

**Rules of Executive Clemency
Should Allow Level-1 Offenders to
Have Their Civil Rights
Automatically Restored Upon
Completion of Their Sentences**

A Report of the
Florida Advisory Committee to the
U.S. Commission on Civil Rights

June 2014

State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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Letter of Transmittal

Florida Advisory Committee to the U.S. Commission on Civil Rights

The Florida Advisory Committee submits this report on voting rights as part of its responsibility to study and report on civil rights issues in Florida. This report is a re-examination of Clemency Rules for ex-felons in the State of Florida. It builds upon the Committee's 2009 report on the same issue. This report was adopted by a vote of 9 to 0 at a public meeting of the Florida Advisory Committee held in Miami, FL, on September 17, 2013.

It is the considered opinion of the Florida Advisory Committee that former Governors Jeb Bush (R) and Charlie Crist (R) acted correctly to modify the rules for executive clemency. The Florida Advisory Committee continues to hold that position, absent the introduction of a compelling government interest or purpose; and believes doing so will allow for deserving persons who have made full and proper restitution to again have the privilege to vote and participate in the democratic processes as well as assist such persons to successfully integrate back into society.

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I. VOTING RIGHTS FOR EX-FELONS IN FLORIDA

Addressing voting rights issues has been a central mission for the U. S. Commission on Civil Rights and its state advisory committees since its establishment in 1957. In the 1960s the work of the Commission was instrumental in passage of the Voting Rights Act of 1965. In 2001, the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential election.¹

In keeping with the Commission's historical attention to voting rights, in 2008 the Florida Advisory Committee examined the issue of voting rights with respect to an adverse impact on males and African Americans as a result of the state's Constitutional ban on the right of ex-felons to vote. In 2009, the Committee released a report, *Ex-Felon Voting Rights in Florida: Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders is the Right Policy*.²

Florida is one of only eleven states with lifetime voting bans for ex-felons. The other ten states with lifetime voting bans for ex-felons are: Alabama, Arizona, Delaware, Iowa, Kentucky, Mississippi, Nevada, Tennessee, Virginia, and Wyoming.³ All eleven states, however, have some procedure in place whereby a former felon can have his/her voting rights restored. In Florida, that process is through executive clemency. Executive clemency is a formal act of the Cabinet that absolves the individual from all or any part of the punishment that the law imposes, including the restoration of civil and voting rights.

Despite the possibility of clemency in states with lifetime bans, the effect on voting rights as a result of the lifetime disenfranchisement statutes is significant.⁴ According to the National Commission on Federal Election Reform, one-third of the people presently denied the right to vote because of a felony conviction have completed their sentences.⁵

¹ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (Washington, DC: Government Printing Office, June 2001).

² Florida Advisory Committee to the U.S. Commission on Civil Rights, *Ex-Felon Voting Rights in Florida: Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders is the Right Policy* (2009) (hereafter cited as *Ex-Felon Voting Rights Report*).

³ The listing of states that permanently ban ex-felons from voting is open to interpretation. For example, the Florida Advisory Committee lists eleven states with permanent bans on ex-felon from voting, but its listing does not include Nebraska which has a permanent ban for treason.

⁴ For purposes of this report and as used herein the term "disenfranchisement" means the revocation of the right to vote by a person.

⁵ John Mark Hansen, Task Force on the Federal Election System, *Disfranchisement of Felons*, 1 (July 2001), in *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to accompany the Report of the National Commission on Election Reform* (Aug. 2001).

Concerned that without successful re-entry back into society ex-offenders are likely to become re-offenders, in 2005 former Governor Jeb Bush issued an executive order creating the Governor's Ex-Offender Task Force to study the effectiveness of Florida in facilitating the re-entry of ex-offenders back into the community. The former Governor stated that “without successful re-entry...recidivism is likely to occur, to the great detriment of public safety, Florida's communities, families, taxpayers, and individual ex-offenders.”⁶ The task force noted that Florida has the third largest prison population in America, with more than 30,000 people in the state being released from prison each year.⁷

Following upon the work of Governor Bush's Task Force, in 2007 with the concurrence of a majority of the Governor's Cabinet, former Governor Charlie Crist issued revised Rules of Executive Clemency.⁸ The 2007 revised rules automatically restored civil rights and voting rights to most felons upon release from prison. Under the 2007 Rules of Executive Clemency, immediately upon completion of their sentences, ex-offenders were automatically reviewed by the Parole Commission to determine their eligibility for restoration of civil rights without a hearing.

For those individuals given Level-1 status by the Parole Commission, an executive order was automatically issued that granted the restoration of their civil rights signed by the Clemency Board without the need for a formal hearing. Ex-felons given Level-1 status included non-violent offenders who had no outstanding detainers, pending criminal charges and did not owe restitution pursuant to a court order.

Under the 2007 Rules of Executive Clemency, individuals granted Level-2 status also received a restoration of civil and voting rights without a hearing before the Clemency Board. However, Level-2 offenders had to undergo an investigation by the Parole Commission. Level-2 status was given to offenders who had committed severe offenses.⁹ Level-3 offenders were required to petition for a hearing before the Clemency Board to have their civil rights restored.¹⁰ Level-3 offenders were persons who had been convicted of certain serious offenses, such as murder or a sex offense.

The Florida Advisory Committee noted in its 2009 report that the revisions to the Rules of Executive Clemency that automatically granted restoration of civil rights to Level-1 ex-offenders were a significant policy change. In its report, the Committee noted the following:

⁶ State of Florida, Office of the Governor, Exec. Order No. 05-28.

