

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7089 PCB CRJ 19-03 Voting Rights Restoration  
**SPONSOR(S):** Criminal Justice Subcommittee; Grant, J.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7086

| REFERENCE                                  | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Criminal Justice Subcommittee | 10 Y, 5 N | Hall    | Hall                                     |
| 1) State Affairs Committee                 | 15 Y, 6 N | Toliver | Williamson                               |
| 2) Judiciary Committee                     |           |         |  |

### SUMMARY ANALYSIS

Prior to 2019, article VI, section 4 of the Florida Constitution disqualified a convicted felon from voting unless granted restoration of his or her civil rights through the executive clemency process. Executive clemency requires an offender to complete all terms of a sentence, including incarceration, probation, parole, and restitution payments. An offender must be arrest and conviction free for five to seven years to be eligible to apply. The Governor and two members of the Cabinet, sitting as the Board of Executive Clemency, may grant or deny clemency for any reason.

Florida voters approved Amendment 4 in 2018, amending the Constitution to provide that a felon's voting rights were automatically restored upon completion of all terms of sentence, including parole or probation. The amendment excludes a person convicted of murder or a felony sexual offense from being able to restore his or her voting rights except through the clemency process. However, because the amendment did not define essential terms, the qualifications for voting rights restoration are unclear.

The Department of State (DOS) and supervisors of elections, who are responsible for determining voter eligibility, have suspended the process for determining voter ineligibility following a felony conviction. As such, supervisors of elections have continued to register new voters without an initial eligibility determination from DOS.

This bill provides standards for authenticating voting eligibility following a felony conviction by:

- Defining essential terms left undefined by the amendment, including "murder," "felony sexual offense," "completion," and "term of sentence;"
- Delegating rulemaking authority to DOS to implement a process for authenticating voter eligibility;
- Requiring the Department of Corrections and county detention facilities to provide inmates being released from incarceration with information on voting rights restoration and specified outstanding financial obligations; and
- Revising the voter registration laws to clarify that a person's voting rights, rather than all civil rights, must be restored prior to registering to vote.

The bill may have a negative indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Voter Registration

The Florida Voter Registration Act (act)<sup>1</sup> governs the voter registration process, from the requirements necessary for registration to the operation and administration of the Florida Voter Registration System (FVRS).<sup>2</sup> The Secretary of State, as Florida's chief election officer, administers and maintains the FVRS.<sup>3</sup> However, it is each county's supervisor of elections (supervisor) that is responsible for ensuring that each applicant is eligible to vote and is processed in accordance with the law.<sup>4</sup> A person may be 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>5</sup>

A person may not register or vote if the person has been:

- Adjudicated mentally incapacitated with respect to voting in Florida or any other state and has not had his or her voting rights restored; or
- Convicted of a felony and not had his or her voting rights restored.<sup>6</sup>

The Department of State (DOS) developed a uniform statewide voter registration application for distribution to any person seeking to register to vote.<sup>7</sup> The application elicits specified information from the applicant, including, but not limited to, the applicant's name, date of birth, address, county of residence, race or ethnicity, state or county of birth, sex, and party affiliation.<sup>8</sup> An application must include the applicant's signature, swearing and affirming under oath that the information in the application is true, including whether the applicant:

- Is a United States citizen;
- Is a convicted felon, and if so, whether his or her civil rights are restored; and
- Has been adjudicated mentally incapacitated with respect to voting, and if so, whether his or her right to vote is restored.<sup>9</sup>

An applicant must check a box affirming the oath requirement to complete the application.<sup>10</sup> If an applicant willfully swears or affirms falsely to the oath or willfully submits false voter registration information, he or she commits a third degree felony.<sup>11</sup> The application is only accepted as valid and complete if the applicant has provided all information necessary to ascertain his or her eligibility<sup>12</sup> and if DOS has verified the authenticity of the applicant's driver license number, identification number, or

---

<sup>1</sup> S. 97.032, F.S.

<sup>2</sup> The FVRS is a single, uniform, centralized, interactive, computerized statewide voter registration system that contains the name and registration information of every legally registered voter in the state. S. 98.035, F.S.

<sup>3</sup> S. 97.012(11), F.S.

<sup>4</sup> S. 98.045(1), F.S.

<sup>5</sup> S. 97.041(1)(a), F.S.

<sup>6</sup> S. 97.041(2), F.S.; *see also* art. VI, s. 4(a), Fla. Const.

<sup>7</sup> S. 97.052(1)(b), F.S.

<sup>8</sup> S. 97.052(2), F.S.

<sup>9</sup> S. 97.052(2)(s)-(u), F.S.

<sup>10</sup> S. 97.053(5)(a), F.S.; *see also* Art. VI, s. 3, Fla. Const.

<sup>11</sup> S. 104.011, F.S.

