

**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 Judiciary

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BILL: CS/SB 7086

INTRODUCER: Judiciary Committee and Criminal Justice Committee

SUBJECT: Voting Rights Restoration

DATE: April 10, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cox</u>	<u>Jones</u>		<b>CJ Submitted as Committee Bill</b>
1.	<u>Cox</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7086 makes a number of conforming changes to ensure the Amendment 4 ballot initiative approved by the Florida voters in 2018 is uniformly implemented and relevant terms are defined.

Specifically, the bill creates s. 98.0751, F.S., codifying that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4 of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. Additionally, the bill defines necessary terms, including “completion of all terms of sentence,” “felony sexual offense,” and “murder.”

The bill authorizes the Department of State (DOS) to verify whether a person who has been convicted of a felony and may be eligible for rights restoration pursuant to Article VI, section 4 of the Florida Constitution, has completed all terms of his or her sentence as required in the bill. The verification must be conducted when such person registers or applies to register to vote. The bill provides specific rulemaking authority to the DOS to implement the act.

The bill also creates an undesignated section of law which establishes the Restoration of Voting Rights Work Group within the DOS for the purpose of conducting a comprehensive review of the process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony but who may be eligible for restoration of voting rights. The bill establishes the Work Group membership and appointment procedures and also provides duties. The Work Group

is required to submit a report of its specified recommendations to the Legislature by November 1, 2019.

The bill amends s. 940.061, F.S., requiring the Department of Corrections (DOC) to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

Sections 97.052, 97.053, 98.045, and 98.075, F.S., are amended to revise the term “civil” to “voting” clarifying that these provisions relate to the restoration of voting rights. Section 98.075, F.S., is also amended to require county supervisors of elections to notify a potential voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution. Lastly, s. 944.292, F.S., is amended to reference the voting rights restoration process.

The Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to the DOS as a result of additional duties necessary to verify certain voters’ eligibility to vote pursuant Article VI, section 4 of the Florida Constitution. Additionally, certain entities will likely see increased workload and a positive fiscal impact (i.e. increase in costs) as a result of the requirement for such entities to notify inmates or offenders of outstanding terms of sentence. *See* Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## **II. Present Situation:**

### **Voting Registration in Florida**

#### ***Eligibility to Register to Vote***

The Florida Constitution and Florida Statutes provide for a person’s eligibility to vote in an election<sup>1</sup> and specifically state that a person is eligible to vote in Florida only if that person is:

- At least 18 years old;
- A United States citizen;
- A legal resident of Florida;
- A legal resident of the county in which the person seeks to register; and
- Registered pursuant to the Florida Election Code.<sup>2</sup>

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<sup>1</sup> Section 97.021(12), F.S., defines “election” to mean any primary election, special primary election, special election, general election, or presidential preference primary election.

<sup>2</sup> FLA. CONST. art. VI, s. 2; s. 97.041(1), F.S. *See also* s. 97.011, F.S., providing that chs. 97-106, F.S., are known as the “Florida Election Code.”

In part, a person is not qualified to register to vote in Florida, without having his or her voting rights restored, if he or she has been convicted of a felony<sup>3</sup> by any court of record.<sup>4</sup> The Secretary of State, who is the head of the Florida Department of State (DOS), is designated as the chief election officer of Florida<sup>5</sup> and is required, in part, to:

- Obtain and maintain uniformity in the interpretation and implementation of the election laws;<sup>6</sup>
- Enact rules to provide uniform standards for the proper and equitable implementation of the registration laws;<sup>7</sup> and
- Create and administer a uniform statewide voter registration system as required by the Help America Vote Act of 2002.<sup>8</sup>

### ***Uniform Statewide Voter Registration***

The statewide voter registration system must contain the name and registration information of every legally registered voter in the state. The voter registration system is the official list of registered voters in the state and must provide secured access by authorized voter registration officials.<sup>9</sup> The DOS may not contract with any other entity for the operation of the statewide voter registration system.<sup>10</sup>

A supervisor of elections is an elected position whose primary duties include updating voter registration information, entering new voter registrations into the statewide voter registration system, and acting as the official custodian of documents received related to the registration of electors and changes in voter registration status of electors of the supervisor's county.<sup>11</sup> The supervisor of elections must also ensure that all voter registration and list maintenance procedures conducted and the voter registration system used are in compliance with any federal and state laws as well as the DOS rules through the statewide voter registration system.<sup>12</sup>

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<sup>3</sup> Article X, section 10 of the Florida Constitution defines "felony" to mean 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. Additionally, s. 775.08(1), F.S., defines "felony" to mean 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 imprisonment in a state penitentiary. "State penitentiary" is further defined to include state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

<sup>4</sup> FLA. CONST., art. VI, s. 4(a); s. 97.041(2), F.S.

<sup>5</sup> Section 97.012, F.S.

<sup>6</sup> Section 97.012(1), F.S.

<sup>7</sup> Section 97.012(2), F.S.

<sup>8</sup> Section 97.012(11), F.S. The secretary may delegate voter registration duties and records maintenance activities to voter registration officials provided that any responsibilities delegated are performed in accordance with state and federal law. Section 97.021(17), F.S., defines "lists of registered electors" to mean names and associated information of registered electors maintained by the DOS in the statewide voter registration system or generated or derived from the statewide voter registration system and provides that lists may be produced in printed or electronic format.

<sup>9</sup> Section 97.021(43), F.S., defines "voter registration official" to mean any supervisor of elections or individual authorized by the DOS to accept voter registration applications and execute updates to the statewide voter registration system.

<sup>10</sup> Section 98.035(2) and (3), F.S.

<sup>11</sup> Section 98.015, F.S.

<sup>12</sup> Section 98.015(10), F.S. The specific federal laws that are cited relating to compliance are the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Help America Vote Act of 2002.

As mentioned above, the DOS develops a uniform statewide voter registration application (application) for distribution to any person seeking to register to vote.<sup>13</sup> The application elicits specified information from the applicant, including, in part, the applicant's:

- Name;
- Date of birth;
- Address;
- County of residence;
- Race or ethnicity;
- State or county of birth;
- Sex; and
- Party affiliation.<sup>14</sup>

Additionally, the application must contain a question as to whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored. The convicted felon who has gained his or her rights back must not be made to divulge the existence of such a conviction when filling out an application. The affirmative statement required to be included in the application is: "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored."<sup>15</sup>

In part, applications must be accepted in the office of any supervisor of elections,<sup>16</sup> the DOS, or a voter registration agency during the hours that office is open or when mailed.<sup>17</sup> An application is complete and becomes the official voter registration record of that applicant when all information necessary to establish the applicant's eligibility as discussed above is received by a voter registration official.<sup>18</sup> The supervisor of elections must notify an applicant by mail within five business days if the applicant fails to provide any of the required information on the application and the applicant must be given an opportunity to complete the application to vote in the next election up until the book closing for that next election.<sup>19</sup>

### ***Verification of Eligibility and Maintenance of the Voting Registration System***

A supervisor of elections is prohibited from removing a voter from the statewide voter registration system except in limited circumstances, including, in part, as a result of a felony conviction.<sup>20</sup> The DOS identifies ineligible registered voters who qualify for removal from the registration system by comparing information received from specified entities, including, in part:

- The Florida Commission on Offender Review (FCOR);<sup>21</sup>

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<sup>13</sup> Section 97.052(1)(b), F.S.

<sup>14</sup> Section 97.052(2), F.S.

<sup>15</sup> Section 97.052(2)(t), F.S. Section 97.053(5)(a)6., F.S., further provides that this requirement is satisfied in the application with a mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored.

<sup>16</sup> Section 97.021(43), F.S., includes supervisors of election in the definition of "voter registration official" and provides that such entities accept voter registration applications and execute updates to the statewide voter registration system.

<sup>17</sup> Section 97.053(1), F.S.

<sup>18</sup> See s. 97.053(5)(a) and (6), F.S.

<sup>19</sup> Section 97.052(6), F.S.