⁷ State of Florida, *Governor's Ex-Offender Task Force, Final Report to the Governor*, Letter of Chair Vicki Lopez Lukis to Governor Jeb Bush, Nov. 30, 2006 (hereafter cited as *Ex-Offender Task Force Final Report*).

⁸ State of Florida, Parole Commission, *Annual Report: 2006-2007*, December 2007.

⁹ *Ibid.* p. 10.

¹⁰ *Ibid.* p. 5(e).

Nearly 200,000 persons in the State of Florida lost their right to vote between 1995 and 2005 because of the state's Constitutional ban. Over the same period of time, only about 6,500 ex-felons each year on average had their civil rights restored by the Clemency Board, and a total of one million persons in the state are likely disenfranchised from voting at the present time.

The state's Constitutional ban prohibiting persons convicted of a felony from voting has a disproportionate impact on voting rights for minorities and males living in the state as minorities comprise nearly half of the inmate population and less than a quarter of the state's population.¹¹

The Florida Advisory Committee supported the revised Rules of Executive Clemency. Further, the Florida Advisory Committee recommended that as future studies show the automatic restoration of civil rights policy for ex-felons to enhance the civil rights of citizens and promote the general welfare, that succeeding Governors endorse and retain these revisions to the Rules of Executive Clemency.¹²

In addition, the Florida Advisory Committee recommended that the Parole Commission immediately put in place data collection systems that will allow future studies to be conducted on the impact of this policy change. The Committee further recommended that data be collected so that in the future the effect of the policy change on minority and male voter participation will be able to be studied.¹³

In March 2011 Governor Rick Scott (R) with the consent of a majority of the Florida Cabinet, amended the previous clemency rules to what was essentially in place prior to Governor Bush. The new procedures require the Clemency Board to review all ex-felon cases individually and decide further action.¹⁴ Furthermore, additional documentation is now required to receive clemency. Ex-felons must now submit an application and any accompanying documents to the Clemency Board regardless of the level of offense.¹⁵ At the time of this change, there were 98,963 cases pending an automatic restoration of civil rights.¹⁶

¹¹ *Ex-Felon Voting Rights Report*, p. 21.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ See 2011 Amended Fla. R. Exec. Clem. (amended Mar. 9, 2011) available at https://fpc.state.fl.us/docs/clemency/clemency_rules.pdf.

¹⁵ *Ibid.* p. 9.

¹⁶ State of Florida, *Parole Commission Proviso Report: The Processing of Clemency Cases for FY 2010-2011*, October 2011 (hereafter cited as *Parole Commission Proviso Report*).

II. EX-FELON DISENFRANCHISEMENT IN FLORIDA AND OTHER STATES

A. Ex-Felon disenfranchisement in Florida extends back more than 150 years

Historically, Florida's policy of criminal disenfranchisement dates back more than 150 years. Florida's earliest Constitution, adopted in 1838, authorized the General Assembly to enact criminal disenfranchisement laws, and in 1845 Florida's General Assembly passed such a law:

Be it further enacted, that every person who shall become a candidate for any of the foregoing offices shall possess the same qualification as that prescribed for a voter ... [a]nd no person who shall hereafter be convicted of bribery, perjury, or other infamous crime, shall be entitled to the right of suffrage.¹⁷

Following the Civil War, the First Reconstruction Act of 1867 mandated that to re-enter the Union former Confederate states had to adopt new constitutions guaranteeing male suffrage without regard to race. In 1868 Florida convened a second post-war constitutional convention to amend its first post-war constitution, which denied suffrage to African Americans. Section 4 of the 1868 state Constitution continued to contain the disenfranchisement provision for ex-felons:

No person under guardianship, non compos mentis, or insane, shall be qualified to vote in any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights.¹⁸

In 1968, the State of Florida adopted a revised state Constitution. The revised Constitution continued to contain an ex-felon voting prohibition. Specifically, the state Constitution provides that no person convicted of a felony will be allowed to vote or hold office until there has been a restoration of the individual's civil rights:

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.¹⁹

The disenfranchisement provision of Article VI of the Florida Constitution has come under scrutiny in recent years, in part because of its disparate impact on males and minorities. In its 2009 report, the Florida Advisory Committee estimated that 200,000 former offenders in Florida

¹⁷ *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1218 n.6 (11th Cir. 2005) (quoting 1845 Fla. Laws. Ch. 38, art. 2 § 3).

¹⁸ FLA. CONST. of 1868, art. XIV, § 2.

¹⁹ FLA. CONST. art. IV, § 4(a). Under the Florida Constitution, the authority to restore civil rights is reserved to the Clemency Board, composed of the Governor and the three members of the Cabinet: Attorney General, Finance Commissioner, and Commissioner of Agriculture. Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposes.

were disenfranchised from the right to vote in the 10-year period between 1995 and 2005.²⁰ Moreover, 600,000 to 1.2 million persons, or from about 3 to 6 percent of the voting population, is estimated to be disenfranchised from voting.²¹

Table 1: Restrictions on Voting Rights for Ex-Felons in States without Lifetime Bans²²

No Prohibitions On Voting	Incarcerated Individuals Can Not Vote	Incarcerated Individuals and Persons on Parole Can Not Vote	Ex-Felons Prohibited from Voting Until Sentence is Fully Complete	Prohibited From Voting for Treason
Maine Vermont	Hawaii Illinois Indiana Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon Pennsylvania Rhode Island Utah	California Colorado Connecticut New York	Alaska Arkansas Georgia Idaho Kansas Louisiana Maryland Minnesota Missouri ¹ New Jersey New Mexico North Carolina Oklahoma South Carolina South Dakota Texas Washington West Virginia Wisconsin	Nebraska ²

Source: Florida Advisory Committee.