<sup>12</sup> S. 97.053(2), F.S.; *see also* s. 97.053(5)(a), F.S.

the last four digits of his or her social security number.<sup>13</sup> The voter registration application is then entered into the FVRS and is immediately forwarded to the appropriate supervisor.<sup>14</sup>

### *Ineligibility Determination*

A supervisor may not remove a voter from the statewide voter registration system unless the voter is deceased, has requested removal, is convicted of a felony or adjudicated as mentally incapacitated with respect to voting, or the removal is pursuant to specified list maintenance activities.<sup>15</sup> DOS identifies ineligible registered voters who qualify for removal from the registration system and forwards that information to the appropriate supervisor for a final determination.<sup>16</sup> To identify ineligibility because of a felony conviction, DOS compares information received from:

- A circuit court clerk;<sup>17</sup>
- The Board of Executive Clemency (Board);<sup>18</sup>
- The Department of Corrections;<sup>19</sup>
- The Department of Law Enforcement;<sup>20</sup> or
- A United States Attorney's Office.<sup>21</sup>

DOS reviews ineligibility information and makes an initial credibility and reliability determination.<sup>22</sup> If DOS determines the information is credible and reliable, it notifies the appropriate supervisor and provides a copy of supporting documentation indicating the voter's potential ineligibility.<sup>23</sup> Once a supervisor receives notification from DOS, the supervisor must notify the registered voter of his or her potential ineligibility by mail within seven days. 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 if the person requires assistance; and
- Instructions for seeking restoration of civil rights following a felony conviction, if applicable.<sup>24</sup>

If a registered voter fails to respond to the notice, or responds without requesting a hearing, the supervisor makes a final ineligibility determination and may remove the voter from the statewide voter registration system and provide a notification of removal.<sup>25</sup>

If the voter denies the accuracy of the information and requests a hearing, the supervisor must conduct a hearing at which the registered voter may present evidence prior to making an eligibility determination.<sup>26</sup> If the supervisor determines the voter is ineligible following a hearing, the supervisor may remove the voter from the statewide voter registration system and notify the voter of such action.<sup>27</sup>

---

<sup>13</sup> S. 97.053(6), F.S.

<sup>14</sup> S. 97.053(7), F.S.

<sup>15</sup> S. 98.045(2)(a), F.S.

<sup>16</sup> Ss. 98.075(1)-(5), F.S.

<sup>17</sup> S. 98.075(5), F.S.

<sup>18</sup> This information, provided bimonthly by the Florida Commission on Offender Review, identifies persons granted clemency in the preceding month or any updates to prior records, which occurred in the preceding month. S. 98.093(1)(e), F.S.

<sup>19</sup> Identifying persons convicted of a felony and committed to the department's custody or placed on community supervision. S. 98.093(1)(f), F.S.

<sup>20</sup> Identifying persons convicted of a felony whose name appears in the voter registration records. S. 98.093(1)(d), F.S.

<sup>21</sup> Identifying persons convicted of a felony in federal court. S. 98.093(1)(c), F.S.

<sup>22</sup> S. 98.075(5), F.S.

<sup>23</sup> *Id.*; The supervisor is also authorized to remove the name of an ineligible person from the statewide voter registration system based on information received from other sources and not provided by DOS. S. 98.093(3), F.S.

<sup>24</sup> S. 98.075(7), F.S.

<sup>25</sup> S. 98.075(7)(a)3., F.S.

<sup>26</sup> S. 98.075(7)(a)5., F.S.

<sup>27</sup> *Id.*

An eligibility determination must be supported by a preponderance of the evidence, and upon removal, a voter has the right to appeal the determination.<sup>28</sup>

### Executive Clemency

Article IV, section 8 of the Florida Constitution grants the Governor, with the approval of two Cabinet members, sitting as the Board, the power to restore civil rights.<sup>29</sup> The Board may grant, at any time, for any reason, any of the following types of clemency:

- Full pardon;
- Pardon without firearm authority;
- Pardon for a misdemeanor;
- Commutation of sentence;
- Remission of fines and forfeitures;
- Specific authority to own, possess, or use a firearm;
- Restoration of civil rights in Florida; and
- Restoration of alien status under Florida law.<sup>30</sup>

### *Civil Rights Restoration*

Restoration of civil rights restores to an applicant all the rights of citizenship in Florida that he or she enjoyed before a felony conviction, except the right to own, possess, or use a firearm. The Rules of Executive Clemency establish two processes by which the Board can restore an applicant's civil rights: without a hearing, or when not so qualified, with a hearing. 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 and conditions of supervision imposed and meet the following requirements:

- Completed all sentences imposed and all conditions of supervision 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 judgement, or ch. 960, F.S.,<sup>31</sup> and
- Not have a conviction for:
  - Murder, attempted murder, attempted felony murder, or manslaughter;<sup>32</sup>
  - Driving under the influence (DUI) manslaughter or DUI causing serious bodily injury;<sup>33</sup>
  - Leaving the scene of an accident involving injury or death;<sup>34</sup>
  - Sexual battery, attempted sexual battery, unlawful sexual activity with a minor, or female genital mutilation;<sup>35</sup>
  - Any violation of ch. 800, F.S.;
  - Lewd or lascivious offense on an elderly or disabled person;<sup>36</sup>
  - Sexual performance by a child;<sup>37</sup>
  - Aggravated child abuse;<sup>38</sup>
  - Failure to register as a sexual predator or sexual offender;<sup>39</sup>

---

<sup>28</sup> S. 98.075(7)(b), F.S.

