

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1332

INTRODUCER: Senator Perry

SUBJECT: Restoration of Civil Rights

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1332 creates s. 947.131, F.S., providing for the priority processing of restoration of civil rights cases for applicants that have never been convicted of a specified offense. The bill defines a priority case to mean an application for the restoration of civil rights submitted by an applicant who has never been convicted of an offense enumerated in s. 775.084(1)(d), F.S., excluding burglary as defined in s. 810.02(3)(b) or (4), F.S.

The bill requires the Florida Commission on Offender Review (FCOR) to complete investigations for priority applications that are submitted prior to July 1, 2018, before a priority application submitted after such date, or any nonpriority application. The FCOR must complete an investigation by:

- July 1, 2022, for a priority application that is submitted before July 1, 2018;
- July 1, 2023, for a priority application submitted on or after July 1, 2018, but before July 1, 2021;
- July 1, 2024, for a priority application submitted on or after July 1, 2021, but before July 1, 2023.

Beginning July 1, 2023, the bill requires the FCOR to complete the investigation for a priority application within one year after its submission. The bill does not impose deadlines on the completion of an investigation for an application that is not designated as a priority application.

Subject to an agreement between the Florida Department of Law Enforcement (FDLE) and the FCOR and an appropriation, the bill requires the FDLE to conduct the applicant's criminal history background screening for the FCOR.

The bill also provides various provisions to any application for the restoration of civil rights, regardless of whether such application is designated a priority application or not, which are designed to enhance communication between an applicant and the FCOR.

The bill will likely have a negative indeterminate fiscal impact on the FCOR and the FDLE. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Restoration of Civil Rights

A person convicted of a felony forfeits specified rights as a result of the conviction. The Florida Constitution requires the loss of the right to vote and the right to hold public office as consequences of a felony conviction.¹ Additional civil rights are lost in accordance with statute, including the right to serve on a jury² and possess a firearm.³ The civil rights of a convicted felon are suspended until restored by a pardon⁴ or restoration of civil rights.⁵ The restoration of civil rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.

The Florida Constitution, in part, grants the power of restoring civil rights to the Governor with the consent of at least two Cabinet members.⁶ The Governor and Cabinet sit as the Executive Board of Clemency (Clemency Board).⁷ The Rules of Executive Clemency (Rules) which outline the eligibility criteria for the process of restoration of civil rights, are adopted by the Governor with the approval of two members of the Clemency Board.⁸ The Rules provide, in part, that the unfettered discretion to:

- Deny the restoration of civil rights at any time, for any reason, rests with the Governor; and
- Grant the restoration of civil rights at any time, for any reason, rests with the Governor, provided at least two members of the Clemency Board also approve.⁹

¹ FLA. CONST. Article VI, s. 4. The Florida Constitution defines the term “felony” to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary. FLA. CONST. Article X, s. 10.

² Section 40.013, F.S.

³ Section 790.23, F.S. *See also* s. 790.06(2)(d) and (k), F.S.

⁴ Florida provides for several types of pardons applicable to felony convictions. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. FCOR, *Clemency Overview*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited January 19, 2018).

⁵ Section 944.292, F.S.

⁶ FLA. CONST. Article IV, s. 8(a). This authority is also codified in s. 940.01, F.S.

⁷ Rules of Executive Clemency (2017), Rule 1., available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last visited January 16, 2018) (hereinafter cited as “Rule”).

⁸ Section 940.03, F.S. *See also* Rule 2.A.

⁹ Rule 4.