Note 1: In Missouri, persons convicted of either felony or misdemeanor offenses connected with the exercise of the right of suffrage are permanently disqualified from voting.

Note 2: In Nebraska, persons convicted of treason are permanently disqualified from voting.

B. 39 states allow ex-felons the right to vote

In 39 of the 50 states ex-felons may vote, but there is wide variance among the states on this allowance. In two states, Maine and Vermont, incarcerated felons may vote. In Nebraska, a convicted felon's right to vote is restored automatically two years after completion of sentence, including period of parole and probation, for all convictions except treason.

²⁰ *Ex-Felon Voting Rights Report*, p. 12.

²¹ *Ibid.*, p. 14.

²² See Appendix 1 for statutory sources.

The most common restriction on ex-felon voting rights is withholding the right to vote until the individual is released from prison, and in some of these cases until parole and/or all other terms of the sentence have been completed. Thirty-six (36) states have such provisions.

In 13 states, former felons are allowed to vote as soon as they are released from prison. In four states, California, Colorado, Connecticut, and New York, ex-felons may vote after they are no longer incarcerated but only after they have completed all terms of their parole. In 19 states there is a similar restriction, extending until all terms of the sentence including parole have been completed, e.g., restitution, community service.²³

Table 2: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans²⁴

Board of Parole/Probation Restores Voting Rights	Executive and/or Legislative Pardon Restores Voting Rights	County Board of Elections Restores Voting Rights
Alabama ¹ Tennessee ¹ Wyoming ²	Arizona Florida Iowa Kentucky Mississippi Nevada Virginia	Delaware ¹

Source: Florida Advisory Committee.

Note 1: In Alabama, Delaware, and Tennessee there is a permanent ban on voting for certain offenses.

Note 2: In Wyoming, the Board of Parole may restore voting rights only for first-offenders. Second time offenders must receive an executive pardon.

C. Eleven states – including Florida – have lifetime voting bans; an estimated 1 million persons are affected in Florida

Eleven states, including Florida, have lifetime voting bans on ex-felons. In all eleven of these states, however, it is possible for a person to obtain a form of clemency and have voting rights restored. The process of clemency varies among the states.

In Mississippi ex-felons are banned for life from voting, but under the state's Constitution may have their voting rights restored by a vote of two-thirds of both legislative houses. (See Table 2.) In seven other states with lifetime bans on ex-felon voting rights the clemency process is an executive decision. In four of these states, Iowa, Kentucky, Tennessee, and Virginia, the Governor has sole power to grant clemency. In Alabama, Arizona, and Nevada, executive clemency is under the authority of the state's correctional system. (See Table 2.)

²³ Table 1.

²⁴ See Appendix 2 for statutory sources.

Florida is unique among the eleven states with lifetime bans for ex-felons in that its clemency procedure resides with the State's cabinet. In Florida, for an individual convicted of a felony to again obtain the right to vote along with the restoration of other civil rights, executive clemency must be granted.²⁵ The Clemency Board is composed of the Governor and the three members of the Florida Cabinet: the Attorney General, Chief Financial Officer, and Commissioner of Agriculture.²⁶ The Clemency Board meets four times a year to vote on clemency applications.²⁷

III. EXECUTIVE CLEMENCY PROCESS REFORMED BY GOVERNOR BUSH IN 2004 AND FURTHER REVISED BY GOVERNOR CRIST IN 2008 TO GRANT AUTOMATIC CLEMENCY

Prior to the implementation of the revised Rules of Executive Clemency in 2009, the rate of clemency was inconsistent and varied considerably depending upon the Cabinet. Two decades ago the number of persons in Florida granted clemency started to decline; but in recent years an upward movement has been observed. In 1986, almost 15,000 persons had their civil rights restored.²⁸ In the 4-year period from 1994 to 1998, the number of individuals receiving clemency remained at historically low levels, and only 6,669 persons had their civil rights restored during this period—an annual average of about 1,300 persons.²⁹ That number started to increase substantially in the next few years, and between 1999 and 2005 the Executive Clemency Board restored the civil rights of nearly 75,000 individuals—an average of about 15,000 per year.³⁰

In 2004 former Governor Jeb Bush and the cabinet adopted changes to the Rules of Executive Clemency that made it easier for felons in Florida to get their civil rights restored. Those rules allowed felons who had been arrest-free for 5 years to obtain restoration of civil rights without a hearing, unless they were convicted of certain violent crimes or owed restitution. In addition, felons who remain arrest-free for 15 years or more could have their rights restored without a hearing, regardless of their crime, unless they owed the victim compensation.³¹

The task force began its work by studying the challenge to make re-entry successful. It noted that Florida has the third largest prison population in America, and over 30,000 people in the state

²⁵ FLA CONST. art. IV, § 8(a); Fla. Stat. §§ 940.01, -05.

²⁶ See State of Florida, Florida Parole Commission, <https://fpc.state.fl.us/clemency.shtml> (last visited June 28, 2012).

²⁷ Fla. Rules of Exec. Clem. (2011), §12(A).

²⁸ “Barred for Life: The Process For Restoring Civil Rights of Felons in Florida Works Perfectly – If Not Restoring Their Rights is the Goal,” Miami New Times, Jan. 16, 2003, p. 17.

²⁹ State of Florida, Parole Commission, *Annual Report: 2006-2007*, December 2007, p. 9.

³⁰ *Ibid.*

³¹ Fla. R. Exec. Clem., (2007), §10(B).

return home from prison each year.³² The continual growth of imprisonment in the state has created an unprecedented challenge for the state and for the local communities.