<sup>20</sup> Section 98.045(2)(a), F.S.

<sup>21</sup> Section 98.093(2)(e), F.S., requires the FCOR to provide information on a bimonthly frequency that identifies persons granted clemency in the preceding month or any updates to prior records which occurred in the preceding month.

- The Department of Corrections (DOC);<sup>22</sup>
- The Florida Department of Law Enforcement (FDLE);<sup>23</sup> or
- A United States Attorney's Office.<sup>24</sup>

The DOS reviews ineligibility information, including relevant information provided by such entities, and makes an initial credibility and reliability determination.<sup>25</sup> The DOS notifies the voter's supervisor of elections if it determines the information is credible and reliable and provides a copy of supporting documentation indicating the voter's potential ineligibility.<sup>26</sup> A supervisor of elections must notify the registered voter of his or her potential ineligibility by mail within seven days after receiving the notice or information from the DOS. The notice must include:

- A statement regarding the basis for potential ineligibility and a copy of any supporting documentation;
- A statement that failing to respond within 30 days after receiving the notice may result in an ineligibility determination and removal from the statewide voter registration system;
- A return form requiring the registered voter to admit or deny the accuracy of the information used to make the initial ineligibility determination;
- Instructions for contacting the supervisor of elections if the person requires assistance; and
- Instructions for seeking restoration of civil rights following a felony conviction, if applicable.<sup>27</sup>

If a registered voter fails to respond to the notice, or responds without requesting a hearing, the supervisor of elections makes a final ineligibility determination and may remove the voter from the statewide voter registration system and provide a notification of removal.<sup>28</sup>

If the voter denies the accuracy of the information and requests a hearing, the supervisor of elections must conduct a hearing at which the registered voter may present evidence, prior to making an eligibility determination. If the supervisor of elections determines the voter is ineligible following a hearing, the supervisor of elections may remove the voter from the statewide voter registration system and notify the voter of such action.<sup>29</sup> An eligibility determination must be supported by a preponderance of the evidence, and upon removal, a voter

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<sup>22</sup> Section 98.093(2)(f), F.S., requires the DOC to provide information identifying persons convicted of a felony and committed to the custody of or supervision with the DOC. This information must be provided in a time and in a manner that allows the DOC to identify registered voters who are convicted felons and to meet its obligations under state and federal law.

<sup>23</sup> Section 98.093(2)(d), F.S., requires the FDLE to provide information identifying persons convicted of a felony whose name appears in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables the FDLE to meet its obligations under state and federal law.

<sup>24</sup> Section 98.093(2)(c), F.S., requires the United States Attorney to provide information to the DOS listing persons convicted of a felony in federal court.

<sup>25</sup> Section 98.075(5), F.S.

<sup>26</sup> *Id.* Further, ss. 98.075(6) and 98.093(3), F.S., also authorize the supervisor of elections to remove the name of an ineligible person from the statewide voter registration system based on information received from other sources.

<sup>27</sup> Section 98.075(7)(a), F.S. Further, if the mailed notice is returned as undeliverable, the supervisor of elections must publish a specified notice once in a newspaper of general circulation in the county.

<sup>28</sup> Section 98.075(7)(a)3., F.S.

<sup>29</sup> Section 98.075(7)(a)5., F.S.

has the right to appeal the determination of ineligibility in the circuit court of the county where the person registered.<sup>30</sup>

Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.<sup>31</sup> When the name of any elector has been erroneously or illegally removed from the statewide voter registration system, the name of the elector must be restored by a voter registration official upon satisfactory proof, even though the registration period for that election is closed.<sup>32</sup>

In addition to updating the voter registration system as described above, the supervisor of elections is required to conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.<sup>33</sup>

### **Conditions Placed Upon Regaining the Right to Vote Subsequent to a Felony Conviction**

Poll taxes began in the 1890s and essentially operated as a voting fee. Eligible voters were required to pay a tax before they could cast a ballot.<sup>34</sup> In 1964, the 24th Amendment to the United States Constitution was ratified, which prohibited the use of poll taxes for federal elections.<sup>35</sup> Despite the federal ban on the use of poll taxes, states tried to keep them in operation. The United States Supreme Court held those attempts unconstitutional by finding that, “[A] state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”<sup>36</sup>

However, the issue of whether the imposition of fees or fines as a requisite to a completion of a sentence to *restore* voting rights has not been resolved. Florida’s suspension of a person’s voting rights subsequent to a felony conviction has been challenged on constitutional grounds a number of times. In *Beacham v. Brateman*, the court held that such suspension does not violate the Equal Protection nor the Due Process Clause of the United States Constitution, holding that a state may constitutionally exclude persons otherwise qualified to vote who have been convicted of a felony.<sup>37</sup>

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<sup>30</sup> Sections 98.075(7)(b) and 98.0755, F.S. Section 98.0755, F.S., further provides that notice of appeal must be filed within the time and in the manner provided by the Florida Rules of Appellate Procedure and the voter must bear the cost of the trial in the circuit court unless there is a finding that his or her name was erroneously or illegally removed from the statewide voter registration system, or that he or she is indigent.

<sup>31</sup> Section 98.075(7)(b)5., F.S.

<sup>32</sup> Section 98.081(2), F.S.

<sup>33</sup> Section 98.065(1), F.S. Further, s. 98.065(2), F.S., requires that a registration list maintenance program be conducted by each supervisor of elections, at a minimum, in each odd-numbered year and must be completed not later than 90 days prior to the date of any federal election.

<sup>34</sup> The National Museum of American History, *Poll Taxes*, available at <http://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/poll-taxes> (last visited March 20, 2019).

<sup>35</sup> *Id.*; U.S. CONST., amend. IV.

<sup>36</sup> See *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (U.S. 1966).

<sup>37</sup> *Beacham v. Brateman*, 300 F.Supp. 182, 184 (S.D. Fla. 1969).

In *Johnson v. Bush*, the plaintiffs’ alleged that the imposition of financial conditions on regaining the right to vote, specifically the requirement to pay all victim restitution, constituted a practical equivalent of a poll tax.<sup>38</sup> The court rejected this argument, reasoning that Florida had permissibly suspended the plaintiffs’ right to vote along with other civil rights based on their felony convictions and that the state’s requirement for the plaintiffs seeking to have their civil rights fully restored to satisfy victim restitution is one made within the state’s authority. Furthermore, the court held that payment of restitution to the victim was *part of the sentence* and thus, the sentence was not complete without such payment. The court further reasoned that the payment of restitution to the victim was not a condition precedent to the plaintiffs’ right to vote, but rather a prerequisite to having their civil rights restored.<sup>39</sup>

### Restoration of Civil Rights

As discussed above, a person convicted of a felony forfeits specified rights as a result of the conviction under the Florida Constitution.<sup>40</sup> Additional civil rights are lost in accordance with statute, including the right to serve on a jury<sup>41</sup> and possess a firearm.<sup>42</sup> Prior to 2019, the civil rights of a convicted felon were suspended until restored by a pardon<sup>43</sup> or restoration of civil rights.<sup>44</sup>

The Florida Constitution, in part, grants the power of restoring civil rights to the Governor with the consent of at least two Cabinet members.<sup>45</sup> The Governor and Cabinet sit as the Executive Board of Clemency (Clemency Board).<sup>46</sup> The Rules of Executive Clemency (Clemency Rules) outline the eligibility criteria for the process of restoration of civil rights, are adopted by the Governor with the approval of two members of the Clemency Board.<sup>47</sup> The Clemency Rules provide, in part, that the unfettered discretion to:

- Deny the restoration of civil rights at any time, for any reason, rests with the Governor; and
- Grant the restoration of civil rights at any time, for any reason, rests with the Governor, provided at least two members of the Clemency Board also approve.<sup>48</sup>

<sup>38</sup> *Johnson v. Bush*, 353 F.3d 1287, 1308 (11th Cir. 2003); *See also Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005).