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

- Received a full pardon from the Clemency Board;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the FCOR.¹⁰

The current Rules define the restoration of civil rights as a process that restores all of the applicant's rights of citizenship enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.¹¹ The Rules further provide the specific authority to own, possess, or use a firearm must be restored through the separate process for such rights.¹²

Role of Specified Entities in the Restoration of Civil Rights Process

The FCOR's Office of Executive Clemency, in part, assists in the acceptance, review, and recommendation of applications for restoration of civil rights, as well as the agenda for Clemency Board meetings.¹³ A Coordinator must be appointed by the Clemency Board and serves as the official custodian of the records.¹⁴ The FCOR's Office of Clemency Investigations, in part, conducts comprehensive, confidential investigations of persons that have applied for restoration of civil rights.¹⁵ An individual seeking restoration of civil rights submits an application to the Office of Executive Clemency and the application is forwarded to the FCOR for investigation, report, and recommendation.¹⁶

The Department of Corrections (DOC) is required to inform inmates and offenders on community supervision about the restoration of civil rights. Additionally, DOC is required to electronically send to the FCOR a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision that may be eligible for restoration of civil rights.¹⁷

Restoration of Civil Rights Under Governor Scott's Administration

The current Rules became effective March 9, 2011, after being amended and adopted by the Clemency Board subsequent to Governor Scott taking office.¹⁸ Eligibility for restoration of civil

¹⁰ Article IV, s. 8, of the Florida Constitution, authorizes the creation of a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be proscribed by law. The FCOR, previously known as the Parole Commission, was created in 1941 and renamed in 2014, to perform these functions. *See* s. 1, ch. 20519, 1941, L.O.F., and ch. 2014-191, L.O.F.

¹¹ Rule 4.I.G. Restoration of civil rights in accordance with the Rules does not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

¹² *See* Rule 4.I.F.

¹³ Rule 2.B. *See also* FCOR, *Executive Clemency Timeline: 1991-2015*, p. 2 (on file with the Senate Committee on Criminal Justice) (hereinafter cited as "Clemency Timeline").

¹⁴ Clemency Timeline, p. 2.

¹⁵ Section 947.13(1)(d), F.S., requires the FCOR to conduct investigations as may be necessary. *See also* Clemency Timeline, p. 2.

¹⁶ Section 940.03, F.S. *See also* Rules 6. and 7.

¹⁷ Section 940.061, F.S.

¹⁸ Clemency Timeline, p. 5.

rights is separated out between applications that require a hearing in front of the Clemency Board for approval and those that do not. The investigations for the applications requiring a hearing are more intensive than applications that do not require a hearing.¹⁹

Any applicant, regardless of whether he or she requires a hearing with the Clemency Board, which is submitting an application for the restoration of his or her civil rights to be considered must:

- Have had five years pass since the date of completion of all sentences and conditions of supervision imposed without any new criminal charges;
- Not have any outstanding detainers or pending criminal charges;
- Have paid all restitution in full; and
- Be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.²⁰

However, to be eligible for a restoration of civil rights to be granted without a hearing before the Clemency Board, the applicant must also:

- Have never been convicted of an enumerated offense;²¹ and
- Have never been declared to be a specified designation.²²

A person that intends to apply for the restoration of his or her civil rights must either request an application form from the FCOR or download it from the FCOR's website.²³ The current Rules require the application to include a certified copy of the applicant's indictment or information, the judgment adjudicating the applicant to be guilty, and the sentence.²⁴

Upon receipt of a person's application for the restoration of civil rights, the FCOR date stamps the application and this date controls the placement of the application in the backlog of pending applications. Staff then performs a cursory review of the application to ensure that all required documents have been submitted and filled out completely. The FCOR reports that an applicant is notified by letter regarding whether the application submission was complete and if not, the applicant is provided an opportunity to make the application whole. Staff then conducts an initial prescreening of the applicant to ensure he or she meets the eligibility criteria proscribed in the

¹⁹ See FCOR, *Annual Report 2016-17*, p. 15, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201617.pdf> (last visited January 19, 2018) (hereinafter cited as "Annual Report").

²⁰ Rules 9.A and 10.A.

²¹ Rule 9.A.4., provides an extensive list of offenses that include, but are not limited to, DUI manslaughter, any violation of ch. 800, F.S., aggravated child abuse, robbery, carjacking, home invasion robbery, and exploitation of the elderly.

²² Rule 9.A.5., prohibits an applicant who has ever been designated as a habitual violent felony offender, three-time violent felony offender, violent career criminal, prison release reoffender, or sexual predator from being eligible for restoration of civil rights without a hearing.