<sup>29</sup> Art. IV, s. 8, Fla. Const.; s. 940.01, F.S.

<sup>30</sup> Rules of Executive Clemency, r. 4, [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) (last visited Mar. 24, 2019).

<sup>31</sup> 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>32</sup> Ch. 782, F.S.

<sup>33</sup> S. 316.193, F.S.

<sup>34</sup> S. 316.027, F.S.

<sup>35</sup> Ch. 794, F.S.

<sup>36</sup> A conviction for attempt to commit the offense also disqualifies a person from eligibility. S. 825.1025, F.S.

<sup>37</sup> A conviction for attempt to commit the offense also disqualifies a person from eligibility. S. 827.071, F.S.

<sup>38</sup> S. 827.03, F.S.

<sup>39</sup> Ss. 775.21 and 943.0435, F.S.

- Computer pornography, transmission of computer pornography, or any crime involving a minor in violation of ch. 847, F.S.;
- Kidnapping, false imprisonment, or luring or enticing a child;<sup>40</sup>
- Aggravated battery;<sup>41</sup>
- Felony battery or domestic battery by strangulation;<sup>42</sup>
- Robbery, carjacking, home invasion;<sup>43</sup>
- Poisoning food or water;<sup>44</sup>
- Abuse of a dead human body;<sup>45</sup>
- Burglary of a dwelling or first degree burglary;<sup>46</sup>
- Arson;<sup>47</sup>
- Aggravated assault;<sup>48</sup>
- Aggravated stalking;<sup>49</sup>
- Battery, aggravated battery, or aggravated assault on an officer;<sup>50</sup>
- Trafficking or conspiracy to traffic in a controlled substance or any other first or second degree felony violation of ch. 893, F.S.;
- Aircraft piracy;<sup>51</sup>
- Unlawful throwing, placing, or discharging of a destructive device or bomb;<sup>52</sup>
- Facilitating or furthering terrorism;<sup>53</sup>
- Treason;<sup>54</sup>
- Possession of a firearm by a convicted felon or violent career criminal;<sup>55</sup>
- Bribery, misuse of public office,<sup>56</sup> extortion by a state officer,<sup>57</sup> misappropriation of money by a commission to make a sale,<sup>58</sup> or any crime committed by an elected official while in office;
- Illegal use of explosives;<sup>59</sup>
- Racketeering;<sup>60</sup>
- Exploitation of an elderly person;<sup>61</sup>
- 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.

Additionally, an applicant may not be previously declared a habitual felony offender,<sup>62</sup> three-time violent felony offender,<sup>63</sup> violent career criminal,<sup>64</sup> Prison Releasee Reoffender,<sup>65</sup> or sexual predator.<sup>66</sup>

<sup>40</sup> A conviction for attempt to commit any of these offenses also disqualifies a person from eligibility. Ch. 787, F.S.

<sup>41</sup> A conviction for attempt to commit the offense also disqualifies a person from eligibility. S. 784.045, F.S.

<sup>42</sup> S. 784.041, F.S.

<sup>43</sup> A conviction for attempt to commit any of these offenses also disqualifies a person from eligibility. Ch. 812, F.S.

<sup>44</sup> S. 859.01, F.S.

<sup>45</sup> S. 872.06, F.S.

<sup>46</sup> An attempt to commit these offenses also disqualifies a person from eligibility. S. 810.02, F.S.

<sup>47</sup> The attempt or conspiracy to commit such offense also disqualifies a person from eligibility. S. 806.01, F.S.

<sup>48</sup> S. 784.021, F.S.

<sup>49</sup> S. 784.048, F.S.

<sup>50</sup> S. 784.07, F.S.

<sup>51</sup> S. 860.16, F.S.

<sup>52</sup> S. 790.161, F.S.

<sup>53</sup> S. 775.31, F.S.

<sup>54</sup> S. 876.32, F.S.

<sup>55</sup> Ss. 790.23 and 790.235, F.S.

<sup>56</sup> Ch. 838, F.S.

<sup>57</sup> S. 839.11, F.S.

<sup>58</sup> S. 839.17, F.S.

<sup>59</sup> Ch. 552, F.S.

<sup>60</sup> Ch. 895, F.S.

<sup>61</sup> S. 825.103, F.S.

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

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

<sup>64</sup> S. 775.084, F.S.

<sup>65</sup> S. 775.082(9)(a), F.S.

The Florida Commission on Offender Review (FCOR) reviews an applicant's eligibility for restoration of civil rights without a hearing, and if so qualified, the 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>67</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>68</sup>

Clemency hearings occur four times a year. During the hearing, the Board allows an applicant to make a five-minute presentation. Following a hearing, the 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>69</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>70</sup>

#### Amendment 4

Prior to 2019, article VI, section 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until the restoration of his or her civil rights.<sup>71</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>72</sup>

In the 2018 general election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Constitution to provide "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>73</sup> The amendment 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>74</sup>

Following the amendment's passage, advocates have asserted the amendment is self-executing and requires no legislative implementation.<sup>75</sup> However, officials responsible for determining voter eligibility have expressed considerable confusion and DOS, the entity responsible for reviewing criminal records for voting eligibility purposes, has suspended the process of sending such records to supervisors for ineligibility determinations.<sup>76</sup>

Much of the confusion centers around ambiguity in the amendment's language including which crimes qualify as "murder" or a "felony sexual offense" and what it means for an offender to complete all

---

<sup>66</sup> S. 775.21, F.S.