<sup>39</sup> *Id.* at 1343. *See also Howard v. Gilmore*, 205 F.3d 1333 (4th Cir. 2000), where the court in that case held that requiring felons to pay a \$10 fee to the Circuit Court of Richmond in order to begin the process of having a person’s civil rights restored did not constitute an unconstitutional poll tax. *See also Johnson v. Bredesen*, 624 F.3d 742, 750-751 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010).

<sup>40</sup> Article VI, section 4 of the Florida Constitution provides that a person loses their right to hold office subsequent to a felony conviction.

<sup>41</sup> Section 40.013, F.S.

<sup>42</sup> Section 790.23, F.S. *See also* s. 790.06(2)(d) and (k), F.S.

<sup>43</sup> Florida provides for several types of pardons applicable to felony convictions. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. The FCOR, *Clemency Overview*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited March 19, 2019).

<sup>44</sup> Section 944.292, F.S.

<sup>45</sup> FLA. CONST. art. VI, s. 2. This authority is also codified in s. 940.01, F.S.

<sup>46</sup> Rules of Executive Clemency (2017), Rule 1., available at [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) (last visited March 20, 2019)(hereinafter cited as “Clemency Rule”).

<sup>47</sup> Section 940.03, F.S. *See also* Clemency Rule 2.A.

<sup>48</sup> Clemency Rule 4.

The current Clemency Rules define the restoration of civil rights as a process that restores all of the applicant's rights of citizenship enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.<sup>49</sup> The Clemency Rules further provide the specific authority to own, possess, or use a firearm must be restored through a separate process for such rights.<sup>50</sup>

### ***Restoration of Civil Rights Under Governor Scott's Administration***

The current Clemency Rules, which have not been amended since Governor DeSantis and the new Cabinet members were sworn into office on January 8, 2019, became effective March 9, 2011 under then Governor Scott.<sup>51</sup> Eligibility for restoration of civil rights is separated out between applications that require a hearing in front of the Clemency Board for approval and those that do not. The investigations for the applications requiring a hearing are more intensive than applications that do not require a hearing.<sup>52</sup>

For a person to qualify for civil rights restoration without a hearing an applicant must have not committed or been arrested for any crime for five years from the date of completion of all sentences, conditions of supervision imposed, and meet the following requirements:

- Complete all sentences imposed and all conditions of supervision must have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
- Have no outstanding detainers or pending criminal charges;
- Owe no restitution pursuant to a court order, civil judgment, or ch. 960, F.S.;<sup>53</sup>
- Not have a conviction for:
  - Murder, attempted murder, attempted felony murder, or manslaughter (ch. 782, F.S.);
  - Driving under the influence (DUI) manslaughter or DUI causing serious bodily injury (s. 316.193, F.S.);
  - Leaving the scene of an accident involving injury or death (s. 316.027, F.S.);
  - Sexual battery, attempted sexual battery, unlawful sexual activity with a minor, or female genital mutilation (ch. 794, F.S.);
  - Any violation of lewdness or indecent exposure (ch. 800, F.S.);
  - Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);<sup>54</sup>

<sup>49</sup> Clemency Rule 4.I.G. Restoration of civil rights in accordance with the Clemency Rules does not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

<sup>50</sup> See Clemency Rule 4.I.F.

<sup>51</sup> Clemency Rule 2.B. See also The FCOR, *Executive Clemency Timeline: 1991-2015*, p. 2 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as "Clemency Timeline").

<sup>52</sup> See The FCOR, *Annual Report 2016-17*, p. 15, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201617.pdf> (last visited March 20, 2019).

<sup>53</sup> The FCOR reports that the current Clemency Rules require all restitution to be paid even if such restitution is converted to a civil lien. However, the FCOR reports that other financial obligations do not have to be paid to be eligible for clemency unless the other obligation was ordered by the court as restitution. Email from Alexander Yarger, Legislative Affairs Director, the FCOR, January 2, 2019 (on file with the Senate Criminal Justice Committee). Chapter 960, F.S., provides compensation for crime victim assistance services including, but not limited to, mental health counseling, forensic physical examinations, and relocation assistance for specified crimes.

<sup>54</sup> Clemency Rule 9.A.4. A conviction for attempt to commit the offense also disqualifies a person from eligibility.



- Sexual performance by a child (s. 827.071, F.S.);<sup>55</sup>
- Aggravated child abuse (s. 827.03, F.S.);
- Failure to register as a sexual predator or sexual offender (s. 775.21 or s. 943.0435, F.S.);
- Computer pornography, transmission of computer pornography, or any crime involving a minor (ch. 847, F.S.);
- Kidnapping, false imprisonment, or luring or enticing a child (ch. 787, F.S.);<sup>56</sup>
- Aggravated battery (s. 784.045, F.S.);<sup>57</sup>
- Felony battery or domestic battery by strangulation (s. 784.041, F.S.);
- Robbery, carjacking, home invasion (ch. 812, F.S.);<sup>58</sup>
- Poisoning food or water (s. 859.01, F.S.);
- Abuse of a dead human body (s. 872.06, F.S.);
- Burglary of a dwelling or first degree burglary (s. 810.02, F.S.);<sup>59</sup>
- Arson (s. 806.01, F.S.);<sup>60</sup>
- Aggravated assault (s. 784.021, F.S.);
- Aggravated stalking (s. 784.048, F.S.);
- Battery, aggravated battery, or aggravated assault on an officer (s. 784.07, F.S.);
- Trafficking or conspiracy to traffic in a controlled substance or any other first or second degree felony (ch. 893, F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.161, F.S.);
- Facilitating or furthering terrorism (s. 775.31, F.S.);
- Treason (s. 876.32, F.S.);
- Possession of a firearm by a convicted felon or violent career criminal (s. 790.23 or s. 790.235, F.S.);
- Bribery, misuse of public office (ch. 838, F.S.), extortion by a state officer (s. 839.11, F.S.), misappropriation of money by a commission to make a sale (s. 839.17, F.S.), or any crime committed by an elected official while in office;
- Illegal use of explosives (ch. 552, F.S.);
- Racketeering (ch. 895, F.S.);
- Exploitation of an elderly person (s. 825.103, F.S.);
- Public corruption;
- Any felony violation of election law;
- A “dangerous crime” as defined by s. 907.041, F.S.; or
- A similar offense committed in another jurisdiction.

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<sup>55</sup> *Id.* A conviction for attempt to commit the offense also disqualifies a person from eligibility.

<sup>56</sup> *Id.* A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

<sup>57</sup> *Id.* A conviction for attempt to commit arson also disqualifies a person from eligibility.

<sup>58</sup> Clemency Rule 9.A.4. A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

<sup>59</sup> Clemency Rule 9.A.4. An attempt to commit an offense also disqualifies a person from eligibility.

<sup>60</sup> The attempt or conspiracy to commit an offense also disqualifies a person from eligibility.

Additionally, an applicant may not be previously declared a:

- Habitual felony offender;<sup>61</sup>
- Three-time violent felony offender;<sup>62</sup>
- Violent career criminal;<sup>63</sup>
- Prison Releasee Reoffender;<sup>64</sup> or
- Sexual predator.<sup>65</sup>

The FCOR reviews an applicant's eligibility for restoration of civil rights without a hearing, and if so qualified, the Clemency Board may restore civil rights. If approval is denied, FCOR notifies the applicant who may pursue a hearing to restore the applicant's civil rights.<sup>66</sup>

To qualify for restoration of civil rights with a hearing, an applicant must:

- Not be convicted of a felony for seven years or more after completing all sentences imposed for the applicant's most recent felony conviction, and all conditions of supervision are expired or completed, including but not limited to, imprisonment, parole, community control, control release, and conditional release; and
- Pay all restitution pursuant to a court order, civil judgment, or ch. 960, F.S.<sup>67</sup>

Clemency hearings occur four times a year and the Clemency Board allows an applicant to make a five-minute presentation. Following a hearing, the Clemency Board may issue an Executive Order restoring a person's civil rights. For each case, the applicant is entitled to a letter stating the official disposition of his or her case.<sup>68</sup> A person granted or denied any form of executive clemency may not apply for further relief for at least two years from the date of final action.<sup>69</sup>

### ***Role of Specified Entities in the Restoration of Civil Rights Process***

The FCOR's Office of Executive Clemency, in part, assists in the acceptance, review, and recommendation of applications for restoration of civil rights, as well as the agenda for Clemency Board meetings.<sup>70</sup> A coordinator must be appointed by the Clemency Board and serves as the official custodian of the records.<sup>71</sup> The FCOR's Office of Clemency Investigations, in part, conducts comprehensive, confidential investigations of persons that have applied for restoration of civil rights.<sup>72</sup> An individual seeking restoration of civil rights submits an application to the Office of Executive Clemency and the application is forwarded to the FCOR for investigation, report, and recommendation.<sup>73</sup>

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<sup>61</sup> Section 775.084(1)(b), F.S.

