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# **Ex-Felon Voting Rights in Florida**

## **Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders Is the Right Policy**

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**August 2008**

This is the work of the Florida Advisory Committee to the United States Commission on Civil Rights. The views expressed in this report and the findings and recommendations contained herein are those of the members of the State Advisory Committee and do not necessarily represent the views of the Commission, its individual members, or the policies of the United States Government.

## **The United States Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; submit reports, findings, and recommendations to the President and Congress; and issue public service announcements to discourage discrimination or denial of equal protection of the laws.

## **The State Advisory Committees**

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 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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Automatically Restore Civil Rights to Level-1  
Offenders Is the Right Policy**

## Letter of Transmittal

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

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The Florida Advisory Committee submits this 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*, as part of its responsibility to study important civil rights issues in the state and report on its findings to the Commission and the public. The Florida Advisory Committee is a bipartisan federal advisory committee that operates under the Federal Advisory Committee Act, and this report was unanimously adopted by all members of the Committee by a vote of 13 yes, 0 no, and no abstentions.

Addressing voting rights issues has been a central mission for the Commission since its establishment in 1957. Most recently in 2006 the Commission held a series of briefings on the reauthorization of the Voting Rights Act. Five years earlier in 2001, the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential elections. In the 1960s, the work of the Commission was instrumental in the passage of the historic Voting Rights Act of 1965. In keeping with the Commission's historical attention to voting rights, the Florida Advisory Committee determined to examine the issue of ex-felon voting rights in Florida.

Despite Constitutional voting protections under the 15<sup>th</sup> Amendment, for more than 100 years following the Civil War most blacks were denied the right to vote in many parts of the South, including Florida. The present Constitution of Florida provides that no person convicted of a felony in Florida or any other state will be allowed to vote or hold office until there has been a restoration of the individual's civil rights. Such civil rights can only be restored upon the formal granting of clemency by the Clemency Board, which is composed of the Governor and members of the Cabinet.

An independent assessment by the Florida Advisory Committee estimates that nearly 200,000 persons lost the right to vote between 1995 and 2005 because of the state's Constitutional ex-felon disenfranchisement 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 it is likely that a total of one million persons in the state may presently be disenfranchised from voting. As blacks make up nearly half of the inmate population though they comprise only about 15 percent of the state's population and males comprise 90 percent of the prison population, the state Constitutional ban prohibiting persons convicted of a felony from voting has a disparate impact on voting rights for minorities and males living in Florida.

On April 5, 2007, with the concurrence of a majority of the Cabinet, the Clemency Board issued revised Rules of Executive Clemency that automatically restore civil rights and voting rights to most felons upon release from prison. The new rules no longer require most ex-felons to file a formal application or petition for the restoration of their civil rights. Instead, under the new Rules of Executive Clemency, immediately upon completion of their sentences ex-offenders are automatically reviewed by the Parole Commission to determine their eligibility for restoration of civil rights without a hearing.

For those individuals granted Level-1 status by the Parole Commission, an executive order is automatically issued that grants the restoration of their civil rights signed by the Clemency Board without the need for a formal hearing. Level-1 status is comprised of non-violent offenders who have completed all terms of their sentence, made any required payment of restitution to victims, and are free of any pending charges.

The Florida Advisory Committee unanimously supports this change in policy, and issues this report in support of its position. Further, in anticipation that future studies show the revised Rules of Executive Clemency to enhance the civil rights of all citizens and promote the general welfare, the Committee recommends that succeeding Governors and cabinet officials continue to endorse and retain this policy. In addition, the Committee also recommends that the state's Parole Commission immediately act to put in place data collection systems that will allow future studies to be conducted on the impact of this change in policy.

Respectfully,

Elena M. Flom, Ed.D, *Chairperson*  
Florida Advisory Committee

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\*\* Gilbert Colon replaced Wilfredo Gonzalez of Jacksonville, FL, on the Florida Advisory Committee in June 2008. Mr. Gonzalez was a member of the Florida Advisory Committee during the conduct of this project and the report approval process.

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<b>Contents</b>	
<b>Background</b>	1
<b>Introduction</b>	2
<b>Ex-Felon Disfranchisement in Florida Extends Back More Than 100 Years</b>	4
Blacks in the South Denied Right to Vote For 100 Years Following the Civil War	4
Florida Ex-Felon Voting Disfranchisement Rooted In State Constitution	6
Florida Law Challenged in Federal Court As Violation of Equal Protection Clause	9
<b>Several Hundred Thousand Persons Disfranchised in Florida, 200,000 Disfranchised Between 1995 and 2005</b>	12
200,000 Persons Disfranchised In Florida Between 1995 and 2005	12
Clemency Board Has Authority to Restore Civil Rights, Estimated 6,500 Petitions Granted Annually Since 1994	14
Governor’s Task Force Notes Loss of Civil Rights Impediment to Successful Return to Community	15
<b>New Clemency Rules Give Automatic Restoration of Civil Rights to Most Ex-Felons</b>	17
Non-Violent Offenders Have Civil Rights Restored Automatically Upon Completion of Sentence	17
Public Officials Divided in Their Opinion Concerning the Revised Rules for Clemency	19
<b>Findings and Recommendations</b>	21
<b>Appendix I—Revised Rules of Executive Clemency</b>	22

## Tables

Table 1: Restrictions on Voting Rights for Ex-Felons for States With Lifetime Bans	7
Table 2: Restrictions on Voting Rights for Ex-Felons for States Without Lifetime Bans	8
Table 3: Prisoners in Florida Under State or Federal Jurisdiction, 1995-2004	13
Table 4: Calculated Estimate of Number of Ex-Felons Disenfranchised in Florida Since Between 1995 and 2005	14

## Background

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency charged with the responsibility to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin. Addressing voting rights issues has been a central mission for the Commission since its establishment in 1957. Most recently, the Commission addressed the Voting Rights Act in a briefing held October 2005 and in its statutory enforcement report for FY 2006.<sup>1</sup> Five years earlier in 2001, the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential elections.<sup>2</sup> In the 1960s the Commission was instrumental in passage of the Voting Rights Act of 1965.