<sup>67</sup> Rules of Executive Clemency, r. 9 (B), [https://www.fcor.state.fl.us/docs/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency_rules.pdf) (last visited Mar. 24, 2019).

<sup>68</sup> *Id.* r. 10 (A).

<sup>69</sup> *Id.* r. 12 (D).

<sup>70</sup> *Id.* r. 14.

<sup>71</sup> Art. VI, s. 4, Fla. Const.

<sup>72</sup> Florida Association of Counties, *Amendment 4: Voting Rights Restoration for Felons Initiative*, <http://www.fl-counties.com/amendment-4> (last visited Mar. 24, 2019).

<sup>73</sup> *Id.* See also Alejandro De Le Garza, 'Our Voice Will Count.' Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People, *Time* (Nov. 7, 2018) <http://time.com/5447051/florida-amendment-4-felon-voting/> (last visited Mar. 24, 2019).

<sup>74</sup> *Id.*

<sup>75</sup> Florida Rights Restoration Coalition, *Amendment 4 Implementation, Frequently Asked Questions*, <https://floridarrc.com/amendment-4-faq/> (last visited Mar. 15, 2019).

<sup>76</sup> Zac Anderson, *Florida elections officials confused on how to give felons the vote*, *Herald Tribune* (Dec. 4, 2018), <https://www.heraldtribune.com/news/20181204/florida-elections-officials-confused-on-how-to-give-felons-vote> (last visited Mar. 24, 2019).

terms of a sentence.<sup>77</sup> In December 2018, the Secretary of State called for the Legislature to direct DOS as to "implementation, definitions, [and other ambiguities raised by the supervisors of elections]."<sup>78</sup> Amendment 4 took effect January 8, 2019, and while supervisors continue to register new voters, the supervisors are doing so without an initial eligibility verification from DOS.

## Murder

Chapter 782, F.S., defines homicide and assigns penalties for an offense. First degree murder is a capital felony<sup>79</sup> and 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;<sup>80</sup>
  - Arson;
  - Sexual battery;
  - Robbery or home-invasion robbery;
  - Burglary;
  - Kidnapping;
  - Escape;
  - Aggravated child abuse;
  - 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 a human being;
  - Resisting an officer with violence;
  - Aggravated fleeing or eluding with serious bodily injury or death;
  - A felony act of terrorism;<sup>81</sup>
  - Human trafficking; or
  - Unlawful distribution of a specified controlled substance<sup>82</sup>, which is the proximate cause of a user's death.<sup>83</sup>

The unlawful killing of a human being, when perpetrated by an imminently dangerous act and demonstrating a depraved mind regardless of human life, is murder in the second degree;<sup>84</sup> a murder in the second degree is a first degree felony, punishable by a term of imprisonment not exceeding life.<sup>85</sup> If a person is killed during the commission of, or during the attempt to commit an enumerated felony,<sup>86</sup> by a person other than the person engaged in such felony, the person committing or

---

<sup>77</sup> Steven Lemongello, *Florida election supervisors will register ex-felons Jan. 8, despite confusion over amendment*, Orlando Sentinel (Dec. 20, 2018), <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-former-felons-register-vote-20181220-story.html> (last visited Mar. 25, 2019).

<sup>78</sup> Dara Kim, *Florida elections officials express confusion over restoring felon voting rights*, Orlando Sentinel (Dec. 4, 2018), <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-election-felon-voting-rights-20181204-story.html> (last visited Mar. 25, 2019).

<sup>79</sup> The offense is punishable by death or life imprisonment. S. 775.082, F.S.

<sup>80</sup> Specified in s. 893.135(1), F.S.

<sup>81</sup> Or an act in furtherance of terrorism, including a felony under ss. 775.30, 775.32, 775.33, 775.34, or 775.35, F.S.

<sup>82</sup> A substance controlled under s. 893.03(1), F.S., including 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>83</sup> S. 782.04, F.S.

<sup>84</sup> S. 782.04(2), F.S.

<sup>85</sup> Ss. 775.082, 775.083, and 775.084, F.S.

<sup>86</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. S. 782.04(3), F.S.

attempting to commit such felony commits second degree murder,<sup>87</sup> a first degree felony punishable by imprisonment for a term of years not exceeding life.<sup>88</sup>

Lastly, third degree murder 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 other than a felony<sup>89</sup> enumerated by statute.

