must be domiciled in the State of Florida, if he or she is requesting restoration of residence rights.
- ▶ The applicant was not a public official who during his or her term of office committed a criminal offense for which he or she was subsequently convicted.

If the Florida Parole Commission determines that the above criteria have been met, a certificate that would grant restoration of civil rights or residence rights in the State of Florida is issued without the specific authority to possess a firearm. **If any member of the Board of Executive Clemency objects to the restoration of civil rights then the applicant must have a clemency hearing before the Board of Executive Clemency.**

The review process takes anywhere from 8 to 12 months to complete but can be accelerated if the individual contacts the Board directly and files an application for clemency.

A felon who has lost his or her civil rights is required to re-register to have his or her name restored to the voter registration books. s. 98.093(4), F.S., (1999).

In 1998, the Parole Commission reviewed 9,989 inmates released from prison and 7,676 persons whose community supervision including probation had terminated. A total of 1,254 persons received the restoration of their civil rights without a hearing.

Expunction of Records

Criminal history records may be expunged by court-order, as provided pursuant to s. 943.0585, F.S. (1999) and Rule 11C-7.006, F.A.C. Prior to petitioning a court to expunge a criminal history record the subject must apply to the Florida Department of Law

Enforcement (FDLE) for a certificate of eligibility and remit a \$75 processing fee. The petitioner must certify to certain facts and be accompanied by a certified statement from the appropriate state attorney or statewide prosecutor stating:

- ▶ That an indictment, information, or other charging document was not filed or issued in the case.
- ▶ That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or not prosecuted by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.
- ▶ That the criminal history record does not relate to the dangerous crimes enumerated in s. 907.041, F.S., where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

Dangerous crimes include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult; or aggravated abuse of an elderly person or disabled adult; hijacking; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence; and home-invasion robbery.

C. EFFECT OF PROPOSED CHANGES:

Restoration of Civil Rights

The bill provides that convicted felons will automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed." "Completion and satisfaction of all sentences" occurs when:

- ▶ A person is released from incarceration upon expiration of sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
- ▶ A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

Monetary conditions of a sentence, such as restitution to a victim and costs of supervision, would not have to be paid in order for a convicted felon to have his or her right to vote automatically restored.

The bill provides that a **majority** of the Board of Executive Clemency may prevent the automatic restoration of the right to register or vote if that objection is made prior to the automatic restoration (1 year) - a higher standard than is currently provided by rule. Under this circumstance, the person would be required to file an application with the Board of Executive Clemency for review.

The Board of Executive Clemency currently consists of seven members - six Cabinet officers and the Governor. This will be reduced to four (three Cabinet officers and the Governor) due to the passage of Constitutional Amendment No. 8, which amended Article IV, Section 4, Florida Constitution.

Expunction of Records

HB 781 provides for the mandatory expunction of felony records upon application and payment of a \$75 processing fee to FDLE if the following conditions are met:

- ▶ The felony must be a second or third degree felony (first degree, capital, and life felonies are excluded);
- ▶ The person was 22 years old or less when the felony was committed;
- ▶ The person has not committed a felony offense for a minimum of 6 years from the latter of:
 - a. Adjudication from most recent felony (including adjudication withheld);
 - b. The date the person was released from a detention facility, jail, prison, or other correctional facility.
 - c. The date the person completed any form of postrelease supervision.

Rulemaking authority is granted to FDLE to provide procedures for verification and notification of applications for expunction of felony records.

Additionally, the bill provides that the courts continue to have jurisdiction over their own procedures with respect to the maintenance, sealing, expunction, and correction of judicial records, insofar as it is not inconsistent with the conditions enumerated in this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides for the automatic restoration of a person's right to register and vote one year after the completion and satisfaction of all sentences imposed with the exception of monetary penalties.

Provides that if a majority of the Board of Executive Clemency objects to the automatic restoration of a felon's right to register and vote, such person must make application to the Board of Executive Clemency directly for review.

Section 2. Provides short title.

Section 3. Provides for the mandatory expunction of a felon's record if that person applies to FDLE and meets certain criteria; provides rulemaking authority and construction of law with respect to judicial jurisdiction.

Section 4. Provides that those provisions contained in the bill which require the passage of a constitutional amendment, shall be effective upon the effective date of that constitutional amendment. The remaining provisions of the bill shall become effective July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

HB 781 requires a person who makes application to expunge criminal records to remit a \$75 processing fee to FDLE. The amount of revenue this would generate is indeterminate.

