

**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.)

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

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BILL: SB 934

INTRODUCER: Senator Thurston

SUBJECT: Restoration of Civil Rights

DATE: March 3, 2017

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 934 may be cited as the “Restoration of Civil Rights Act.” The bill provides that a person convicted of a felony (except for crimes excluded by the bill) shall have his or her civil rights restored upon completion of his or her sentence. “Completion of sentence” occurs when a person is released from incarceration upon expiration of his or her sentence and has completed all other terms and conditions of the sentence or subsequent supervision. It also occurs if a person has not been incarcerated for the felony but has completed all terms and conditions of supervision.

Persons convicted of any of the following offenses are ineligible for automatic restoration of civil rights:

- Murder;
- Aggravated manslaughter of a child;
- Sexual battery;
- Incest;
- Sexual performance by a child; or
- Selling or buying minors.

A person is also ineligible for automatic restoration of civil rights if he or she was convicted of treason or if his or her impeachment has resulted in conviction.

However, the bill does not impair the ability of a person convicted of a felony to apply for executive clemency.

The bill requires a court to provide a defendant certain notice about restoration of civil rights before accepting a guilty plea or imposing a sentence for a felony.

The Secretary of State is required to develop and implement a program to educate members of the public, attorneys, judges, election officials, and corrections officials, including parole and probation officers, about the requirements of this bill.

The bill applies retroactively to all persons who are eligible for restoration of civil rights under the bill, regardless of whether such persons were convicted or discharged from sentence before the effective date of the bill.

The bill takes effect on the effective date of SJR 270 or another amendment to the State Constitution which authorizes, or removes impediments to, enactment of this bill by the Legislature.

## II. Present Situation:

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights.<sup>1</sup> 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.<sup>2</sup> Other civil rights that are lost in accordance with statute include the right to serve on a jury<sup>3</sup> and the right to possess a firearm.<sup>4</sup>

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.<sup>5</sup> Section 940.05, F.S., provides that any person convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her before conviction<sup>6</sup> if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served that 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> Section 944.292, F.S.

<sup>2</sup> Article VI, s. 4, Fla. Const.

<sup>3</sup> Section 40.013, F.S.

<sup>4</sup> Sections 790.06(2)(d) and (k) and 790.23, F.S.

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

<sup>6</sup> 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).

<sup>7</sup> Rules of Executive Clemency 2(B).

<sup>8</sup> Rules of Executive Clemency 4. Article IV, s. 8, Fla. Const.

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

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

### **III. Effect of Proposed Changes:**

#### **Short Title**

The short title of the bill is the “Restoration of Civil Rights Act.”

#### **Findings and Purpose**

The bill provides the following Legislative findings:

- The exercise of civil rights is a fundamental aspect of citizenship. Restoring civil rights allows former felons to participate in public service, serve on juries, and pursue chosen occupations.
- Restoring civil rights helps felons who have completed their sentences to reintegrate into society. Having opportunities to fully participate in society reinforces their ties to their communities and may help to prevent recidivism.
- Under current law, all persons convicted of felonies permanently lose many civil rights unless they receive discretionary executive clemency.
- The restoration of civil rights through the clemency process is cumbersome, costly, and produces long delays. The clemency process imposes administrative burdens on the state and economic burdens on state taxpayers and should be reserved for extraordinary cases. Streamlining the restoration process for the majority of former felons will advance administrative efficiency, fiscal responsibility, fairness, and democracy.

The bill provides that its purpose is to “strengthen democratic institutions by enabling persons who have completed their felony sentences to become productive members of society and to streamline procedures for restoring civil rights.”

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<sup>10</sup> Rules of Executive Clemency 9(A)

<sup>11</sup> Rules of Executive Clemency 9(A)4.

<sup>12</sup> Rule of Executive Clemency 10(A).

## **Restoration of Civil Rights**

The bill creates s. 944.294, F.S., to provide that a person convicted of a felony<sup>13</sup> shall have his or her civil rights restored upon completion of his or her sentence. “Completion of sentence” occurs when a person is released from incarceration upon expiration of his or her sentence and has completed all other terms and conditions of the sentence or subsequent supervision. It also occurs if a person has not been incarcerated for the felony but has completed all terms and conditions of supervision.

### ***Persons ineligible for restoration of civil rights***

Persons convicted of any of the following offenses are ineligible for automatic restoration of civil rights under the bill:

- Murder;<sup>14</sup>
- Aggravated manslaughter of a child;<sup>15</sup>
- Sexual battery;<sup>16</sup>
- Incest;<sup>17</sup>
- Sexual performance by a child;<sup>18</sup> or
- Selling or buying minors.<sup>19</sup>

A person is also ineligible for automatic restoration of civil rights if he or she was convicted of treason or if his or her impeachment has resulted in conviction.<sup>20</sup>

However, the bill does not impair the ability of a person convicted of a felony to apply for executive clemency pursuant to the Florida Constitution.

## **Notification by the Court**

Before accepting a plea of guilty or nolo contendere to a felony without trial or, if a trial is held, before imposing sentence for a felony, a court shall notify the defendant as follows:

- Felonies that preclude a person from being eligible for restoration of civil rights as enumerated above do not preclude a person from applying for executive clemency.
- If the felony does not preclude a person from being eligible for restoration of civil rights as enumerated above, the defendant must complete his or her sentence before his or her civil rights are restored, except for the right to own, possess, or use firearms.

## **Secretary of State**

The bill requires the Secretary of State to develop and implement a program to educate members of the public, attorneys, judges, election officials, and corrections officials, including parole and

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<sup>13</sup> Except those felonies enumerated in s. 944.294(3), F.S., created by the bill.

<sup>14</sup> Section 782.04, F.S.

<sup>15</sup> Section 782.07(3), F.S.

<sup>16</sup> Section 794.011, F.S.

<sup>17</sup> Section 836.04, F.S.

<sup>18</sup> Section 827.071, F.S.

<sup>19</sup> Section 847.0145, F.S.

<sup>20</sup> Article IV, s. 8, Fla. Const.

probation officers, about the requirements of this bill. In doing so, the Secretary of State shall ensure that:

- Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their civil rights.
- Accurate and complete information about the civil rights of people who have been charged with or convicted of crimes, whether disenfranchising or not, is made available through a single publication to government officials and the public.

### **Suspension of Civil Rights**

Section 944.292, F.S., is amended to provide that in addition to a full pardon, conditional pardon, or through clemency, civil rights may be restored as provided for in this bill.

### **Release Orientation Program**

Section 944.705, F.S., is amended to require the Department of Corrections to include instruction on restoration of civil rights in the release orientation program.

### **Retroactivity**

The bill applies retroactively to all persons who are eligible for restoration of civil rights, regardless of whether such persons were convicted or discharged from sentence before the effective date of this bill.

### **Effective Date**

The bill takes effect on the effective date of SJR 270 or another amendment to the State Constitution which authorizes, or removes impediments to, enactment of this bill by the Legislature.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The impact to the Department of State is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 1975, Florida Governor Askew requested an advisory opinion on whether the Florida Correctional Reform Act presented an infringement upon the constitutional power of the Governor and Cabinet to restore civil rights. The Florida Correctional Reform Act provided for suspension and automatic reinstatement of civil rights for prisoners through statute. The Florida Supreme Court answered in the affirmative and determined that it was a clear infringement upon the constitutional power of the Governor to restore civil rights through executive clemency.<sup>21</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 944.292 and 944.705.

This bill creates section 944.294 of the Florida Statutes.

**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.

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

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<sup>21</sup> In re Advisory Opinion of Governor Civil Rights, 306 So. 2d 520 (Fla. 1975).