Other offenses included in ch. 782, F.S., but not specifically defined as murder, include:

- Attempted felony murder;<sup>90</sup>
- Manslaughter and aggravated manslaughter;<sup>91</sup>
- Vehicular homicide<sup>92</sup> and vessel homicide;<sup>93</sup>
- Assisting self-murder<sup>94</sup> and commercial exploitation of self-murder;<sup>95</sup>
- Killing of an unborn child by injury to its mother;<sup>96</sup>
- Unnecessary killing to prevent an unlawful act;<sup>97</sup> and
- Partial-birth abortion.<sup>98</sup>

### Felony Sexual Offenses

Florida law only defines "sexual offense" in ch. 92, F.S., relating to special protections for witnesses,<sup>99</sup> and defines the term as any offense for which a conviction requires an offender to register as a sexual predator<sup>100</sup> or sexual offender.<sup>101</sup>

#### *Sexual Offenders*

Qualifying convictions for sexual offender designation in Florida include:

- Sexual misconduct with a person having a developmental disability;<sup>102</sup>
- Sexual misconduct with a mental health patient by an employee;<sup>103</sup>
- Kidnapping or falsely imprisoning a minor, with sexual intent or motive;<sup>104</sup>
- Luring or enticing a child, by a person with a prior sexual conviction;<sup>105</sup>
- Human trafficking for commercial sexual activity;<sup>106</sup>
- Sexual battery;<sup>107</sup>
- Unlawful sexual activity with a minor;<sup>108</sup>

---

<sup>87</sup> S. 782.04(3), F.S.

<sup>88</sup> Ss. 775.082, 775.083, and 775.084, F.S.

<sup>89</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; a felony act of terrorism or act in furtherance of terrorism; and drug distribution of a specified controlled substance when such drug is the proximate cause of a user's death. S. 782.04(3), F.S.

<sup>90</sup> S. 782.051, F.S.

<sup>91</sup> S. 782.07(1)-(4), F.S.

<sup>92</sup> S. 782.071, F.S.

<sup>93</sup> S. 782.072, F.S.

<sup>94</sup> S. 782.08, F.S.

<sup>95</sup> S. 782.081, F.S.

<sup>96</sup> S. 782.09, F.S.

<sup>97</sup> S. 782.11, F.S.

<sup>98</sup> S. 782.34, F.S.

<sup>99</sup> S. 92.55, F.S.

<sup>100</sup> S. 775.21(4)(a)1., F.S.

<sup>101</sup> S. 943.0435(1)(h)1.a.(l), F.S.

<sup>102</sup> S. 393.135(2), F.S.

<sup>103</sup> S. 394.4593(2), F.S.

<sup>104</sup> Ss. 787.01 and 787.02, F.S.

<sup>105</sup> S. 787.025(2), F.S.

<sup>106</sup> S. 787.06(3)(b), (d), (f), or (g), F.S.

<sup>107</sup> S. 794.011, excluding s. 794.011(10), F.S.

- Lewd or lascivious battery, molestation, conduct, or exhibition;<sup>109</sup>
- Video voyeurism, involving a minor victim;<sup>110</sup>
- Lewd or lascivious offense on an elderly or disabled person;<sup>111</sup>
- Sexual performance by a child;<sup>112</sup>
- Providing obscene materials to a minor;<sup>113</sup>
- Computer pornography involving a minor;<sup>114</sup>
- Soliciting a minor over the internet;<sup>115</sup>
- Traveling to meet a minor;<sup>116</sup>
- Lewd or lascivious exhibition over the internet;<sup>117</sup>
- Transmitting child pornography by electronic device or equipment;<sup>118</sup>
- Transmitting material harmful to a minor by electronic device;<sup>119</sup>
- Selling or buying a minor to engage in sexually explicit conduct;<sup>120</sup>
- Racketeering involving a sexual offense;<sup>121</sup>
- Sexual misconduct with a forensic client;<sup>122</sup> and
- Sexual misconduct by an employee with a juvenile offender.<sup>123</sup>

*Felonies with a Sexual Element*

Some felony offenses in Florida do not require a convicted person to register as a sexual offender; yet still contain a sexual element. Such offenses include:

- Prostitution or soliciting a prostitute, subsequent conviction;<sup>124</sup>
- Video voyeurism;<sup>125</sup>
- Incest;<sup>126</sup>
- Lewd or lascivious exhibition in the presence of a correctional facility employee;<sup>127</sup>
- Sexual offenses against a student by an authority figure;<sup>128</sup>
- Locating an adult entertainment store within 2,500 feet of a school;<sup>129</sup>
- Committing an enumerated offense by a person who is HIV positive;<sup>130</sup>
- Sexual cyberharassment, second or subsequent offense;<sup>131</sup>
- Sexual misconduct between a detention facility employee and an inmate;<sup>132</sup>
- 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;<sup>133</sup>

---

<sup>108</sup> S. 794.05, F.S.

<sup>109</sup> S. 800.04, F.S.

<sup>110</sup> S. 810.145(8), F.S.

<sup>111</sup> S. 825.1025, F.S.

<sup>112</sup> S. 827.071, F.S.

<sup>113</sup> S. 847.0133, F.S.

<sup>114</sup> S. 847.0135(2), F.S.

<sup>115</sup> S. 847.0135(3), F.S.

<sup>116</sup> S. 847.0135(4), F.S.