Almost 90 percent of the people now in Florida's prisons will one day be released. Within three years of release, over a quarter of those people will go back to prison for a new crime. This rate of recidivism is unacceptably high and unacceptably expensive. For each new crime, there is a new victim, and new costs to Florida communities.³³

The task force called for this trend to be reversed, commenting that focusing only on custody and control does not reduce recidivism. Such a focus protects the public safety by segregating people who have committed crimes from the public, but those are not the only public safety concerns. In order to prevent recidivism, it is essential that after release ex-offenders be reconnected to positive and productive activities in their communities to reduce recidivism and facilitate successful re-entry to civilian life.³⁴

The task force also specifically identified the loss of civil rights as an issue of concern to assist with a positive and productive return to society. The task force reported that hundreds of thousands in Florida have lost their civil rights, which has an impact on their range of employment opportunities, as well as voting, jury service, and seeking public office.³⁵

Table 3 Number of Level-1 Persons Granted Automatic Clemency in 2009 and 2010

	2009	2010	Total
Persons granted automatic Clemency	24,375	5,582	29,957
Persons granted clemency	162	45	207
Totals	24,537	5,627	30,164*

Source: Florida Parole Commission Proviso Report

*A factual total of 30,672 Florida felons were granted their civil rights by the Board of Executive Clemency for calendar years 2009 and 2010. This number includes restoration of alien status under Florida law.

In 2007, with the concurrence of a majority of the Governor's Cabinet, the Clemency Board revised the Rules of Executive Clemency. Under the 2007 revised Rules, civil rights and voting rights were automatically restored to most felons upon release from prison. As part of the revised process, most ex-felons no longer had to formally file a petition for the restoration of their civil rights nor was it necessary to have an individual hearing before the Clemency Board.³⁶

³² *Ex-Offender Task Force Final Report*.

³³ *Ibid.* p. 1.

³⁴ *Ibid.* p. 20.

³⁵ *Ibid.* p. 21.

³⁶ *Parole Commission Proviso Report*, p. 6.

Under the 2007 revised Rules, nearly 25,000 ex-felons were automatically granted clemency in 2009. This is four times the number of persons receiving clemency in that year than the average number of clemencies on an annual basis since the mid-1990s. The number of automatic clemencies declined markedly in 2010, however, to only about 5,500 (See Table 3.)

The revised Rules only grant automatic clemency to non-violent ex-offenders. Persons who have been convicted of certain crimes, including the following, were not eligible under the revised Rules of Executive Clemency to have their civil rights and voting rights automatically restored.³⁷

- Murder, attempted murder, manslaughter
- DUI manslaughter
- sexual battery, attempted sexual battery
- lewd or lascivious battery
- sexual performance by a child
- aggravated child abuse
- failure to register as a sexual predator
- computer pornography, buying or selling of minors
- trafficking in illegal substances
- kidnapping, attempted kidnapping
- aggravated battery
- aggravated assault
- poisoning of food or water
- armed robbery, home invasion
- abuse of a dead human body
- first degree burglary
- arson or attempted arson
- aggravated stalking
- aircraft piracy
- facilitating terrorism
- treason

In addition to violent offenders not receiving automatic clemency, other stipulations under the revised Rules of Executive Clemency precluded ex-felons from having their rights automatically restored. A person shall have his/her civil rights status under Florida Law immediately restored by automatic approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, if the following requirements are met:

³⁷ For a complete list of crimes ineligible for restoration of civil rights, *see* Fla. Rules of Exec. Clem. (2011), § 9(A)(4).

- (1) The person has 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.
- (2) The person has no outstanding detainers or pending criminal charges.
- (3) The person has paid all restitution pursuant to a court order or civil judgment and obligation pursuant to Chapter 960, Florida Statutes.
- (4) The person has not been declared to be: (a) an habitual violent felon offender, (b) a three-time felony offender, (c) violent career criminal, (d) prison release re-offender, or (e) sexual predator.³⁸

IV. IN 2011, NEWLY ELECTED CABINET REVOKES REVISED 2008 RULES OF EXECUTIVE CLEMENCY AND AGAIN REQUIRES ALL EX-FELONS TO HAVE A FORMAL HEARING BEFORE THE CLEMENCY BOARD

In 2011 the newly elected Cabinet amended the previous clemency rules to say that the Clemency Board must review all ex-felon cases individually and decide further action. This act was based on the idea that “it is appropriate to grant the restoration of civil rights only to individuals who have demonstrated over a period of time that they are committed to living a crime-free life.”³⁹ The waiting period that naturally happens as the board reviews every individual case presents an opportunity for ex-felons to demonstrate their commitment to a crime-free life.

Under the previous Governor, depending on an ex-felon’s level of offense, he or she was granted automatic clemency upon his/her release from prison. Others had to apply for their restoration of their rights. For example, a Level-1 offender, a person convicted of burglary, was automatically processed and given his or her rights back upon release.

Another updated provision put in place is additional paper work as part of each individual case. Ex-felons must now submit accompanying documents in support of their application, regardless of the level of offense. Level-1 offenders, who previously would have been granted automatic clemency, must also abide by these new rules. As the new procedures have created more

³⁸ Ibid.