<sup>62</sup> Section 775.084(1)(c), F.S.

<sup>63</sup> Section 775.084(1)(d), F.S.

<sup>64</sup> Section 775.082(9)(a), F.S.

<sup>65</sup> Section 775.21, F.S.

<sup>66</sup> Clemency Rule 9.B.

<sup>67</sup> Clemency Rule 10.A.

<sup>68</sup> Clemency Rule 12.D.

<sup>69</sup> Clemency Rule 14.

<sup>70</sup> Clemency Rule 2.B. *See also* Clemency Timeline, p. 2.

<sup>71</sup> Clemency Timeline, p. 2.

<sup>72</sup> Section 947.13(1)(d), F.S., requires the FCOR to conduct investigations as may be necessary. *See also* Clemency Timeline, p. 2.

<sup>73</sup> Section 940.03, F.S. *See also* Clemency Rules 6 and 7.

The DOC is required to inform inmates and offenders on community supervision about the restoration of civil rights. Additionally, DOC is required to electronically send to the FCOR a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision that may be eligible for restoration of civil rights.<sup>74</sup>

#### **Amendment 4 (2018) Ballot Measure**

As mentioned above, until the 2018 election, Article VI, section 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until restoration of his or her civil rights.<sup>75</sup> At that time, Florida was one of only four states, including Iowa, Kentucky, and Virginia, that did not restore voting rights to a convicted felon unless and until restored by a state officer or board.<sup>76</sup>

In the 2018 General Election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Florida Constitution to provide voting rights restoration to specified voters. Specifically, the ballot language provided that “any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”<sup>77</sup> The provision excludes a “person convicted of murder or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.<sup>78</sup>

Following the passage of Amendment 4, advocates have asserted the amendment is self-executing and required no legislative implementation.<sup>79</sup> However, officials responsible for determining voter eligibility expressed considerable confusion and concerns about uniform implementation of the provisions across the state. As a result, the DOS has suspended the

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<sup>74</sup> Section 940.061, F.S.

<sup>75</sup> Article VI, s. 4, FLA. CONST.

<sup>76</sup> Florida Association of Counties, *Amendment 4: Voting Rights Restoration for Felons Initiative*, available at <http://www.fl-counties.com/amendment-4>. Additionally, the National Conference of State Legislatures (NCSL) provides a summary of state laws related to felon voting rights as of December 2018, including: that in two states, felons never lose their right to vote, even while they are incarcerated; in 14 states and the District of Columbia, felons lose their voting rights only while incarcerated, and receive automatic restoration upon release; in 22 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation, voting rights are automatically restored after this time period, and former felons may also have to pay any outstanding fines, fees or restitution before their rights are restored; and in 12 states felons lose their voting rights indefinitely for some crimes, or require a governor’s pardon in order for voting rights to be restored, or face an additional waiting period after completion of sentence (including parole and probation) before voting rights can be restored. See the NCSL, *Felon Voting Rights*, December 21, 2018, available at <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (all sites last visited on March 20, 2019).

<sup>77</sup> *Id.* See also Time, ‘Our Voice Will Count.’ *Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at <http://time.com/5447051/florida-amendment-4-felon-voting/> (last visited on March 20, 2019).

<sup>78</sup> The DOS, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 11, available at <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> (last visited on March 19, 2019).

<sup>79</sup> The Florida Rights Restoration Coalition (FRRC), *Amendment 4 Implementation, Frequently Asked Questions*, March 14, 2019 (on file with the Senate Criminal Justice Committee). This webpage has been subsequently taken down, however, the on file copy was printed from the website on such date.

process of reviewing criminal records it receives to verify a voter's eligibility for registration discussed above or sending such records to the supervisors of elections.<sup>80</sup>

The DOS, various supervisors of elections, and other entities involved in verifying an applicant's eligibility have reported, including during committee workshops in both the Florida Senate and the Florida House of Representatives, that much of the confusion with implementing Amendment 4 provisions centers around ambiguity related to which crimes qualify as "murder" or a "felony sexual offense" and what it means for an offender to have "completed all terms of sentence."<sup>81</sup>

During the Senate workshop, the political director for the Florida Rights Restoration Coalition (FRRRC), which is the grassroots organization that was instrumental in the passage of Amendment 4, stated that the FRRRC supports efforts to clarify what constitutes eligibility under the amendment, provided it does not infringe on the rights of people to vote. The political director of the FRRRC also acknowledged that there is confusion about eligibility and stated that they are advising people to wait to register to vote if a potential applicant is unsure about whether he or she qualifies for voting restoration under the ballot measure.<sup>82</sup>

In December 2018, then Governor-elect, Ron DeSantis, stated that Amendment 4 should take effect after lawmakers pass and he approves "implementing language" in a bill.<sup>83</sup> Additionally, the Secretary of State called for the Legislature to direct the DOS as to "implementation, definitions, [and other ambiguities raised by the supervisors of elections]."<sup>84</sup> On January 8, 2019, supervisors of elections began registering new voters eligible under Amendment 4 and continued to register new voters. However, supervisors of elections are registering such voters without an initial eligibility verification from the DOS. The DOS reports that there have been 132,532 new persons registered since January 8, 2019, which was the implementation date included in the Amendment 4 constitutional ballot language. However, this number is inclusive of all persons who have registered to vote in Florida since the implementation date, not just persons who have registered that may qualify under the new provisions of Article VI, section 4 of the Florida Constitution.<sup>85</sup>

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<sup>80</sup> Herald Tribune, *Florida elections officials confused on how to give felons the vote*, Zac Anderson, December 4, 2018, available at <https://www.heraldtribune.com/news/20181204/florida-elections-officials-confused-on-how-to-give-felons-vote> (last visited on March 20, 2019).

<sup>81</sup> Orlando Sentinel, *Florida election supervisors will register ex-felons Jan. 8, despite confusion over amendment*, Steven Lemongello, December 20, 2018, available at <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-former-felons-register-vote-20181220-story.html>; See also Senate Criminal Justice Committee, Workshop on Amendment 4, January 22, 2019, available at <https://thefloridachannel.org/videos/1-22-19-senate-criminal-justice-committee/> (hereinafter cited as "Senate Workshop Video") and House of Representatives Judiciary Committee and Criminal Justice Subcommittee Joint Workshop on Amendment 4, available at <https://thefloridachannel.org/videos/2-14-19-joint-house-meeting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/> (all sites last visited on March 20, 2019).

<sup>82</sup> Senate Workshop Video, at 1:06-1:07.

<sup>83</sup> Tampa Bay Times, *Ron DeSantis says Amendment 4 should be delayed until he signs bill from lawmakers*, Michael Van Sickler, December 13, 2018, available at <https://www.tampabay.com/florida-politics/buzz/2018/12/13/ron-desantis-says-amendment-4-should-be-delayed-until-he-signs-bill-from-lawmakers/> (last visited on March 20, 2019).

<sup>84</sup> Orlando Sentinel, *Florida elections officials express confusion over restoring felon voting rights*, Dara Kam, December 4, 2018, <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-election-felon-voting-rights-20181204-story.html> (last visited on March 20, 2019).