<sup>117</sup> S. 847.0135(5), F.S.

<sup>118</sup> S. 847.0137, F.S.

<sup>119</sup> S. 847.0138, F.S.

<sup>120</sup> S. 847.0145, F.S.

<sup>121</sup> S. 895.03, F.S.

<sup>122</sup> S. 916.1075(2), F.S.

<sup>123</sup> S. 985.701(1), F.S.

<sup>124</sup> Ss. 796.07 and 796.08, F.S.

<sup>125</sup> When committed by a person 19 or older, or when the offense is a second or subsequent offense. S. 810.145(6) and (7), F.S.

<sup>126</sup> S. 826.04, F.S.

<sup>127</sup> S. 800.09(2), F.S.

<sup>128</sup> S. 800.101(2), F.S.

<sup>129</sup> S. 847.0134(1), F.S.

<sup>130</sup> S. 775.0877, F.S.

<sup>131</sup> S. 784.049(3)(b), F.S.

<sup>132</sup> S. 951.221(1), F.S.

<sup>133</sup> S. 491.0112(1) and (2), F.S.

- Sexually abusing a dead human body;<sup>134</sup>
- Sexual misconduct by a correctional facility employee with an inmate;<sup>135</sup>
- Committing specified acts with obscene, lewd, etc. materials, second or subsequent offense;<sup>136</sup>
- 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;<sup>137</sup>
- Knowingly promoting, conducting, performing, or participating in an obscene show, second or subsequent offense;<sup>138</sup>
- Sale or distribution to minors or using minors in production of harmful materials;<sup>139</sup> and
- Wholesale promotion of obscene materials.<sup>140</sup>

### Incarceration and Probation

A court may sentence a defendant convicted of a felony offense to any term of incarceration authorized under s. 775.082, F.S.<sup>141</sup> As an alternative to incarceration or in addition to, a court may sentence a person to probation or community control for a felony and the Department of Corrections (DOC) is responsible for supervising and monitoring compliance with such supervision. Standard terms and conditions of probation generally require a probationer or person on community control to:

- Report to a probation officer as directed;
- Permit a probation officer to visit his or her workplace or home;
- Maintain employment, if possible;
- Remain within a specified place;
- 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>142</sup>
- Pay specified application<sup>143</sup> and attorney fees;<sup>144</sup>
- Not associate with persons engaging in criminal activity;
- Submit to random drug or alcohol testing;
- Be prohibited from possessing, carrying, or owning a firearm;<sup>145</sup>
- Not use intoxicants to excess;
- Submit to drawing of blood or other biological specimens, for specified reasons; and
- Take a digitized photograph.<sup>146</sup>

In addition to standard conditions of probation, a court may order an offender to complete specific terms of supervision, including:

- Community service;<sup>147</sup>
- Restitution;<sup>148</sup>
- Residential treatment;<sup>149</sup>

<sup>134</sup> S. 872.06(2), F.S.

<sup>135</sup> S. 944.35(3)(b)2., F.S.

<sup>136</sup> S. 847.011(1), F.S.

<sup>137</sup> S. 847.011(3), F.S.

<sup>138</sup> S. 847.011(4), F.S.

<sup>139</sup> S. 847.012, F.S.

<sup>140</sup> S. 847.07(2) and (3), F.S.

<sup>141</sup> For example, a third degree felony is punishable by up to five years in prison; a second degree felony is punishable by up to 15 years in prison; and a first degree felony is punishable by up to 30 years in prison. S. 775.082, F.S.

<sup>142</sup> S. 960.17, F.S.

<sup>143</sup> S. 27.52(1)(b), F.S.

<sup>144</sup> S. 938.29, F.S.

<sup>145</sup> S. 948.03(1)(m)2., F.S. The prohibition also includes "weapons" generally, unless the consent of the probation officer is obtained.

<sup>146</sup> S. 948.03, F.S.

<sup>147</sup> S. 948.031, F.S.

<sup>148</sup> S. 948.032, F.S.

<sup>149</sup> S. 948.035, F.S.

- A work program;<sup>150</sup>
- An educational program;<sup>151</sup>
- Batterer's intervention program;<sup>152</sup> or
- Any other special term or condition of probation reasonably related to the circumstances of the offense and appropriate for the offender.<sup>153</sup>

## Financial Obligations

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

A person convicted of a felony offense is assessed court costs and fines upon the disposition of a case.<sup>154</sup> The clerk of court collects and deposits fines into the clerk's fines and forfeiture fund.<sup>155</sup> In addition to standard court costs and fines, a person ordered to supervision must pay 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, 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>156</sup>

### *Restitution*

A court must order restitution as a condition of an offender's probation when a crime results in direct or indirect damage or loss to a victim.<sup>157</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, if probation is 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>158</sup>

A court may order the clerk to collect and dispense restitution payments in any case or DOC to collect and dispense restitution and other payments from a person remanded to its custody or supervision.<sup>159</sup> A court may also order an income deduction order related to restitution.<sup>160</sup> The clerk of court receives a payment made pursuant to an income deduction order.<sup>161</sup>

If an offender does not pay within the specified time, a court may continue a restitution order through a civil judgement, by which the state or a victim can enforce an order in the same manner as a judgment in a civil action.<sup>162</sup> The outstanding unpaid amount accrues interest, and when properly recorded, becomes a lien on real estate owned by the defendant.<sup>163</sup>

## **Effect of Proposed Changes**

The bill delegates rulemaking authority to DOS to implement a process to authenticate voter eligibility under article VI, section 4 of the Florida Constitution. If DOS makes an initial ineligibility determination based upon an applicant's felony conviction, DOS must forward the information to the appropriate

<sup>150</sup> S. 948.036, F.S.

