

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 848

INTRODUCER: Senator Rouson

SUBJECT: Suspension of Civil Rights

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 848 revises s. 944.242, F.S., by making the automatic suspension of civil rights only apply to persons who are convicted of a life or capital felony or a forcible felony defined in s. 776.08, F.S.

The bill attempts to change the parameters for the suspension of civil rights to certain types of felonies, which may conflict with the language of the Florida Constitution which does not distinguish the types of felonies that are subject to the automatic suspension of civil rights. See Section IV. Constitutional Issues.

II. Present Situation:

Civil Rights

The civil rights of a convicted felon are automatically suspended until restored by pardon or restoration of civil rights.¹ The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.² Other civil rights that are lost in accordance with statute include the right to serve on a jury³ and the right to possess a firearm.⁴

The power to pardon, restore civil rights, commute punishment, or remit fines and forfeitures is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.⁵ Section 940.05, F.S., provides that any person convicted of a felony may be entitled

¹ Section 944.292, F.S.

² Article VI, s. 4, Fla. Const.

³ Section 40.013, F.S.

⁴ Sections 790.06(2)(d) and (k) and 790.23, F.S.

⁵ Article IV, s. 8(a), Fla. Const. See also s. 940.01, F.S.

to the restoration of all the rights of citizenship enjoyed by him or her before conviction⁶ if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.

The Governor and Cabinet sit as the Board of Executive Clemency (Clemency Board) and the Office of Executive Clemency assists in the acceptance, review, and recommendation of applications for clemency.⁷ The Rules of Executive Clemency set forth the eligibility and requirements for an individual to seek a full or conditional pardon, restore civil rights, commute punishment, or remit fines and forfeitures.⁸ An individual seeking clemency submits an application to the Office of Executive Clemency and the application is forwarded to the Florida Commission on Offender Review for investigation, report, and recommendation.⁹

Eligibility for restoration of civil rights without a hearing is for less serious offenses and requires that five years have passed since the date of completion of all sentences and conditions of supervision imposed. The person may not have pending criminal charges and must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.¹⁰ The person also is not eligible for restoration of civil rights if he or she committed one of a number of crimes, such as murder, sexual battery, or kidnapping.¹¹

Eligibility for restoration of civil rights with a hearing requires that seven years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions. The person must have paid all restitution and be a citizen of the United States and, if convicted in a court other than a Florida court, be a legal resident of Florida.¹²

Felonies

The Florida Constitution defines a “felony” as “any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.”¹³ Felonies are classified, for the purpose of sentence and for any other purpose specifically provided by statute into the following categories:

- Capital felony – generally punishable by life imprisonment or a death sentence as provided in s. 921.141, F.S.;¹⁴

⁶ Restoration does not relieve a person of “registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.” Rules of Executive Clemency 4.I.(G). Additionally, the Rules of Executive Clemency require a separate application to restore the rights to possess, own, or use a firearm. Rules of Executive Clemency 4.I.(F) and (G) and 5(D) and (E).

⁷ Rules of Executive Clemency 2(B).

⁸ Rules of Executive Clemency 4. Article IV, s. 8, Fla. Const.

⁹ Rules of Executive Clemency 6(A) and 7. See also s. 940.03, F.S.

¹⁰ Rules of Executive Clemency 9(A).

¹¹ Rules of Executive Clemency 9(A)4.

¹² Rule of Executive Clemency 10(A).

¹³ Article X, s. 10, Fla. Const.

¹⁴ Section 775.082, F.S.

- Life felony – generally punishable by a term for life, or imprisonment for a term of years not exceeding life imprisonment;¹⁵
- Felony of the first degree – generally punishable by a term of imprisonment not exceeding 30 years;¹⁶
- Felony of the second degree – generally punishable by a term of imprisonment not exceeding 15 years;¹⁷ and
- Felony of the third degree – generally punishable by a term of imprisonment not exceeding 5 years.¹⁸

“Forcible felony” is defined as treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, burglary, arson, kidnapping, aggravated assault, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing or discharging of a destructive device or bomb, and any other felony which involves the use or threat of physical force or violence against any individual.¹⁹

III. Effect of Proposed Changes:

The bill revises s. 944.242, F.S., by making the automatic suspension of civil rights only apply to persons who are convicted of a life or capital felony or a forcible felony defined in s. 776.08, F.S. The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article VI, Section 4(a) of the Florida Constitution 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.

¹⁵ Section 775.082(3)(a), F.S.

¹⁶ Section 775.082(3)(b), F.S.

¹⁷ Section 775.082(3)(d), F.S.

¹⁸ Section 775.082(3)(e), F.S.

¹⁹ Section 776.08, F.S.

Article X, Section 10 of the Florida Constitution defines a “felony” as “any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.”

The language of the constitution should be interpreted naturally, to give effect to the ordinary meaning of words and phrases. Courts must interpret words and phrases in accordance with their “plain meaning” unless certain that the framers intended a different meaning.²⁰

The bill attempts to change the parameters for the suspension of civil rights to certain types of felonies. This would conflict with the language of the Florida Constitution which does not distinguish the types of felonies that are subject to the automatic suspension of civil rights. Under the Florida Constitution, civil rights are suspended until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to Article IV, Section 8 of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.292 of the Florida Statutes.

²⁰ See *State ex rel. West v. Butler*, 69 So. 771, 777 (Fla. 1915); *Shelby Mutual Insurance Co. v. Smith*, 556 So. 2d 393, 395 (Fla. 1990).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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