²³ Rule 6.A. Section 940.03, F.S., also provides that an application for executive clemency for a person who is sentenced to death must be filed within one year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later.

²⁴ An applicant seeking the restoration of civil rights is currently required to include with the application a list of all convictions and provide court documents. See *Application for Clemency*, available at <https://www.fcor.state.fl.us/docs/clemency/ClemencyApplication.pdf> (last visited January 19, 2018). Section 940.04, F.S., provides that such required court documents must be furnished by the clerk of court to the applicant free of charge and without delay.

Rules. If the applicant is determined to be eligible under the Rules, his or her application is forwarded for the full investigation to be conducted. The FCOR reports that a quick eligibility review is periodically conducted on the applicant during the waiting period to ensure that he or she remains eligible under the Rules.²⁵

Investigative Duties of the Florida Commission on Offender Review

As mentioned above, the investigations for applications requiring a hearing are more intensive than applications not requiring a hearing. For the investigation of a case that requires a hearing, the FCOR must provide a broad picture of the applicant's history and activities. The FCOR conducts an interview of the applicant and investigates factors including, but not limited to:

- Information related to the felony conviction that led to the revocation of civil rights, including the offense, any co-defendants associated with the case, applicant's acceptance of a plea (if applicable), sentence imposed, and status on the payment of fines, court costs, fees, and victim restitution;
- An applicant-reported narrative of the offense that led to the revocation of civil rights;
- The applicant's entire criminal history record;
- History of:
 - Adjustment to incarceration or supervision;
 - Domestic violence, if applicable;
 - Alcohol and substance abuse, if applicable;
 - Employment; and
 - Military service;
- Traffic record, if applicable;
- Voter registration information;
- Citizenship verification; and
- Input from the court, state attorney, and victim.²⁶

An investigation for an application that does not require a hearing reviews more limited factors, similar to such information that is obtained through a criminal or employment background search performed by the FDLE, such as:

- Felony convictions;
- Circumstances of the offense;
- Criminal record;
- Domestic violence information; and
- Confidential victim memorandum, if deemed necessary by the investigator.²⁷

The FCOR reports that it cannot accurately estimate how long it takes to complete an investigation for either type of restoration of civil rights case because it does not capture this data.²⁸

²⁵ *Id.*

²⁶ *Id.* and Annual Report, p. 15.

²⁷ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

²⁸ *Id.*

When an investigation is complete, an additional quality assurance review is conducted to ensure the investigation is accurate and the FCOR's advisory recommendation is obtained for submission to the Clemency Board.²⁹ A confidential case analysis, which summarizes the findings of the investigation and the advisory recommendation, is prepared for any investigation conducted on a case that requires a hearing. Clemency applicants are mailed a copy of their investigative reports prior to each scheduled Clemency Board meeting.³⁰ The FCOR states that it sends the case analysis to both the Clemency Board and the applicant at the same time.³¹ It does not appear that there is an opportunity for the applicant to dispute any information included in the report.

The FCOR reports it has a total of 53 investigators on its staff including:

- 32 investigators that conduct investigations for each of the various types of cases that fall under the purview of the FCOR, including investigations required for conditional medical release, parole, pardons, commutations, and clemency cases; and
- 21 investigators that solely perform clemency investigations, which includes restoration of civil rights.³²

Further, the FCOR reports that investigators who handle all the various types of cases must give priority to cases that have statutorily mandated time frames, such as parole or conditional medical release, and therefore an investigation for a restoration of civil rights case may get delayed if a time sensitive case is assigned to the investigator.³³ Currently, there are no statutorily imposed time frames imposed on any portion of the restoration of civil rights investigation process.

Resolution of an Application that Does Not Require a Hearing

The FCOR must review the application of an individual who has applied for restoration of civil rights. For a restoration of civil rights application that does not require a hearing, the FCOR Office of Executive Clemency Coordinator must issue a preliminary review list of all individuals who meet the eligibility requirements and submit it to the Clemency Board.³⁴ If the Governor, plus two members, approve an individual's restoration of civil rights without a hearing within 60 days of issuance of the preliminary review list, the FCOR Coordinator must issue a certificate that grants the individual restoration of civil rights upon signature of the Governor and two Clemency Board members.³⁵ If approval is not granted, that candidate will be notified, and may pursue restoration of civil rights with a hearing.³⁶

²⁹ *Id.*

³⁰ Annual Report, p. 15.