<sup>151</sup> S. 948.037, F.S.

<sup>152</sup> S. 948.038, F.S.

<sup>153</sup> S. 948.039, F.S.

<sup>154</sup> S. 775.083, F.S.

<sup>155</sup> *Id.*

<sup>156</sup> S. 948.09, F.S.

<sup>157</sup> S. 775.089(1), F.S.

<sup>158</sup> S. 775.089(3)(b), F.S.

<sup>159</sup> S. 775.089(11)(a) and (b), F.S.

<sup>160</sup> S. 775.089(12)(a), F.S.

<sup>161</sup> S. 775.089(12)(b)4., F.S.

<sup>162</sup> S. 775.089(5), F.S.

<sup>163</sup> *Id.*

supervisor, who must provide the voter registration applicant information on voting rights restoration under article VI, section 4 of the Florida Constitution. If the basis for ineligibility is a felony conviction from another jurisdiction, the supervisor must include information on the conviction in the notice of ineligibility mailed to the applicant. A person whom the supervisor determines is ineligible to vote may request a hearing, at which he or she may present evidence, as under current law.

The bill defines the amendment's undefined and ambiguous terms to provide consistency and accuracy in voter eligibility authentications.

The term "murder" is defined as a conviction for any of the following crimes or a similar offense from another jurisdiction:

- First degree murder; and
- Second degree murder.<sup>164</sup>

The term "felony sexual offense" is defined as any felony violation for the following crimes or a similar offense from another jurisdiction:

- Sexual misconduct with a person having a developmental disability;<sup>165</sup>
- Sexual misconduct with a mental health patient by an employee;<sup>166</sup>
- Kidnapping or false imprisonment of a minor, involving sexual intent or motive;<sup>167</sup>
- Luring or enticing a child, by a person with a prior sexual conviction;<sup>168</sup>
- Human trafficking for commercial sexual activity or forced labor;<sup>169</sup>
- Sexual battery;<sup>170</sup>
- Unlawful sexual activity with a minor;<sup>171</sup>
- Lewd or lascivious battery, molestation, conduct, or exhibition;<sup>172</sup>
- Video voyeurism;<sup>173</sup>
- Lewd or lascivious offense on an elderly or disabled person;<sup>174</sup>
- Sexual performance by a child;<sup>175</sup>
- Providing obscene material to a minor;<sup>176</sup>
- Computer pornography involving a minor or traveling to meet a minor;<sup>177</sup>
- Transmitting child pornography by electronic device;<sup>178</sup>
- Transmitting material harmful to a minor by electronic device;<sup>179</sup>
- Selling or buying a minor to engage in sexually explicit conduct;<sup>180</sup>
- Racketeering, involving a sexual offense;<sup>181</sup>
- Sexual misconduct with a forensic client;<sup>182</sup>
- Sexual misconduct by an employee with a juvenile offender;<sup>183</sup>
- Prostitution or soliciting prostitution, subsequent offense;<sup>184</sup>

---

<sup>164</sup> S. 782.04 (1)-(3), F.S.

<sup>165</sup> S. 393.135(2), F.S.

<sup>166</sup> S. 394.4593(2), F.S.

<sup>167</sup> Ss. 787.01 and 787.02, F.S.

<sup>168</sup> S. 787.025(2)(c), F.S.

<sup>169</sup> S. 787.06(3) and (4), F.S.

<sup>170</sup> S. 794.011, F.S., excluding falsely accusing another person of sexual battery under subsection (10).

<sup>171</sup> S. 794.05, F.S.

<sup>172</sup> S. 800.04, F.S.

<sup>173</sup> When the victim is a minor (s. 810.145(8), F.S.); when the offender is 19 or older (s. 810.145(6), F.S.); or when conviction is for a second or subsequent offense (s. 810.145(7), F.S.).

<sup>174</sup> S. 825.1025, F.S.

<sup>175</sup> S. 827.071, F.S.

<sup>176</sup> S. 847.0133, F.S.

<sup>177</sup> Excluding owners or operators of computer services under subsection (6). S. 847.0135, F.S.

<sup>178</sup> S. 847.0137, F.S.

<sup>179</sup> S. 847.0138, F.S.

<sup>180</sup> S. 847.0145(8), F.S.

<sup>181</sup> S. 895.03, F.S.

<sup>182</sup> S. 916.1075(2), F.S.

<sup>183</sup> S. 985.701(1), F.S.