³⁹ State of Florida, Parole Commission, *Restoration of Civil Rights (RCR) Cases Granted 2009 and 2010, 2011*, available at <https://fpc.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf> (hereafter cited as *Parole Commission Clemency Report*).

paperwork to be submitted and reviewed, the waiting list for ex-felons to regain their voting rights has increased.⁴⁰

After all documents have been submitted, there are two ways a felon can go about getting their case reviewed; with a hearing or without a hearing. Offenders whose crimes are serious enough to require a hearing (Level-2 and Level-3 offenders) must wait seven years, during which they cannot have any convictions with the law, before they are eligible to apply for restoration of rights. Applicants whose offenses do not require a hearing (Level-1 offenders) must wait five years, during which they must maintain a crime free status, in order to be eligible to apply.⁴¹ These requirements are considerably different from what the previous Governor implemented. Level-1 offenders, as stated above, were granted automatic clemency. Level-2 offenders were subject to a more in-depth investigation without a hearing for a 30 day review process and upon approval the offenders were granted clemency. It was only Level-3 offenders, those who committed serious offenses like manslaughter or sexual battery, who were subjected to a hearing which included an in-depth field investigation requiring a personal interview and an Advisory Commission recommendation.⁴²

Table 4: Clemency Cases Received, Closed, and Pending for Fiscal Years 2007, 2008, 2009, 2010, and 2011

All Clemency Cases	Jul 1, 2006 - Jun 30, 2007	Jul 1, 2007 - Jun 30, 2008	Jul 1, 2008 - Jun 30, 2009	Jul 1, 2009 - Jun 30, 2010	Jul 1, 2010 - Jun 30, 2011
Cases Received	18,174	137,647	68,008	69,931	38,886
Cases Closed	56,009	171,948	76,069	38,355	30,565
Cases Pending (as of June 30)	87,722	70,766	62,924	88,096	95,425

Source: Florida Parole Commission Annual Reports 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011.

The recent press release for the new executive clemency order states: “The Restoration of Civil Rights can be a significant part of the rehabilitation of criminal offenders and can assist them in reentry into society. It is important that this form of clemency be granted in a deliberate, thoughtful manner that prioritizes public safety and creates incentives to avoid criminal activity.”⁴³

⁴⁰ Lane Wright, “Ex-felons Must Wait 5 Years, Then Ask for Right to Vote,” Sunshine State News, Mar. 10, 2011. available at <http://www.sunshinestatenews.com/story/ex-felons-must-wait-5-years-then-ask-for-right-to-vote> (reporting a backlog of more than 100,000 applications).

⁴¹ State of Florida, Office of the Governor, Press Release, *Governor Scott and Florida Cabinet Discuss Amended Rules of Executive Clemency* (March 9, 2011), available at http://floridaclemencyattorney.com/wp-content/uploads/2011/09/clemency_press_release.pdf (hereafter cited as *Governor Scott Press Release*).

⁴² *Parole Commission Clemency Report*.

⁴³ *Governor Scott Press Release*.

A troubling part of the 2011 revised clemency process is the increasingly anachronistic nature of the state's ex-felon statute. When originally enacted, mandating the Governor and the Cabinet to act on all clemency petitions was not an onerous burden, as the state's population was small.

In 1850, just five years after the state's initial Constitution was adopted, the state's population was only about 87,000 persons. According to the 1870 census, conducted two years after the state ratified its revised Constitution to allow it to re-enter the Union, the state had a population of approximately 188,000 persons. The 2010 census showed Florida's population to be more than 18 million.

This 100-fold increase in the state's population in the last 150 years has inadvertently worked to disenfranchise large numbers of ex-felons because of limits on the ability of the Clemency Board to hear and act on petitions. The process under which ex-felons must operate to have their rights restored necessarily induces a backlog of applicants given the increase in the state's population.

In the context of the backlog of clemency cases in the system,⁴⁴ in 2004, former Governor Jeb Bush (R) adopted changes that made it easier for ex-felons to have their rights restored. The revised process required the Department of Corrections to automatically submit an inmate's name to the Parole Commission for eligibility review for restoration of civil rights without a hearing upon release.⁴⁵ The 2004 rule allowed ex-felons who had been crime-free for five years to obtain automatic restoration of civil rights. In addition, any ex-felon arrest-free for fifteen years or more would have their rights restored without a hearing regardless of their crime.

In 2007, Governor Charlie Crist (R) and the Cabinet went further to expedite the process to restore ex-felons their civil rights. Under the 2007 Revised Rules of Clemency, the state implemented a process of granting automatic clemency for citizens who committed low-level offenses.⁴⁶ The process proved faster, and more efficient. (See Table 4.)

The first fiscal year after the 2007 Revised Rules of Clemency were in effect, the Clemency Board received 137, 647 cases and closed 171,948 cases, which included some 40,000 backlogged cases. The following year, fiscal year 2009, the Clemency Board received 68,008 cases and closed 76,069.⁴⁷

In 2011 Governor Rick Scott (R) and the Cabinet rescinded the 2007 Revised Rules of Clemency. Similar to the process before the 2004 reforms of Governor Jeb Bush, all petitions to

⁴⁴ See Debbie Cenziper & Jason Grotto, "Clemency Proving Elusive for Florida's Ex-Cons," *Miami Herald*, Oct. 31, 2004, p. 1A; Debbie Cenziper and Jason Grotto, "The Long Road to Clemency," *Miami Herald*, Nov. 7, 2004, p. 1A.

⁴⁵ 2004 Fla. R. Exec. Clem. § 9(A).

⁴⁶ 2007 Fla. R. Exec. Clem. § 9(A).

⁴⁷ Table 4.

restore civil rights to ex-felons are again individually reviewed and decided by the Clemency Board. Automatic restoration of civil rights is no longer granted for any ex-felon. In addition, petitioners are now saddled with new requirements to file paperwork with the Clemency Board.

