

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

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

Proposal #: P 21

Relating to: SUFFRAGE AND ELECTIONS, Disqualifications

Introducer(s): Commissioner Rouson

Article/Section affected: Article VI, Section 4

Date: January 28, 2018

	REFERENCE	ACTION
1.	<u>EE</u>	<u>Favorable</u>
2.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article VI, Section 4 of the Florida Constitution prohibits a person convicted of *any* felony from being qualified to vote or hold a public office in Florida until their civil rights have been restored. Clemency is the constitutionally authorized process that provides a means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights, which include voting rights and the right to hold office. The Florida Cabinet (Governor, Attorney General, Chief Financial Officer, and Agriculture Commissioner) sit as the Board of Executive Clemency and establish the Rules of Executive Clemency. The Board has the exclusive power to grant or deny clemency.

The proposal amends Article VI, Section 4 of the Florida Constitution to provide that only persons convicted of a life or capital felony, a forcible felony (murder, manslaughter, sexual battery, etc.), or any other felony involving the use or threat of physical force or violence against an individual are prohibited from voting or holding office until restoration of their civil rights. The proposal further prohibits any person convicted of a felony from voting or holding a public office until the person has been released from incarceration and any post-conviction supervision, and has paid all court costs and restitution (or established a payment plan).

If passed by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

See “*Related Issues*” section of this analysis for information regarding similar constitutional amendments approved for the November 2018 general election ballot.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Introduction

Article VI, Section 4 of the Florida Constitution provides that no person convicted of a felony, or adjudicated in this state to be mentally incompetent, shall be qualified to vote or hold a public office until restoration of civil rights or removal of disability. This restriction is also codified in Section 97.041(2)(b), Florida Statutes.

Section 944.292, Florida Statutes, specifies that upon conviction of a felony, the civil rights (which includes voting 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.

Executive Clemency

General

In Florida, clemency is the constitutionally authorized process that provides a means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights, which include voting rights and the right to hold public office. The Governor and the other members of the Florida Cabinet (Attorney General, Chief Financial Officer, Agriculture Commissioner) sit as the Board of Executive Clemency and establish the Rules of Executive Clemency. The powers to grant Clemency are vested in the Governor with the agreement of two cabinet members. The Governor has the sole power to deny Clemency. With regard to restoration of civil rights cases under the Board's overall authority to grant or deny clemency, depending on the specifics of the case a decision on restoration of civil rights will be made by the Clemency Board either with or without a hearing. The Clemency Board generally meets four times a year to hold hearings and make decisions on clemency cases.

Under the current Rules of Executive Clemency, individuals seeking restoration of civil rights must submit an application and required court ordered documents to the Office of Executive Clemency, which is housed within the Florida Commission on Offender Review. To qualify for restoration of civil rights, an offender must have completed their sentence, including terms of supervision, must not have any pending criminal charges or outstanding detainers/warrants, have paid all victim restitution, and must meet the timeframes established by the Board of Executive Clemency. Current timeframes established by the Board of Executive Clemency require a waiting period of 5 or 7 years after completion of sentence, parole, or probation.

The Florida Commission on Offender Review operates as the investigative arm of the Clemency Board, and makes recommendations directly to the Governor and Cabinet. The Office of Executive Clemency administers the process and is the official custodian of records. The Florida Commission on Offender Review conducts comprehensive, confidential investigations on clemency applicants.

Florida Commission on Offender Review/Executive Clemency – Recent Activity

The following information is from published reports and other information obtained from the Florida Commission on Offender Review:

- At the last four meetings of the Clemency Board, there were a total of 274 restoration of civil rights applications for consideration. Of these, 108 applications were granted, 141 were denied, 24 were continued, and one was withdrawn by the applicant.
- In 2016, a total of 473 applicants were granted restoration of civil rights; in 2015, a total of 408 applicants were granted restoration of civil rights.
- In 2015, 2,352 applications for restoration of civil rights (either with or without a hearing) were received. Of this total, 839 were found to be eligible for further action. As of November 2017, of the 839 eligible applications 127 were granted, one was denied, and 649 are still pending investigation and a final decision.
- As of October 1, 2017, there were 10,377 total cases pending for restoration of civil rights.
- Once the waiting period of 5 or 7 years has been satisfied, the time it takes to process restoration of civil rights applications varies; from start to finish, final decisions can be made in as little as one year or up to several years – as of October 2017, the oldest application for restoration of civil rights had been pending for over 9 years.

Loss and Restoration of Voting Rights

General

As noted, in Florida loss of civil rights due to a felony conviction includes the loss of the right to vote. According to information from the National Conference on State Legislatures, the Sentencing Project, and Ballotpedia, currently all states but two (Maine and Vermont) take away the right to vote from convicted felons. However, states vary considerably in how voting rights can later be restored to those convicted of felonies. Restoration of voting rights to those convicted of felonies can be summarized within the following broad categories:

Automatic Restoration of Voting Rights Upon Completion of Prison Sentence: 14 states restore voting rights to those convicted of felonies upon completion of prison sentences (Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah.)