<sup>85</sup> Email from Brittany Dover, the DOS Legislative Affairs Director, March 25, 2019 (on file with the Senate Criminal Justice Committee). The DOS further states that this number is accurate as of March 25, 2019.

### *Completion of All Terms of Sentence*

As of March 14, 2019, the FRRC stated on its website that “completion of all terms of sentence” includes any period of incarceration, probation, parole, and financial obligations imposed as part of an individual’s sentence.<sup>86</sup> The FRRC further stated that the financial obligations contemplated may include restitution, fines, and fees imposed as part of a sentence or a condition of probation under existing Florida statutes. However, it stated that “fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for ‘completion of sentence’ and thus, do not need to be paid before an individual may register.”<sup>87</sup> The statement relates its position to the policies used by the FCOR to determine “completion of sentence.” However, the language in the statement by the FRRC does not align with the language used by the FCOR on its website or in the Rules adopted by Governor Scott’s Cabinet, which are still in effect today.<sup>88</sup>

Additionally, during oral arguments in front of the Florida Supreme Court concerning the single subject of the proposed Amendment 4 ballot language and whether the title and summary page provided a clear explanation of the initiative, the justices asked several questions about the intent of the ballot language to the FRRC counsel, Jon Mills. The questions specifically addressed the intent of the group for the terms in the amendment.<sup>89</sup> The FRRC counsel answered in the affirmative on multiple occasions when asked by the Court about whether certain terms, such as “the full payment of any fines,” “payment of fines and costs” and “payment of restitution when it was ordered to a victim as part of a sentence,” were contemplated by the “completion of all terms of sentence” provision.<sup>90</sup>

### Incarceration

A court may sentence a defendant convicted of a felony offense to any term of incarceration authorized under s. 775.082, F.S.<sup>91</sup> The Criminal Punishment Code (Code) is Florida’s primary sentencing policy. Generally, the permissible sentencing range under the Code is the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>92</sup>

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<sup>86</sup> *Supra* n. 79.

<sup>87</sup> *Id.*

<sup>88</sup> *See Id.*; *see also* Clemency Rules.

<sup>89</sup> The WFSU, Gavel to Gavel Video Portal, *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS)*, Case Number(s): SC16-1785, SC16-1981, March 6, 2017 available at <https://wfsu.org/gavel2gavel/viewcase.php?eid=2421> (last visited on March 19, 2019).

<sup>90</sup> *See* Transcript for *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS)*, Case Number(s): SC16-1785, SC16-1981, p. 4 and 10-11, available at [https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785\\_16-1981.pdf](https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf) (last visited on March 21, 2019).

<sup>91</sup> Section 775.082, F.S., provides that the statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.

<sup>92</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S., provides that if the total sentence points exceed 44 points, the lowest permissible sentence

Upon release, s. 944.705(6), F.S., requires the DOC to notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.<sup>93</sup>

### Parole

Prior to 1983, Florida law authorized defendants who were sentenced to certain felonies to be eligible for release onto parole supervision prior to the expiration of the inmate's court-ordered sentence. Parole is a period of supervision to be successfully completed by complying with the conditions and terms of the release agreement ordered by the FCOR. The decision of the FCOR to parole an inmate is considered an act of grace and is not a right. Currently, all inmates whose crimes were committed prior to October 1, 1983, may be considered for release on parole. There are a number of additional specified inmates that may be eligible for release on parole based on the type of offense committed and the date of such commission.<sup>94</sup>

### Community Supervision

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.<sup>95</sup> The DOC supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.<sup>96</sup>

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in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

<sup>93</sup> Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

<sup>94</sup> The FCOR, *Release Types, Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited March 20, 2019). Sections 947.16-947.24, F.S., provide for the eligibility criteria, process for the hearing and granting of parole, terms of parole, etc.

<sup>95</sup> Section 948.01, F.S.

<sup>96</sup> The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 21, 2019).

*Probation*

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.<sup>97</sup> There are also specialized forms of supervision such as drug offender probation<sup>98</sup> and mental health probation.<sup>99</sup> Section 948.03, F.S., requires a court to determine the terms and conditions of probation. A court may order additional specific terms and conditions of probation that it considers proper, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.<sup>100</sup> Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record. The standard terms and conditions of probation include, but are not limited to, a probationer to:

- Report to a probation officer as directed;
- Permit a probation officer to visit his or her workplace or home;
- Maintain employment, if possible;
- Live without violating the law;
- Make restitution to a victim, if applicable;
- Make payment of a debt due to a county or municipal detention facility for medical care;
- Support his or her legal dependents to the best of his or her ability;
- Pay the state any debt due for crime victim compensation;<sup>101</sup>
- Pay specified application<sup>102</sup> and attorney fees;<sup>103</sup>
- Not associate with persons engaging in criminal activity;
- Submit to random drug or alcohol testing; and
- Submit to drawing of blood or other biological specimens, for specified reasons.<sup>104</sup>

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<sup>97</sup> Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

<sup>98</sup> Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.

<sup>99</sup> Section 948.001(5), F.S., “mental health probation” means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.

<sup>100</sup> Section 948.03(1) and (2), F.S.

<sup>101</sup> Section 960.17, F.S.

<sup>102</sup> Section 27.52(1)(b), F.S.

<sup>103</sup> Section 938.29, F.S.

<sup>104</sup> Section 948.03, F.S.

### *Community Control*

Community control<sup>105</sup> is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.<sup>106</sup> The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.<sup>107</sup> A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.<sup>108</sup>

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply as well as additional terms of supervision as part of his or her community control sentence.<sup>109</sup>

### Financial Obligations of a Sentence

#### *Restitution*

Unless a clear and compelling reason is found for not ordering restitution, a court must order the defendant to make restitution to the victim, if applicable,<sup>110</sup> in addition to any punishment. The restitution may be ordered for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.<sup>111</sup>

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<sup>105</sup> Section 948.001(3), F.S.

<sup>106</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>107</sup> Section 948.10(1), F.S.

<sup>108</sup> *Id.*

<sup>109</sup> *See* s. 948.101(1) and (2), F.S.

<sup>110</sup> Section 775.089(1)(c), F.S., defines the term "victim" to mean each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, F.S., when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode. The term also includes the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation relating to violations of s. 540.11(3)(a)3., F.S., applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. The term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

<sup>111</sup> Section 775.089(1)(a), F.S. Section 960.001(1)(j), F.S., also speaks to a victim's right to request, receive, and enforce restitution pursuant to s. 775.089, F.S., or s. 985.437, F.S.



Restitution may be monetary or nonmonetary restitution. If a court places an offender on probation, it must make the payment of restitution a condition of probation.<sup>112</sup> A court may require an offender to make restitution payments within a specified period or in installments. An offender must pay restitution no later than:

- The end of the period of probation ordered;
- Five years after the end of the term of imprisonment, if the court does not order probation; or
- Five years after the sentencing date in any other case.<sup>113</sup>

A court may order the clerk of courts to collect and dispense restitution payments in any case or the DOC to collect and dispense restitution and other payments from a person remanded to its custody or supervision.<sup>114</sup> A court may also order an income deduction order related to restitution. The clerk of court receives a payment made pursuant to an income deduction order.<sup>115</sup>

### *Court Costs, Fines, and Fees*

A person convicted of a felony offense is assessed court costs and fines upon the disposition of a case. Chapter 938, F.S., provides a number of court costs that are associated with criminal cases in Florida. Some of these costs are mandatory in all cases.<sup>116</sup> There are a number of other costs that are mandatory costs for specific types of cases,<sup>117</sup> mandatory court costs authorized by local governmental entities,<sup>118</sup> or discretionary costs in specific types of cases.<sup>119</sup> Fines are generally proscribed by the degree of offense committed, but there can be additional fines added for specific offenses.<sup>120</sup> There are also fees that may be assessed at the conclusion of a case, such as an application fee for the services of a public defender or regional conflict counsel.<sup>121</sup>

In addition to standard court costs and fines, a person ordered to supervision must pay the DOC monthly supervision fees and may be subject to fees for additional conditions such as electronic monitoring or urinalysis. Failure to pay supervision fees may result in revocation of probation; however, the DOC can exempt a person from payment of supervision fees if it makes specified findings related to the offender's financial or employment status.<sup>122</sup>

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<sup>112</sup> *Id.* An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to ch. 960, F.S. Payment of an award by the Crimes Compensation Trust Fund creates an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived.