³¹ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³² Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³³ *Id.*

³⁴ Rule 9.B.

³⁵ *Id.* The Coordinator issues these certificates pursuant to executive order and the certificate must specifically exclude the authority to own, possess, or use firearms, unless otherwise separately approved by the Clemency Board. FLA. CONST. Article IV, s. 8, requires such signatures.

³⁶ Rule 9.B.

Resolution of an Application that Requires a Hearing

Once the investigation, report, and recommendation has been complete, the FCOR Office of Executive Clemency Coordinator may place an application on the agenda for the next scheduled meeting of the Clemency Board.³⁷ The Clemency Board met four times in 2017, and heard approximately 85-95 hearings each agenda, with approximately 56 percent of the hearings being for restoration of civil rights cases.³⁸

Current Backlog for Restoration of Civil Rights Investigations

As of January 1, 2018, the FCOR reports that there are 10,264 restoration of civil rights cases awaiting an investigation and hearing, of which 391 are applications that do not require a hearing with the Clemency Board and 9,873 applications pending that do require a hearing. This number does not include cases that are specific to the restoration of the specific authority to own, possess or use firearms.³⁹

On November 1, 2017, the Ethics and Elections Committee of the Constitutional Revision Commission heard presentations on the process and existing backlog for restoration of civil rights applications in Florida. Julia McCall, Coordinator of the Office of Executive Clemency, stated at the meeting that about 300 cases are scheduled for a hearing with the Clemency Board each year from the 6,000 applications received annually and the average wait for a hearing is 9.2 years.⁴⁰

III. Effect of Proposed Changes:

The bill creates s. 947.131, F.S., providing for priority processing of restoration of civil rights cases for applicants that have never been convicted of a “violent felony.” The bill also specifies deadlines for processing the backlog of cases designated under the bill as priority cases.

³⁷ Rule 11.A.1.

³⁸ FCOR reports that in last year’s Clemency Board meetings there were a total of 363 cases set for hearing, with 205 of those cases being for restoration of civil rights applicants. *See* Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³⁹ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

⁴⁰ The Florida Times-Union, *Restoration of rights backlog highlights need for change, CRC committee says*, Tia Mitchell, (November 1, 2017), available at <http://jacksonville.com/news/florida/2017-11-01/restoration-rights-backlog-highlights-need-change-crc-committee-says> (last visited January 17, 2018).

The bill defines a priority case to mean an application for the restoration of civil rights submitted by an applicant who has never been convicted of an offense enumerated in s. 775.084(1)(d), F.S.,⁴¹ excluding burglary as defined in s. 810.02(3)(b) or (4), F.S.⁴²

Priority applications that are submitted prior to July 1, 2018, must be completely processed and investigated before a priority application submitted after such date, or a nonpriority application, regardless of the submission date. Specified deadlines for processing and completing the investigation of a priority application are provided for, including by:

- July 1, 2022, for a priority application that is submitted before July 1, 2018;
- July 1, 2023, for a priority application submitted on or after July 1, 2018, but before July 1, 2021;
- July 1, 2024, for a priority application submitted on or after July 1, 2021, but before July 1, 2023.

Beginning July 1, 2023, the bill requires the FCOR to complete the investigation for a priority application within one year after the submission of the application. The bill does not impose deadlines on the completion of investigations for applications that are not designated priority applications.

Subject to an agreement between the FDLE⁴³ and the FCOR and an appropriation, the bill requires the FDLE to conduct the applicant's criminal history background screening, which must provide information on any felony conviction, the criminal history record before and after the felony conviction that led to the applicant's civil rights being removed, the traffic record, and any domestic violence injunction or other injunction filed against the applicant.