Automatic Restoration of Voting Rights Upon Completion of All Terms of Sentence (Prison, Parole, Probation): 23 states restore voting rights to those convicted of felonies upon completion of prison sentences and completion of all conditions of parole and/or probation (Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin.)

Conditional Automatic Restoration of Voting Rights: 7 states restore voting rights automatically to certain convicted felons only, usually contingent on the type of felony committed and/or how many felony convictions are on a person's record (Alabama, Arizona, Delaware, Mississippi, Nevada, Tennessee, and Wyoming.)

No Automatic Restoration of Voting Rights: 4 states do not allow automatic restoration of voting rights to those convicted of felonies; voting rights can only be reinstated by state officer or board (Florida, Iowa, Kentucky, and Virginia.)

Impact of Voting Rights Restrictions on Those Convicted of Felonies – National

According to a 2016 report by the Sentencing Project, an estimated total of 6.1 million Americans are prohibited from voting due to legal restrictions on citizens convicted of felony offenses. This represents a disenfranchisement rate of 2.5 percent, based on a voting age population of 247.2 million. Of these 6.1 million, it is estimated that 77 percent are not in prison but are living in their communities, having either completed their sentences (51 percent) or are serving parole or probation (26 percent.)

Impact of Voting Rights Restrictions on Those Convicted of Felonies – Florida

According to the same report, an estimated 1.7 million Floridians are prohibited from voting due to legal restrictions on citizens convicted of felony offenses, almost 28 percent of the 6.1 million national total. This represents a disenfranchisement rate of 10.4 percent, based on a voting age population of 16.2 million. Both the total number and the percentage rate represent the highest amounts of any state in the country. Of these 1.7 million, it is estimated that 94 percent are not in prison but are living in their communities, having either completed their sentences (88 percent) or are serving parole or probation (6 percent.).

B. EFFECT OF PROPOSED CHANGES:

The proposal amends Article VI, Section 4 of the Florida Constitution, adding a paragraph to provide a list of specific felonies to which the current language on being prohibited to vote or hold office until restoration of civil rights would apply. The new paragraph (a)(1) would read as follows:

(a)(1) No person convicted of a life or capital felony, a forcible felony defined under state law as murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing; projecting, placing, or discharging of a destructive device or bomb; or any other felony involving the use or threat of physical force or violence against any individual, or adjudicated in this or any other state to be mentally incompetent, is qualified to vote or hold office until restoration of civil rights or removal of disability.

Further, another new paragraph is added that reads:

(2) No person convicted of a felony may vote or hold office until the person has been released from incarceration and any post-conviction supervision, and has paid all court costs and court-ordered restitution or has established a payment plan to pay all court costs and court-ordered restitution.

Taken together, the effect of these changes appear to specify that those convicted of felonies other than the violence-related ones listed in the first paragraph would have their rights to vote and hold office automatically restored upon the completion of incarceration, post-incarceration supervision, and or formal commitment to pay restitution. Those convicted of the violence-related felonies listed in the first paragraph would not qualify to vote or hold office until they satisfied all the conditions of the second paragraph and go through the existing process to have their civil rights restored.

The felonies listed in the first paragraph roughly conform to the following Florida Department of Corrections summary categories for inmate admission statistics: Murder, Manslaughter; Sexual Offenses; Robbery; Violent Personal Offenses; and Burglary. According to Florida Department of Corrections data for fiscal year 2015-16, of the total number of inmate admissions for that year an estimated 42.3 percent were for violent offenses in the categories specified in this proposal. If the assumption is made that a similar ineligibility for automatic rights restoration percentage exists within the 1.5 million Floridians estimated by the Sentencing Project to have been convicted of felonies, completed their sentences, and have not had their rights restored, approval of this proposal would automatically restore the right to vote and hold office to approximately 858,500 Floridians.

If approved by the voters, the proposal will take effect on January 8, 2019.¹

C. FISCAL IMPACT:

Depending on how the proposal would ultimately be implemented through statute and rule, state and local governments could potentially see indeterminate increased administrative costs associated with the increase in the number of Floridians eligible to vote.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

¹ See FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

D. Related Issues:

On Tuesday, January 23, 2018, the “Voting Restoration Amendment,” a constitutional amendment proposed by citizen initiative, was approved to appear on the November 2018 general election ballot as Amendment 4. The “Voting Restoration Amendment” provides for automatic restoration of the voting rights of convicted felons, except murders or sex offenders, upon completion of all terms of sentence including parole or probation.²

² THE FLORIDA DEPARTMENT OF STATE DIVISION OF ELECTIONS, *Voting Restoration Amendment 14-01*, <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Jan. 28, 2018).