<sup>113</sup> Section 775.089(3), F.S.

<sup>114</sup> Section 775.089(1)(a) and (b), F.S.

<sup>115</sup> Section 775.089(12), F.S.

<sup>116</sup> Some of the mandatory costs imposed in all cases include s. 938.01, F.S. (additional court costs clearing trust fund); s. 938.03, F.S. (Crimes Compensation Trust Fund), s. 938.04, F.S. (additional costs with respect to criminal fines); s. 938.05, F.S. (additional costs for felonies, misdemeanors, and criminal traffic offenses); s. 938.055, F.S. (Operating Trust Fund of the Department of Law Enforcement); and s. 938.06, F.S. (cost for crime stoppers programs).

<sup>117</sup> See ss. 938.07-938.13, F.S.

<sup>118</sup> See ss. 938.15 and 938.17, F.S.

<sup>119</sup> See ss. 938.21-938.301, F.S.

<sup>120</sup> Section 775.083, F.S. Additionally, specific fines can occur throughout Florida statute related to specific offenses. For example, s. 893.135, F.S., imposes mandatory fines related to drug trafficking, while s. 817.568, F.S., imposes additional surcharge fines for the offense of the criminal use of personal identification information.

<sup>121</sup> Section 938.29, F.S.

<sup>122</sup> See ss. 948.03 and 948.09, F.S.

*Civil Judgment Liens*

Any person liable for payment of any financial obligation, such as restitution, fines, or fees discussed above, in any criminal case is subject to s. 938.30, F.S., and courts have jurisdiction over such financial obligations to ensure compliance. A court has the authority, in part, to:

- Require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation.
- Convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining the person's inability to pay.<sup>123</sup>
- Order that any nonexempt property of the person which is in the hands of another be applied toward satisfying the obligation.<sup>124</sup>

The outstanding unpaid amount accrues interest, and when properly recorded, becomes a lien on any real estate owned by the defendant.<sup>125</sup>

If a civil judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.<sup>126</sup> However, if a criminal or civil judgment has previously been entered on a court-imposed financial obligation, the judgment constitutes a civil lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S.<sup>127</sup>

The judgment must secure all unpaid court-imposed financial obligations that are due and may accrue subsequent to the recording of the judgment, as well as interest and reasonable costs for issuing a satisfaction and recording the satisfaction in the official records.<sup>128</sup>

The clerk of the court must enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected through the civil lien process.<sup>129</sup> Additionally, the court may order the person to comply with a payment schedule to satisfy the obligation.<sup>130</sup>

A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, provided that the judgment contains the address of the person who has a lien as a result of such judgment is recorded simultaneously stating the address of the person who has a lien as a result of such

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<sup>123</sup> Section 938.30, F.S. Community service may be ordered subject to the provisions of s. 318.18(8), F.S. Additionally, any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.

<sup>124</sup> Section 938.30(5), F.S.

<sup>125</sup> *Id.*

<sup>126</sup> Section 938.30(6), F.S.

<sup>127</sup> Section 938.30, F.S. Additionally, authority to convert and enforce restitution as a civil lien is addressed in s. 775.089(3), F.S. However, s. 938.30(8), F.S., provides a judgment on a court-imposed financial obligation is not subject to the 10-year rerecording requirement of s. 55.10, F.S.

<sup>128</sup> *Id.*

<sup>129</sup> Section 938.30(9), F.S.

<sup>130</sup> Section 938.30(10), F.S.

judgment, order, or decree.<sup>131</sup> Such a lien must expire after 20 years from the date of the entry of the judgment.<sup>132</sup>

### ***Felony Sexual Offense***

Florida law does not define “felony sexual offense,” however, several places in statute define the term “sexual offense.”<sup>133</sup> Florida law requires a person convicted of specified offenses that are sexual in nature to register as a sexual offender or sexual predator.<sup>134</sup> Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);<sup>135</sup>
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);
- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

<sup>131</sup> Section 55.10(1), F.S.

<sup>132</sup> Sections 55.10(2) and 55.081, F.S.

<sup>133</sup> For example, s. 92.55, F.S., relating to protections for specified witnesses, defines the term to include any offense for which a conviction requires an offender to register as a sexual predator or sexual offender pursuant to s. 775.21 or s. 943.0435, F.S., respectively. Additionally, s. 90.404, F.S., relating to admissibility of character evidence, defines the term to mean specified enumerated offenses that also require an offender to register on the sexual predator and sexual offender registries.

<sup>134</sup> *See generally*, ss. 775.21, 943.0435, and 944.607, F.S. In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements.

<sup>135</sup> However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor.

In addition to the above listed offenses, there are a number of offenses that are classified as a felony that have an element that is sexual in nature, but that do not require registration as a sexual predator or sexual offender, including:

- Prostitution or soliciting a prostitute, subsequent conviction (ss. 796.07 and 796.08, F.S.);
- Video voyeurism (s. 810.145(6) and (7), F.S.);<sup>136</sup>
- Incest (s. 826.04, F.S.);
- Lewd or lascivious exhibition in the presence of a correctional facility employee (s. 800.09(2), F.S.);
- Sexual offenses against a student by an authority figure (s. 800.101(2), F.S.);
- Locating an adult entertainment store within 2,500 feet of a school (s. 847.0134(1), F.S.);
- Committing an enumerated offense by a person who is HIV positive (s. 775.0877, F.S.);
- Sexual cyberharassment, second or subsequent offense (s. 784.049(3)(b), F.S.);
- Sexual misconduct between a detention facility employee and an inmate (s. 951.221(1), F.S.);
- Sexual misconduct by a psychotherapist with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact (s. 491.0112(1) and (2), F.S.);
- Sexually abusing a dead human body (s. 872.06(2), F.S.);
- Sexual misconduct by a correctional facility employee with an inmate (s. 944.35(3)(b)2., F.S.);
- Committing specified acts with obscene, lewd, etc. materials, second or subsequent offense (s. 847.011(1), F.S.);
- Requiring as a condition to sale or delivery for resale of a publication that a purchaser or consignee receive for resale any other obscene publication (s. 847.011(3), F.S.);
- Knowingly promoting, conducting, performing, or participating in an obscene show, second or subsequent offense (s. 847.011(4), F.S.);
- Sale or distribution to minors or using minors in production of harmful materials (s. 847.012, F.S.); and
- Wholesale promotion of obscene materials (s. 847.07(2) and (3), F.S.).

### ***Murder***

Chapter 782, F.S., establishes a number of offenses that impose penalties for the killing of another person.

Section 782.04, F.S., prohibits the unlawful killing of a human being in a number of circumstances and specifically provides that:

- Murder in the first degree, which is a capital felony,<sup>137</sup> is the unlawful killing of a human being when committed:
  - With premeditation to cause the death of the person killed or any human being; or
  - By a person engaged in perpetrating, or attempting to perpetrate, any:
    - Drug trafficking offense (s. 893.135, F.S.);

<sup>136</sup> This provides penalties for when the offense is committed by a person 19 or older, or when the offense is a second or subsequent offense. These specific provisions do not require registration as a sexual offender as required by a violation of s. 810.145(8), F.S.

<sup>137</sup> A capital felony is punishable by death or life imprisonment. Section 775.082(1)(a), F.S.