The bill also provides various guidelines for the processing of any application for the restoration of civil rights, regardless of whether such application is designated a priority application or not. The bill requires:

- An applicant to keep the FCOR updated with correct contact information, including mailing address and email address throughout the clemency process.
- The FCOR to provide written notification to the applicant annually regarding the status of the pending application, which must include the number of applications pending in front of the applicant's application.⁴⁴

⁴¹ Section 775.084(1)(d), F.S., includes the following offenses: treason (s. 876.32, F.S.); murder (s. 782.04, F.S., or s. 782.065, F.S.); manslaughter (s. 782.07, F.S.); sexual battery (s. 794.011, F.S.); carjacking (s. 812.133, F.S.); home-invasion robbery (s. 812.135, F.S.); robbery (s. 812.13, F.S.); burglary (s. 810.02, F.S.); arson (s. 806.01, F.S., or s. 806.031, F.S.); kidnapping (s. 910.14, F.S.); aggravated assault (s. 784.021, F.S.); aggravated battery (s. 784.045, F.S.); aggravated stalking (s. 784.048, F.S.); aircraft piracy (s. 860.16, F.S.); unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.); aggravated child abuse (s. 827.03(2)(a), F.S.); aggravated abuse of an elderly person or disabled adult (s. 825.102(2), F.S.); lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (s. 800.04, F.S., or s. 847.0135(5), F.S.); escape (s. 944.40, F.S.); a felony violation of ch. 790, F.S., involving the use or possession of a firearm, or any other felony which involves the use or threat of physical force or violence against any individual.

⁴² Therefore, the unoccupied burglary of a dwelling, structure, or conveyance will be eligible to be designated as a priority application under the bill.

⁴³ The bill defines the term "department" to mean the FDLE.

⁴⁴ The bill authorizes the annual status notification to be sent via email.

- The FCOR to notify an applicant within 30 days of completing the prescreening review of any incomplete portions of the application or any facts that are determined in the prescreening review⁴⁵ to deem the applicant ineligible for restoration of civil rights. The applicant is provided 45 days to remedy any incomplete portions or discrepancies.
- The FCOR to provide a copy of the confidential case analysis⁴⁶ that is prepared for any restoration of civil rights case to the applicant immediately upon completion, which must be no less than 45 days prior to the FCOR submitting the analysis to the Clemency Board. An applicant is given 45 days to dispute and remedy any discrepancies in the confidential case analysis report before the FCOR submits the report to the Clemency Board.

The bill provides records maintained by the FCOR related to an application submission and the status of such application are public records in accordance with ch. 119, F.S., and are not confidential and exempt by law. The bill requires the FCOR to provide specified information on the status of the application if a member of the Senate or House of Representatives submits a written request on behalf of his or her constituent.⁴⁷

The bill provides the FCOR rulemaking authority to implement the provisions of the act.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁵ The bill defines the term “prescreening review” to mean the initial review to determine eligibility which is conducted by the FCOR upon receipt of an application for restoration of civil rights.

⁴⁶ The bill defines “confidential case analysis report” to mean the final report prepared by the commission which details the findings of the restoration of civil rights investigation and the FCOR’s recommendation.

⁴⁷ Section 14.28, F.S., provides that all records developed or received by any state entity pursuant to a Clemency Board investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records may be released upon the approval of the Governor.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides a method for an applicant who has a pending application with the FCOR for the restoration of his or her civil rights to have his or her investigation completed prior to a specified deadline. The bill allows specified offenses to be designated as a priority application that is subject to the specified timeline deadlines, even though such applications may require a more intensive investigation under the current Rules. However, the FCOR cannot provide data on how many of the approximately 10,000 backlog cases pending are a result of convictions from these specified offenses. To the extent that the bill results in an increased workload on the FCOR to complete such investigations, the bill will likely have an indeterminate negative fiscal impact on the FCOR.

The bill authorizes the FCOR and the FDLE to agree to the FDLE providing criminal history background checks to the FCOR. To the extent that this increases the amount of criminal history records searches that the FDLE must conduct, the bill will result in a negative indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 947.131 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.