- Incest;<sup>185</sup>
- Lewd or lascivious exhibition in the presence of a correctional facility employee;<sup>186</sup>
- Sexual offenses against a student by an authority figure;<sup>187</sup>
- Locating an adult entertainment store within 2,500 feet of a school;<sup>188</sup>
- Committing an enumerated offense by a person who is HIV positive;<sup>189</sup>
- Sexual cyberharassment, second or subsequent offense;<sup>190</sup>
- Sexual misconduct between a detention facility employee and an inmate;<sup>191</sup>
- 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;<sup>192</sup>
- Sexually abusing a dead human body;<sup>193</sup>
- Sexual misconduct by a correctional facility employee with an inmate;<sup>194</sup>
- Committing certain acts with obscene, lewd, etc. materials, second or subsequent offense;<sup>195</sup>
- 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;<sup>196</sup>
- Knowingly promoting, conducting, performing, or participating in obscene show, second or subsequent offense;<sup>197</sup>
- Selling or distributing to minors or using minors to produce harmful materials;<sup>198</sup> and
- Wholesale promotion of obscene materials.<sup>199</sup>

The term "completion" means:

- For a term of incarceration, release from custody.
- For a term of supervision, successful termination when all supervision conditions are completed, or unsuccessful termination for which a court, DOC, or FCOR waives any incomplete condition.
- For a financial obligation arising from a felony conviction, full payment of the financial obligation or waiver of the obligation with the consent of the payee. A financial obligation continued through a civil judgment remains an outstanding financial obligation for authenticating voter eligibility.

The phrase "term of sentence" is defined as:

- Incarceration;
- Standard conditions of probation;
- Community service;
- Restitution;
- Residential treatment;
- A work program;
- An educational program;
- Batterer's intervention program;
- Any court ordered special condition of probation;
- Any cost of supervision or other monetary obligation; and

---

<sup>184</sup> Ss. 796.07 and 796.08, F.S.

<sup>185</sup> S. 826.04, F.S.

<sup>186</sup> S. 800.09(2), F.S.

<sup>187</sup> S. 800.101(2), F.S.

<sup>188</sup> S. 847.0134(1), F.S.

<sup>189</sup> S. 775.0877, F.S.

<sup>190</sup> S. 784.049(3)(b), F.S.

<sup>191</sup> S. 951.221(1), F.S.

<sup>192</sup> S. 491.0112(1) and (2), F.S.

<sup>193</sup> S. 872.06(2), F.S.

<sup>194</sup> S. 944.35(3)(b)2., F.S.

<sup>195</sup> S. 847.011(1), F.S.

<sup>196</sup> S. 847.011(3), F.S.

<sup>197</sup> S. 847.011(4), F.S.

<sup>198</sup> S. 847.012, F.S.

<sup>199</sup> S. 847.07(2) and (3), F.S.

- Any court imposed fine or fee.

The bill also requires DOC and county detention facilities to inform an inmate or probationer about voting rights restoration following a felony conviction under article VI, section 4 of the Florida Constitution and to provide an accounting of all outstanding financial obligations imposed by a court, DOC, or FCOR for each felony for which an inmate is being released from incarceration. A person released from incarceration may use the information to determine his or her eligibility for voting rights restoration.

Finally, the bill codifies eligibility requirements for restoration of voting rights in s. 944.292, F.S. The bill updates references to restoration of "civil rights" in voter registration laws to "voting rights" to reflect that a voter is no longer required to obtain executive clemency restoring all civil rights to be eligible to vote.

The bill provides an effective date of July 1, 2019.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 97.052, F.S., relating to the uniform statewide voter registration application.

**Section 2:** Amends s. 97.053, F.S., relating to acceptance of voter registration applications.

**Section 3:** Amends s. 98.045, F.S., relating to the administration of voter registration.

**Section 4:** Amends s. 98.075, F.S., relating to registration records maintenance activities; ineligibility determinations.

**Section 5:** Amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

**Section 6:** Amends s. 944.292, F.S., relating to the suspension of civil rights.

**Section 7:** Amends s. 944.704, F.S., relating to staff who provides transition assistance; duties.

**Section 8:** Amends s. 951.29, F.S., relating to procedure for requesting restoration of civil rights of county prisoners convicted of felonies.

**Section 9:** Provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a negative indeterminate fiscal impact on state government by requiring DOC to provide an inmate information on any outstanding financial obligation imposed for a felony conviction for which he or she is being released from incarceration.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a negative indeterminate fiscal impact on local governments by requiring a county detention facility to provide an inmate information on any outstanding financial obligation imposed for a felony conviction for which he or she is being released from incarceration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it concerns election laws and criminal laws.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants DOS rulemaking authority to implement the provisions of the bill concerning the determination of whether a voter with a felony conviction has not had his or her voting rights restored under Amendment 4. The bill grants DOS sufficient rulemaking authority for implementation of the provision and provides DOS with sufficient direction to guide the department in the creation of the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably. The amendment:

- Removed the offenses of sexting by minors and sexual activity involving animals from the definition of "felony sexual offense"; and
- Clarified that a "term of sentence" includes any court imposed fine or fee.