- Arson (s. 806.01, F.S.);
- Sexual battery (s. 794.011, F.S.);
- Robbery or home-invasion robbery (s. 812.13 or s. 812.135, F.S.);
- Burglary (s. 810.02, F.S.);
- Kidnapping (s. 787.01, F.S.);
- Escape (s. 944.40, F.S.);
- Aggravated child abuse (s. 827.03, F.S.);
- Aggravated abuse of an elderly person or disabled adult (s. 825.1025, F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.);
- Carjacking (s. 812.133, F.S.);
- Aggravated stalking (s. 784.048, F.S.);
- Murder of a human being (s. 782.04, F.S.);
- Resisting an officer with violence (s. 843.01, F.S.);
- Aggravated fleeing or eluding with serious bodily injury or death (s. 316.1935(4)(b), F.S.);
- A felony act of terrorism;<sup>138</sup>
- Human trafficking (s. 787.06, F.S.); or
- Unlawful distribution of a specified controlled substance,<sup>139</sup> which is the proximate cause of a user's death.<sup>140</sup>
- Murder in the second degree, which is a felony of the first degree punishable by imprisonment for a term of years not exceeding life,<sup>141</sup> is the unlawful killing of a human being when:
  - Perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, but without any premeditated design to effect the death of any particular individual;<sup>142</sup>
  - Committed by a person other than the person engaged in the commission of, or attempt to commit, an enumerated felony<sup>143</sup> during such felony.<sup>144</sup>

<sup>138</sup> Or an act in furtherance of terrorism, including a felony under s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S., s. 775.34, F.S., or s. 775.35, F.S.

<sup>139</sup> A substance controlled under s. 893.03(1), F.S., includes substances such as cocaine, opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone, alfentanil, carfentanil, fentanyl, sufentanil, or specified controlled substance analogs.

<sup>140</sup> Section 782.04(1)(a), F.S.

<sup>141</sup> A first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a fine of \$10,000. Sections 775.082(3)(b)1. and 775.083, F.S.

<sup>142</sup> Section 782.04(2), F.S.

<sup>143</sup> Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. Section 782.04(3), F.S.

<sup>144</sup> Section 782.04(3), F.S.

- Murder in the third degree, which is a second degree felony,<sup>145</sup> is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony not enumerated by statute.<sup>146</sup>

Other offenses included in ch. 782, F.S., which result in the killing of a human being, but are not specifically included in s. 782.04, include:

- Attempted felony murder (s. 782.051, F.S.);
- Manslaughter and aggravated manslaughter (s. 782.07, F.S.);
- Vehicular homicide and vessel homicide (ss. 782.071 and 782.072, F.S.);
- Assisting self-murder and commercial exploitation of self-murder (ss. 782.08 and 782.081, F.S.);
- Killing of an unborn child by injury to its mother (s. 782.09, F.S.);
- Unnecessary killing to prevent an unlawful act (s. 782.11, F.S.); and
- Partial-birth abortion (s. 782.34, F.S.).

### III. Effect of Proposed Changes:

#### **Codification of Article VI, Section 4 of the Florida Constitution and Relevant Definitions**

The bill creates s. 98.0751, F.S., codifying the language passed in Amendment 4 (2018) and defining specified relevant terms. The bill provides that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4, of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. The bill further provides that the voting disqualification that arises from a felony conviction of murder or a felony sexual offense as defined below does not terminate unless a person's civil rights are restored pursuant to Article IV, section 8 of the Florida Constitution.

#### *Completion of All Terms of Sentence*

The bill defines “completion of all terms of sentence” to mean:

- Release from any term of imprisonment ordered by the court as a condition of the sentence;
- Termination from any term of probation or community control ordered by the court as a condition of the sentence;
- Fulfillment of any term ordered by the court as a condition of the sentence;
- Termination from any term of parole supervision which is monitored by the FCOR;
- Payment of all restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to a civil lien; and
- Payment of all fees and fines ordered by the court as part of the sentence or that are ordered as a condition of probation, community control, or parole.

<sup>145</sup> A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>146</sup> Section 782.04(4), F.S. *See also supra* n. 142.

The definition provides that a financial obligation, other than restitution, required to be paid in accordance with the bill is deemed to have been completed to the extent that the financial obligation has been converted to a civil lien. The definition does not include court costs.

### ***Felony Sexual Offense***

The bill defines the term “felony sexual offense” to include any offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S., or any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in Florida.<sup>147</sup>

### ***Murder***

The bill defines “murder” to include:

- A violation of s. 782.04(1) or (2), F.S. (murder in the first degree and murder in the second degree mentioned above, excluding felony murder in the second degree), which results in the actual killing of a human being; or
- A violation of s. 782.09, F.S. (killing of an unborn child by injury to the mother), that results in the actual killing of the unborn child; or
- Any similar offense committed in another jurisdiction which would be an offense listed above if it had been committed in Florida.

### ***Verification of Eligibility and Rulemaking***

The bill authorizes the DOS to verify whether a person who has been convicted of a felony and may be eligible for rights restoration pursuant to Article VI, section 4 of the Florida Constitution, has completed all terms of his or her sentence as required in the bill. The verification must be conducted when such person registers or applies to register to vote.

The bill also provides specific rulemaking authority to the DOS to implement the act and prescribe forms to carry out the bill.

### ***Notification of All Outstanding Terms of Sentence***

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

The bill amends s. 944.705, F.S., and creates s. 948.041, F.S., requiring the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control. The bill references the newly created s. 98.0751, F.S., for a list of potential terms of sentence that must be included in the written notification.

The bill also amends s. 951.29, F.S., requiring all county detention facilities to provide a prisoner in writing of specified information at least two weeks prior to his or her discharge, if possible. The specified information required to be provided includes:

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<sup>147</sup> As mentioned above, this definition includes any offenses that require registration as a sexual predator.

- Information explaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution; and
- Written notification of all outstanding terms of the prisoner's sentence at the time of release to assist the prisoner in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

For inmates being released from imprisonment with the DOC or county detention facilities, the bill provides that written notification does not have to be given if the inmate or prisoner is being released to a term of supervision with the DOC.

Additionally, the bill amends s. 940.061, F.S., requiring the DOC to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

### ***The Restoration of Voting Rights Work Group***

The bill creates an undesignated section of statute that establishes the Restoration of Voting Rights Work Group (Work Group) within the DOS for the purpose of conducting a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill provides the Work Group is comprised of the following specific members:

- The Secretary of the DOS or his or her designee.
- The Secretary of the DOC or his or her designee.
- The Executive director of the FDLE or his or her designee.
- The Chairman of the FCOR or his or her designee.
- Two clerks of the circuit court who must be appointed by the Governor.
- Two supervisors of elections who must be appointed by the Governor.

The bill provides that the designee from the DOS will serve as chair for the Work Group. The bill requires the appointments of all members to be made within 30 days and to serve for the duration of the Work Group. If a vacancy occurs, the original appointing authority must appoint a new member to fill the vacancy.

The Work Group is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution, to develop recommendations for the Legislature, related to:

- The consolidation of all relevant data necessary to verify the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights.
- Informing a registered voter, applicant, or potential applicant of the entity or entities which are custodians of the relevant data necessary for verifying his or her eligibility for restoration of voting rights under Article VI, section 4 of the Florida Constitution.



- Any other relevant policies or procedures for verifying the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill specifically provides that if any entity is recommended to manage the consolidated relevant data, the recommendations must provide the feasibility of such entity to manage the consolidated relevant data and a timeline for implementation of such consolidation.

The bill requires the Work Group to submit a report of its findings, conclusions, and recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Further, the Work Group must dissolve upon the submission of the report and all members are discharged of further duties. The DOS is required to provide support for the Work Group in performing its duties and Work Group members are required to serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

### *Conforming Changes*

The following conforming changes are made to conform the language to the Florida Constitution and implement the act, including:

- Sections 97.052, 97.053, and 98.045, F.S., are amended to revise the term “civil” to “voting” to clarify that these provisions relate to the restoration of voting rights.
- Section 98.075, F.S., is amended to revise the term “civil” to “voting” as it relates to voting rights restoration provisions and to require supervisors of elections to notify the voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution.
- Section 944.292, F.S., is amended to clarify that, notwithstanding the suspension of civil rights, a person’s voting rights may be obtained pursuant to Article VI, section 4 of the Florida Constitution.