Of note, in the fiscal year in which this process went into effect, more than 95,000 cases were pending review. That is approximately 7,000 more cases than in the previous year.⁴⁸

V. FINDINGS AND RECOMMENDATIONS

Florida State Advisory Committee to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The following findings and recommendations of the Florida Advisory Committee are made through the U.S. Commission on Civil Rights to state and local officials are submitted in accordance with the provisions of Section 703.2 of the Commission's regulations calling upon Advisory Committees to initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied.⁴⁹

A. Findings

The disenfranchisement provision of Article VI of the Florida Constitution has come under scrutiny in recent years, in part because of its disparate impact on males and minorities. It is estimated that the total number of persons in the state estimated to be disenfranchised from voting likely ranges from 600,000 to 1.2 million persons, or from about 3 to 6 percent of the voting population.

In 2004 former Governor Jeb Bush (R) and the cabinet adopted changes to the Rules of Executive Clemency that made it easier for felons in Florida to get their civil rights restored. Those rules allowed felons who had been arrest-free for 5 years to obtain restoration of civil rights without a hearing, unless convicted of certain violent crimes, or if they owe restitution. In addition, anyone arrest-free for 15 years or more could have their rights restored without a hearing regardless of their crime unless they owe the victim.

In 2007, with the concurrence of a majority of the Cabinet, Governor Charlie Crist (R) issued revised Rules of Executive Clemency that automatically restored civil rights and voting rights to most felons upon release from prison. The 2007 rules no longer required ex-felons to file a formal application or petition for the restoration of their civil rights and have a hearing before the Clemency Board. In 2009, nearly 25,000 ex-felons had their voting rights restored.

⁴⁸ Ibid.

⁴⁹ 45 C.F.R. § 703.2.

In 2009 the Florida Advisory Committee issued a report in support of the revised Rules of Executive Clemency. The Florida Advisory Committee recommended that as future studies show the automatic restoration of civil rights policy for ex-felons to enhance the civil rights of citizens and promote the general welfare that succeeding Governors and cabinet officials endorse and retain these revisions to the Rules of Executive Clemency

In 2011 Governor Rick Scott (R) with the support of a majority of the Cabinet amended the previous clemency rules so that again the Clemency Board must review all ex-felon cases individually and decide further action. In addition, under the 2011 rules the new Clemency Board has put in place additional paper work requirements for each individual case. Ex-felons must now submit supporting documentation along with the application to the Clemency Board regardless of the level of offense.

B. Recommendations

The right to vote is fundamental to democracy. The right to vote is also a privilege.

Given the large number of persons disenfranchised in the state because of the state's ex-felon Constitutional provision, it is the considered opinion of the Florida Advisory Committee that former Governors Jeb Bush (R) and Charlie Crist (R) acted correctly to modify the rules for executive clemency. The original framers of the state's Constitution in 1845 could not have reasonably envisioned a state population of 20 million persons and the disenfranchisement of hundreds of thousands of persons when they enacted the ex-felon voting ban and the procedures for executive clemency.

In 2009 the Florida Advisory Committee issued a report in support of the revised Rules of Executive Clemency enacted in 2007 that allowed Level-1 offenders to automatically have their civil rights restored. The Committee continues to hold that position, absent the introduction of a compelling government interest or purpose; and believes doing so will allow for deserving persons who have made full and proper restitution to again have the privilege to vote and participate in the democratic processes as well as assist such persons to successfully integrate back into society.⁵⁰

⁵⁰ This report is the work of the Florida Advisory Committee to the U. S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

Appendix 1: Restrictions on Voting Rights for Ex-Felons in States without Lifetime Bans

No Prohibitions on Voting⁵¹

<i>Maine</i>	ME. REV. STAT ANN tit 21(A) § 112(14) Persons incarcerated in correctional facilities. Maine's statute restricting voter eligibility of convicted felons was repealed by the legislature in 1975. <i>See</i> ME. REV. STAT. ANN. tit. 21, § 247 (2011).
<i>Vermont</i>	17 V.S.A. § 2121. Eligibility of voters. VT. STAT. ANN. tit. 28, § 807 (2012).

Incarcerated Individuals Can Not Vote⁵²

<i>Hawaii</i>	Haw. Const. art. 2, § 2.
<i>Illinois</i>	Ill. Const. art. III, § 2; 10 Ill. Comp. Stat. Ann. 5/3.5 (West 2012); 730 Ill. Comp. Stat. Ann. 5/5-5-5(c) (West 2012).
<i>Indiana</i>	Ind. Const. art. 2, § 8; Ind. Code §§ 3-7-13-4 to -6 (2012).
<i>Massachusetts</i>	Mass. Const. art III; MASS. GEN. LAWS ANN. ch. 51, § 1 (West 2012).
<i>Michigan</i>	Convicted felony and misdemeanor offenders are disqualified from voting while confined in jail or prison. MICH. CONST. ART 2, § 2; MICH. COMP. LAWS § 168.758b (2012).
<i>Montana</i>	Mont. Const. art. IV, § 2; MONT. CODE ANN. § 13-2-402. Reasons for cancellation. (voter registration).
<i>New Hampshire</i>	N.H. Rev. Stat. Ann. §§ 607-A:2(I)(a), 654.5 (2012).
<i>North Dakota</i>	N.D. Const. art II, § 2; N.D. Cent. Code Ann. §§ 12.1-33-01, -03 (West 2012).
<i>Ohio</i>	Ohio Const. art. 5, § 4; Ohio Rev. Code Ann. § 2961.01(A) (West 2012).
<i>Oregon</i>	Or. Const. art II, § 3; Or. Rev. Stat. § 137.281 (2012).
<i>Pennsylvania</i>	The Pennsylvania Elections Statute provides that a convicted felony offender who has been confined in a penal institution for within the last five years is not eligible to register to vote. 25 PA. CONS. STAT. § 1301(a) (2012). However, in

⁵¹ As reported in Table 1.

