

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.)

Prepared By: Judiciary Committee

BILL: CS/SB 432

INTRODUCER: Judiciary Committee, Senator Wilson, and others

SUBJECT: Restoration of Civil Rights

DATE: April 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that administrators of county detention facilities will bear the responsibility for providing applications to prisoners who seek the restoration of their civil rights.¹ When possible, the administrator must provide an application that is produced by the Parole Commission to the prisoner at least two weeks before discharge so that he or she may begin the application process for having civil rights restored.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Although there is a statutory requirement² that an authorized agent of the Florida Department of Corrections (department) assist a felony offender with the restoration of civil rights process prior to the time of discharge from state prison, no equivalent statutory requirement exists for county detention facilities to provide felony offenders with education or assistance regarding civil rights restoration. Any education or assistance that is currently provided is initiated locally.

¹ As of January 2002, at the completion of sentence, for prisoners serving sentences under the Florida Department of Corrections (department), the department will automatically submit an electronic application to the Parole Commission for eligibility review for restoration of civil rights without a hearing. The Florida Parole Commission, Rules of Executive Clemency, Rule 5.I.E. n. 1, Dec. , 2004, <https://fpc.state.fl.us/Policies/ExecClemency/ROEC12092004.pdf> (last visited Apr. 22, 2006).

² Section 944.293, F.S.

When a person is convicted of a felony his or her civil rights are suspended. Those civil rights include the right to vote, to hold public office,³ to serve on a jury,⁴ to obtain certain employment licenses,⁵ and to own, possess, or use firearms.⁶

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. Restoration of civil rights 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.⁷

Convicted felons are eligible for restoration of their civil rights (except the right to own, possess, or use firearms⁸) without a hearing upon completion of sentence or supervision if they meet certain criteria set forth in the rules of the Clemency Board. If not eligible for restoration of civil rights without a hearing, the felon may apply for a hearing to determine whether his or her civil rights will be restored. In certain cases, convicted felons must request a waiver of clemency rules to be eligible for consideration.

The Florida Parole Commission acts as the agent of the Clemency Board in determining whether offenders and inmates are eligible for restoration of rights without a hearing, investigating applications and conducting hearings when required, and making recommendations to the Board. Participation in the process by the Department of Corrections is required by the following statutes:

- Section 940.061, F.S., requires the department to inform and educate inmates and offenders on community supervision about the restoration of civil rights and to assist eligible inmates and offenders on community supervision with completion of the application for restoration of civil rights.
- Section 944.293, F.S., requires the department to assist offenders under supervision in completing the application and necessary forms and to ensure that the application and other necessary information is forwarded to the Governor before the offender is released from supervision.

In recent years, the department and the Parole Commission have coordinated efforts in order to make restoration of civil rights less difficult for incarcerated felons who will be eligible for restoration without a hearing upon release. The department provides the commission with a computerized list of all eligible inmates who are being released from state prison making it unnecessary for the inmate to take any affirmative action to have his or her civil rights restored. Note that this coordinated effort is between the Parole Commission and the Department of Corrections, which does not include county detention facilities.

³ Art. VI, s. 4(a), Fla. Const. (disqualifying a person convicted of a felony from voting or holding office until restoration of civil rights).

⁴ Section 40.013(1), F.S.

⁵ Section 112.011, F.S.

⁶ Section 790.23, F.S.

⁷ Art. IV, s. 8(a), Fla. Const.

⁸ Rules 5.I.D. of the Rules of Executive Clemency provides that the right to own, possess, or use firearms requires an application and there is a waiting period of eight years from the date sentence expired or supervision terminated.

III. Effect of Proposed Changes:

This bill establishes a procedure that helps prisoners who are to be discharged from a county detention facility begin the process for restoration of their civil rights. For felony offenders completing sentences in state prisons, the process is initiated automatically by the Florida Department of Corrections (department).⁹

Section 1 of this bill places the responsibility for initiating the process of restoring civil rights on the administrators of county detention facilities. If possible, within two weeks of a prisoner being released from a county detention facility, the administrator must provide the prisoner with an application for restoration form from the Parole Commission. It would then be the prisoner's responsibility to complete the form.

By implication this bill would only apply to those inmates in county detention facilities who have in fact lost their civil rights by reason of commission of a felony.

Section 2 provides the act shall take effect on July 1, 2006.

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.

⁹ As of January 2002, at the completion of sentence, for prisoners serving sentences in state prisons, the department will automatically submit an electronic application to the Parole Commission for eligibility review for restoration of civil rights without a hearing.

C. Government Sector Impact:

Counties will bear some costs in implementing the provisions of this bill but the specific amount is not determinable. The impact will be dependent upon the number of eligible prisoners in a particular county. Each month counties are required to report their daily population averages to the Department of Corrections, but not all counties report that data every month. According to data supplied to the Department of Corrections for September 2005, approximately 11,310 felons were incarcerated in county detention facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Despite the automatic electronic application by the Department of Corrections to the Parole Commission for eligibility review for restoration of civil rights without a hearing, 85 percent of all offenders must also submit form ADM 1501A to seek restoration of their civil rights.¹⁰ In 2004, the First District Court of Appeal issued a decision which held that the Department of Corrections was not complying with the requirement of s. 944.293, F.S., to provide the appropriate restoration process forms to offenders prior to their discharge from prison. The court also construed the statutes to require the department to offer assistance in completing the forms and give assistance to prisoners when further help was requested prior to the prisoners' discharge.¹¹

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Florida Caucus of Black State Legislators, Inc. v. Crosby*, 877 So. 2d 861, 863 (Fla. 1st DCA 2004).

¹¹ *Id.* at 863-64.

VIII. Summary of Amendments:

None.

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