The bill is effective upon becoming law.

## **IV. Constitutional Issues:**

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

The bill requires all county detention facilities to notify a prisoner, in writing upon discharge, of all outstanding terms of the prisoner’s sentence at the time of release, unless the prisoner is being discharged to the custody or control of the DOC. It is possible that the requirements of the bill related to notification of outstanding terms of sentence will result in an increased workload or expenditures by the local governments. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**Verification of Eligibility**

The bill provides clarification related to the terms included in the Amendment 4 ballot language so that the DOS can resume its verification process to determine an applicant's eligibility to register to vote subsequent to obtaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution. Additionally, to assist with applicant verification determinations, the bill utilizes existing information sharing relationships to ensure that the DOS receives any relevant information. Therefore, the Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to entities such as the DOS. *See* Section VII. Related Issues.

**Notification of Outstanding Terms of Sentence**

The provision to notify specified offenders or inmates of any outstanding terms of his or her sentence is similar to a provision included in SB 642. When analyzing these similar provisions, the DOC reported that it does not track various costs associated with an inmate's resolved case, with the exception of certain inmates in various forms of paid employment, such as work release, prison industries, etc. To comply with the requirements, the DOC stated it will have to research clerk of court records prior to release for updated information on what an inmate, who is not being released to supervision, presently owes in regard to each case for which a sentence was imposed. Additionally, the DOC states that this will be a significant workload increase as it could

generate a significant volume of contacts to the clerk of court to determine the current status of various assessed costs. The DOC estimated it will need additional FTE to achieve this requirement to provide notification.<sup>148</sup>

Additionally, there will likely be an increased workload on the county detention facilities who are also required to notify prisoners of the outstanding terms of sentence as these entities will need to research information in a similar manner as the DOC.

### **Voting Rights Restoration Work Group**

The bill establishes the Voting Rights Restoration Work Group within the DOS. The DOS reports it will incur additional duties and expenses to provide administrative support to the Voting Rights Work Group, as well as expenses to provide reimbursement for per diem and travel expenses until such time the group is dissolved no later than November 1, 2019. The DOS' analysis is silent on the need for additional staff or resources and therefore it appears that the DOS can comply with this requirement within its existing resources.<sup>149</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

### **Fiscal Impact of the Amendment 4 Ballot Initiative**

The DOS reports that there will be an increased workload related to its staff having to conduct more involved research related to the credible and reliable determination of an applicant's eligibility to register to vote under the provisions of the Amendment 4 ballot initiative and the implementing language of the bill. The DOS reports that the time frame for making such determinations may be extended if certain records necessary to make such a determination are not readily available through various online databases. The DOS' analysis provides that it will need an additional 21 FTEs.<sup>150</sup> Any additional resources needed by the DOS involved in conducting a proper eligibility verification of a potential voter who may be eligible to register to vote pursuant to the Amendment 4 ballot initiative should be addressed through the standard budgeting process.

The DOS also reports a positive indeterminate fiscal impact (i.e. unquantifiable increase in costs) as a result of necessary IT modifications that will update the current matching processes and internal applications to the new process created. Such modifications will need to be developed, implemented, and maintained after working with the FDLE, DOC, FCOR, and the supervisors of elections to facilitate the exchange and transfer of files. Additionally, the DOS reports it will

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<sup>148</sup> The DOC, *Agency Analysis for SB 642*, p. 5, February 27, 2019 (on file with the Senate Judiciary Committee).

<sup>149</sup> The DOS, *Agency Analysis for SB 7086*, p. 5 (hereinafter cited as "SB 7086 Agency Analysis")(on file with the Senate Judiciary Committee).

<sup>150</sup> The DOS SB 7086 Agency Analysis, p. 4-5.

need additional memory storage for the image files that are created and electronically transferred.<sup>151</sup>

### **Legislative Implementation of Constitutional Amendments**

One of the issues to consider with implementing language of a constitutional amendment is whether the amendment itself is self-executing and thus, doesn't require further legislation. In *Gray v. Bryant*, the Supreme Court of Florida established that, "[T]he basic guide in determining whether a constitutional provision should be construed to be self-executing or not is whether the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."<sup>152</sup>

In *Florida Hospital Waterman, Inc. v. Buster*, the court held that the amendment at issue in that case was self-executing. The court considered the fact that the amendment provided definitions and there was an expressed intent made in its provisions that, "[E]xisting law was sufficient to implement the provisions of the amendment and that no further legislation was necessary." Furthermore, the amendment in that case stated it was to be effective upon passage, which effectively left no time for the enactment of implementing language.<sup>153</sup>

There is a presumption that constitutional amendments are intended to be self-executing. However, the courts have held that, even with provisions that expressly indicate such a self-executing operation, the Legislature may provide additional laws addressing a self-executing constitutional scheme assuming that such laws supplement, protect, or further the availability of the constitutionally conferred right.<sup>154</sup>

Amendment 4 is silent on all of these factors. The amendment does not define "completion of all terms of sentence," "felony sexual offense," or "murder." As discussed above, the lack of definitions could result in inconsistent implementation of the amendment throughout the state. Additionally, the amendment does not have any language indicating that it is self-executing or that it is effective upon becoming law.<sup>155</sup>

### **Constitutionality of Re-enfranchisement of Felons' Voting Rights**

The courts have consistently held that states may strip convicted felons of their voting rights. It is well-settled that Florida can remove certain rights from a person convicted of a felony under Section Two of the Fourteenth Amendment.<sup>156</sup>

In determining whether a statute violates the United States Constitution, the courts will use one of three levels of scrutiny: rational basis, intermediate, or strict. The courts have used rational

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<sup>151</sup> The DOS SB 7086 Agency Analysis, p. 6.

<sup>152</sup> *Gray v. Bryant*, 125 So.2d 846, 951 (Fla. 1960).

<sup>153</sup> *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478, 485 (Fla. 2008).

<sup>154</sup> *Browning v. Florida Hometown Democracy, Inc. v. PAC*, 29 So.3d 1053, 1064 (Fla. 2010).

<sup>155</sup> *Supra* n. 81 and 83.

<sup>156</sup> *Hand v. Scott*, 285 F. Supp. 3d 1289, 1294 (N.D. Fla. 2018), citing *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974) and *Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc).

basis scrutiny to determine whether statutes that re-enfranchise a felon are constitutional. This level of scrutiny is used because laws that aim to restore the voting rights of a felon do not implicate a fundamental right nor target a suspect class. The right to vote is a fundamental right. However, the courts have drawn an important distinction in noting that the right of felons to vote is not fundamental. Therefore, the statutes must only survive rational basis scrutiny, where by the statute only needs to be “rationally related to legitimate government interests.”<sup>157</sup>

### **Rulemaking Authority**

Section 97.012(1), F.S., provides broad rulemaking authority to the DOS to implement all provisions of the Florida Election Code (chs. 97-102, F.S.). Additionally, s. 98.075(1), F.S., provides the DOS with specific rulemaking authority to implement the protection of the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records, including ineligibility determinations related to felony convictions.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.053, 98.045, 98.075, 940.061, 944.292, 944.705, and 951.29.

This bill creates the following sections of the Florida Statutes: 98.0751 and 948.041

### **IX. Additional Information:**

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

None.

#### **B. Amendments:**

##### **CS by Judiciary on April 8, 2019:**

The Committee Substitute:

- Removes attempted murder in violation of s. 782.04, F.S., from the definition of “murder.”
- Authorizes the DOS to verify potential voters for eligibility to register based upon the provisions of the bill that implement the Amendment 4 ballot initiative.
- Provides specific rulemaking authority to the DOS to implement the bill.

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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>157</sup> *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010).