⁵² *Ibid.*

Mixon v. Com., 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001), this provision was ruled unconstitutional. The court held that there was no rational basis for precluding these offenders from registering to vote when those who were legally registered prior to incarceration could vote upon their release. *Id.* at 451. Accordingly, only convicted felony offenders who are incarcerated on the date of a primary or general election are precluded from voting. See PENN. DEP'T OF STATE, VOTING RIGHTS OF CONVICTED FELONS, CONVICTED MISDEMEANANTS AND PRETRIAL DETAINEES 2, available at http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_160329_77_3092_0_0_18/Convicted_felon_brochure.pdf.

- Rhode Island* R.I. Const. art 2, § 1; R.I. Gen. Laws Ann. § 17-9.2-3 (West 2012).
- Utah* Utah Const. art IV, § 6; Utah Code Ann. §§ 20A-2-101(2)(b), -101.3, -101.5 (West 2012).

Incarcerated Individuals and Persons on Parole Can Not Vote⁵³

- California* Cal. Const. art. II, § 4; Cal. Elec. Code §§ 2201, 2212 (West 2012).
- Colorado* Colo. Const. art. 7, § 10; Col. Rev. Stat. § 1-2-103(4) (2012).
- Connecticut* Conn. Gen. Stat. Ann. § 9-45 (2012).
- New York* N.Y. Const. art. II, § 3; N.Y. Elec. Law §§ 5-106(2) – (5) (McKinney 2012).

Ex-Felons Prohibited from Voting until Sentence Is Complete⁵⁴

- Alaska* Alaska Const. art. 5, § 2; Alaska Stat. §§ 12.55.185(18), 15.05.030(a), 33.30.241 (2012).
- Arkansas* Ark. Const. art. 51, § 11(a)(4).
- Georgia* Ga. Const. art. II, § 1 para. (III)(a); Ga. Code § 21-2-216 (2012).
- Idaho* Idaho Const. art. VI, § 3; Idaho Code Ann. § 18-310 (West 2012).
- Kansas* Kansas Const. art. 5, § 2; Kan. Stat. Ann. §21-6613 (West 2012).
- Louisiana* La Const. art. I, § 10; La Rev. Stat. Ann. § 18:102 (2012).
- Maryland* Md. Const. art I, § 4; Md. Code Ann., Elec. Law § 3-102(b)(1) (West 2013).

⁵³ Ibid.

⁵⁴ Ibid.

- Minnesota* Minn. Const. art. VII, § 1; Minn. Stat. §§ 609.165(1), 201.014(2) (2013).
- Missouri* Convicted felony offenders are disqualified from voting while imprisoned or on probation or parole. MO. REV. STAT. § 115.133 (2011). Convicted misdemeanants are disqualified from voting only while imprisoned. *Id.* Those convicted of either felony or misdemeanor offenses “connected with the exercise of the right of suffrage” are permanently disqualified from voting. MO. CONST. art VIII, § 2.
- New Jersey* N.J. Const. art II, § 1(7); N.J. Stat. Ann. §§ 2C:51-3(a), 19:4-1(8) (2012). If disqualification from voting was imposed by the court as part of the punishment for a criminal violation of election laws, the right to vote can only be restored by pardon. *Id.* § 19:4-1(6), (7).
- New Mexico* N.M. Const. art. VII, § 1; N.M. Stat. Ann. § 31-13-1 (2012).
- North Carolina* N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. §§ 13-1, 165-55(a)(2) (2012).
- Oklahoma* Okla. Stat. tit. 26, § 4-101(1) (2012).
- South Carolina* S.C. Const. art II, § 7; Imprisonment results in disqualification even if conviction is for a misdemeanor offense. S.C. CODE ANN. §§ 7-5-120(B)(2), (3) (2011).
- South Dakota* On March 19, 2012, South Dakota enacted H.B. 1247, which removes voting rights from convicted felons until completion of sentence. H.B. 1247, 87th Leg. Assemb., (S.D. 2012). This legislation amended the state’s statutes on Registration of Voters, which previously precluded from voting only those felony offenders currently incarcerated or on parole. S.D. CODIFIED LAWS § 12-4-18 (2011).
- Texas* Tex. Const. art. 6, § 1(3); Tex. Elec. Code Ann. § 11.002(4) (West 2013).
- Washington* Felony offenders must re-register to vote after completing all requirements of their sentence including period of probation and parole. WASH. CONST. art. VI, § 3. The right to vote is provisionally restored when the offender is discharged from the authority of the Department of Corrections, but may be revoked if the sentencing court determines that they have willfully failed to meet any legal financial obligations resulting from conviction. WASH. REV. CODE ANN. §§ 29A.08.520(1), (2) (West 2013).
- West Virginia* W. Va. Const. art. IV, § 1; W. Va. Code § 3-2-2(b) (2012).
- Wisconsin* Wis. Stat. § 6.03(1)(b) (2012).

Ex-Felons Prohibited from Voting for Treason⁵⁵

Nebraska A convicted felon's right to vote is restored automatically two years after completion of sentence, including period of parole and probation, for all convictions except treason. NEB. CONST. art. VI, § 2; Neb. Rev. Stat. §§ 29-112, 32-313 (2012).