2. Expenditures:

There will be an administrative cost to FDLE to expunge records in accordance with the provisions of this bill. The fiscal impact to FDLE would be offset by the \$75 processing fee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections currently notifies the Office of Executive Clemency of all felons whose sentence has been completed. The Office of Executive Clemency already reviews these cases to see if the felons qualify to have their voting rights restored. Since the provisions of this bill comport to this practice, any additional administrative expenses should be slight. The position of the Office of Executive Clemency is that the bill will not have a fiscal impact to that agency.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See response above.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

See response above.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Before HB 781 can take effect, the Florida Constitution must be amended to remove the disqualification to voting found in Art. VI, s. 4, of the Florida Constitution. In 1974 the Legislature passed Chapter 74-112, Laws of Florida, providing that the civil rights of a person convicted of a felony shall be suspended until the person is discharged from parole at which time civil rights are automatically reinstated. In 1975, the Florida Supreme Court held the law to be an unconstitutional invasion of the authority given exclusively to the Executive Branch. In re Advisory Opinion of the Governor Civil Rights, 306 So.2d 520 (Fla. 1975). House Joint Resolution 779, would remove the disqualification to voting for a person convicted of a felony provided in Art. VI, s. 4, of the Florida Constitution. This constitutional amendment (HJR 779) would not supplant the authority granted to the Governor by Art. IV, s. 8, of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. OTHER COMMENTS:

Amendments

HB 781 should be amended as follows:

1. A technical amendment to Section 1 of the bill should be offered to provide the House Joint Resolution Number to the bill. Specifically, Page 1, line 28 should be amended to insert "779" after the terms "Joint Resolution No. ", " to the bill's effective date provision.
2. Sections 97.052(2), 97.053(5)(a), and 98.0975(1)(b), F.S., should be amended to conform to the restoration of "voting rights" as opposed to "civil rights" currently provided for in the Florida Election Code.
3. Section 944.292(1), F.S., should be amended so as not to conflict with the bill. Nonetheless, the language contained in the bill would be controlling since it is more recent. [See text of s. 944.292(1), F.S., in Present Situation section of this analysis.

The Sentencing Project Report

According to a report by the Human Rights Watch & The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, at (www.hrw.org/hrw/reports98/vote/usvot98o.htm), Florida is one of 12 states that permanently disenfranchise felony offenders who have completed their criminal sentences.

In two of these states, the offenders are disenfranchised after a second felony. [See also, *Criminal Justice Newsletter*, vol. 29, number 16]. However, in a recent approval of a constitutional amendment, the State of Utah became the 13th state to ban felons from voting or holding office until their rights have been restored. *Election Administration Reports*, vol. 29, number 2. Nonetheless, Florida allows automatic restoration of a person's civil rights including the right to vote, subject to an objection by the Clemency Board, if the person has two or fewer felony convictions and all terms of the sentence are completed including monetary conditions (Rules of Executive Clemency - Rule 9).

It should be noted that the "Losing the Vote" report asserted that Florida disenfranchised 647,000 people because of felony convictions. However, due to various factors used in the methodology portion of the *Sentencing Project's* report, this figure appears to be overstated. First, the database utilized by the researchers was one used for gun purchase background checks and include out-of-state felons residing in Florida. Second, this figure does not take into account those who have had their civil rights restored through the Board of Executive Clemency or those which are currently incarcerated, on probation, or on parole. Additionally, felons who have moved out-of-state or have died have not been accounted for in the report's totals. Consequently, when correcting for these discrepancies, the number of felons without the right to vote is 343,675. This statistic includes all felons dating back to 1950. [FDLE statistical assessment of the "Losing the Vote" report, March 1999]. FDLE cautions that the data used by both the Department and *The Sentencing Project* are difficult to derive due to the complexity of the issue. Marc Mauer of *The Sentencing Project* acknowledges their figures may be overstated to the extent that the data received from the governmental agencies canvassed was incorrect. Additionally, felons who have had civil rights restored through executive clemency are not accounted for in their aggregate numbers. [Conversation with Marc Mauer, March 18, 1999]. Although both estimates include statistical assumptions to arrive at their respective figures, FDLE contends their figures are more realistic once the noted discrepancies have been considered.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

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