⁵⁵ *Ibid.*

Appendix 2: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans⁵⁶

- Alabama A person convicted of a “felony of moral turpitude” is disqualified from voting until his/her civil and political rights are restored. Ala. Const. art. VIII, § 177. Upon completion of sentence, a disqualified person may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote, Ala. Code § 17-3-31 (2012), so long as he/she was not convicted of impeachment, murder, rape, sodomy, sexual abuse, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. *Id.* § 15-22-36.1(g).
- Arizona Ariz. Const. art. VII, § 2(c); Ariz. Rev. Stat. Ann. §§ 13-904(A)(1), 16-101(5) (2012). Voting rights for first-time felony offenders are automatically restored upon completion of sentence, as well as payment of any monetary fines or restitution. Ariz. Rev. Stat. Ann. § 13-912. All other offenders may apply for restoration of rights with the sentencing or discharging superior court judge. *Id.* § 13-905. The governor has the authority to grant pardons, except for convictions of treason or impeachment, but his authority may be restricted by statute. Ariz. Const. art. V, § 5; Ariz. Rev. Stat. Ann. § 31-443. Pardons must first be recommended by the Board of Executive Clemency. *Id.* § 31-402(A). The governor is required to publish reasons for each pardon and must report to the legislature at the beginning of each regular session. *Id.* §§ 31-445, 31-446.
- Delaware A convicted felon’s right to vote may be restored five years after completion of sentence and period of probation and parole upon application to the County Board of Elections. Del. Const. art. V, § 2; Del. Code Ann. tit. 15, § 6103-05 (West 2012). This provision does not apply to certain serious offenses including murder, manslaughter, sex offenses, or offenses against public administration. Del. Const. art. V, § 2.
- Florida Fla. Const. art. VI, § 4(a); *Id.* at art. IV, § 8(a); Fla. Stat. §§ 98.075, 944.292(a) (2012). The power to grant a pardon or restore civil rights following felony convictions for offenses other than treason or impeachment is vested in the Governor, and requires approval of two members of the Cabinet. Fla. Stat. §§ 940.01, -05.

⁵⁶ As reported in Table 2.

- Iowa Iowa Const. art. II, § 5; *Id.* at art. IV § 16; Iowa Code Ann. §§ 48A.6, 914.2 (West 2012). Executive pardon by the Governor restores voting rights of an ex-felon.
- Kentucky Ky. Const. §§ 77, 145(1). Executive pardon by the Governor restores voting rights of an ex-felon.
- Mississippi Disqualification from voting occurs only upon conviction by a state court of certain identified felonies including murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, Miss. Const. art. 12, § 241, as well as armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, and carjacking, *see* Op. Miss. Att’y. Gen. No. 2004-0171 (Karrem, Apr. 23, 2004). Voter eligibility may be regained by executive pardon, Miss. Code Ann. § 47-7-41 (West 2012), or by a two-thirds vote of both houses, Miss. Const. art. 12, § 253. Individuals disqualified from voting in the state remain eligible to vote in federal elections. *Id.* § 241.
- Nevada Nev. Const. art. 2, § 1. The right to vote is automatically restored to first-time offenders charged with most non-violent felonies following completion of sentence. Nev. Rev. Stat. §§ 155, 213.157 (2012). For all other offenders, the right to vote may only be restored by executive pardon. *Id.* § 213.090.
- Tennessee Tenn. Const. art. 1, § 5; Tenn. Code. Ann. §40-20-112 (West 2013). Convicted felony offenders may apply to the Board of Probation and Parole for voting restoration upon completion of sentence, Tenn. Code. Ann. § 40-29-202. Persons convicted of certain felony offenses including murder, rape, treason, sexual offenses involving a minor victim, voter fraud, bribery, misconduct involving public officials and employees, or interference with government operations are permanently ineligible to vote. *Id.* § 40-29-204.
- Virginia Va. Const. art. II, § 1; *Id.* at art. V, § 12; Va. Code Ann. §§ 53.1-229, -231 (West 2013). Persons convicted of most non-violent felonies may apply to the governor for a pardon or restoration of voting rights two years after completion of sentence and payment of any monetary fines and restitution. See Sec’y of the Commonwealth, *Non-Violent Offenders Application for Restoration of Civil Rights*, available at <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/McDonnell2-YearRoRApplication-Latest92010.pdf> (last visited June 22, 2012). Persons convicted of violent offenses, drug manufacturing or distribution offenses, offenses against minors, or election law offenses must wait five years to apply for restoration of rights. See Sec’y of the Commonwealth, *Five Year Application for Restoration of Civil Rights*, available at

<http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/5-YearRoRAApplication-UpdatedJuly2010-2.pdf> (last visited June 22, 2012).

Also see: Governor McDonnell announced on May 29, 2013 a transition from an application process to an Automatic Restoration Process for Non-violent Felons effective on July 15, 2013, at <http://www.commonwealth.virginia.gov/judicialsystem/clemency/restoration.cfm>.⁵⁷

Wyoming First-time non-violent felony offenders may apply to the Board of Parole for a certificate restoring voting rights five years after completion of sentence including period of probation. All others must apply to the governor for either a pardon or a restoration of rights. Wyo. Const. art. 6, § 6; Wyo. Stat. Ann. § 7-13-105 (2012).

⁵⁷ Under the executive order, the right to vote is automatically restored to all non-violent offenders who meet the following conditions: (1) all term of incarceration, probation, and parole have been completed, (2) all court costs, fines, and any restitution has been paid, and (3) there are no pending felony charges.

**Florida Advisory Committee to the
United States Commission on Civil Rights**



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