State advisory committees are part of the Commission and are established in each of the 50 states to advise the Commission and inform the public of pressing civil rights issues in their states. In keeping with the Commission's historical attention to voting rights, the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights at a meeting of the Committee in September 2006 decided to examine the issue of ex-felon voting rights in Florida, as the percentage of the voting age population disenfranchised by felony conviction in the state range was estimated to be more than 6 percent and disproportionately minority and male.<sup>3</sup>

In examining this issue, members of the Florida Advisory Committee interviewed members of the Florida Cabinet, local law enforcement officials, local elected and other public officials, and other persons and parties with an expressed interest in the issue. It also examined the history of the state's ex-felon disenfranchisement statute and legal challenges to the law, as well as government and private studies of ex-felon voting disenfranchisement to include the Federal Commission on Election Reform. Finally, the Committee obtained data from the U.S. Department of Justice and the Florida Department of Corrections regarding incarceration and recidivism rates, and did an independent assessment of its considered effect of the ex-felon disenfranchisement statute on the voting age population.

This report is narrowly limited in scope to the recent action by the Executive Board of Clemency to automatically restore voting rights to ex-felons in Florida and does not extend to the restoration of other civil rights such as the right to serve on a jury nor to other issues regarding the re-entry of ex-felons to society, e.g., barriers to employment. It does not purport to examine allegations of race-based voter disenfranchisement in Florida during recent elections nor is it an examination of the judicial system and any alleged racial bias in arrest, prosecution, or sentencing.

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<sup>1</sup> U.S. Commission on Civil Rights, "Reauthorization of the Temporary Provisions of the Voting Rights Act," February 2006 at <http://www.sccr.gov/pubs/067006VRAbrief524.pdf> and <http://www.usccr.gov/pubs/051006VRASatReport.pdf>.

<sup>2</sup> U.S. Commission on Civil Rights, "Voting Irregularities in Florida During the 2000 Presidential Election," June 2001.

<sup>3</sup> Federal Commission on Election Reform, Disenfranchisement of Felons, July 2001, p. 1.

## Introduction

The State of Florida 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. Article VI, Section 4(a) of the state Constitution reads:

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.<sup>4</sup>

However, under the state's Constitution, ex-felons have the right to appeal to the Clemency Board for restoration of civil rights upon the completion of their sentence. The Clemency Board is composed of the Governor and the three members of the Cabinet, the Attorney General, Commissioner of Agriculture, and Commissioner of Finance. Article IV, Section 8(a) of the state Constitution provides:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses. The Governor and members of the Cabinet collectively are the Clemency Board. 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.<sup>5</sup>

Clemency rules are established by mutual consent of the Clemency Board under its constitutional prerogative to grant or deny clemency. The rules may be altered with the approval of the Governor and any two members of the Clemency Board. Prior to 2007, each ex-felon had to individually and formally petition the Clemency Board for restoration of his/her civil rights upon completion of sentence. In April 2007 the Clemency Board issued revised Rules of Executive Clemency that automatically restore civil rights to most felons upon release from prison and no longer requires most ex-felons to file any application for the restoration of civil rights.

Specifically, the Rules of Executive Clemency were revised to allow for the restoration of civil rights without requiring a formal petition and hearing. Under the newly adopted rules, upon final release of a felon from prison or state supervision, the Department of Corrections is required to submit each individual's name to the Florida Parole Commission.<sup>6</sup>

The Parole Commission determines, based on specific criteria, to the extent an ex-felon is eligible for automatic restoration of civil rights. Essentially, if the released individual was a non-violent offender and has completed all terms of his/her sentence as well as having made any required payment of restitution to victims and is free of any pending charges, the ex-offender will be given Level-1 status. Ex-felons determined to be eligible for Level-1 status and with no member of the Board of Executive Clemency objecting, have a certificate issued restoring the felon's civil rights without a hearing that is mailed to the individual's last known address.

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<sup>4</sup> FL. Const. art. VI, § 4 (a).

<sup>5</sup> FL. Const. art. IV, § 8 (a).

<sup>6</sup> Rules of Executive Clemency, 9A, revised Apr. 5, 2007, effective Apr. 5, 2007. The newly adopted Rules of Executive Clemency are in Appendix I.

The revised restoration process is not open to persons convicted of a capital or life felony, or to persons convicted of more than two felonies. In addition, individuals convicted of felonies in other states or federal courts are required to submit an application to the Clemency Board in order to have their civil rights restored.<sup>7</sup> Revised Rule 9 reads:

A person shall (*emphasis added*) have his or her civil rights or alien 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:

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 obligations pursuant to Chapter 960, Florida Statutes;

4. The person has never been convicted of one of the following crimes:

- a. murder, attempted murder, attempted felony murder, manslaughter;
- b. DUI manslaughter;
- c. sexual battery, attempted sexual battery;
- d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- f. sexual performance by a child, attempted sexual performance by a child;
- g. aggravated child abuse;
- h. failure to register as a sexual predator or sexual offender;
- i. computer pornography, transmission of computer pornography, buying or selling of minors;
- j. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child;
- k. aggravated battery, attempted aggravated battery;
- l. armed robbery, attempted armed robbery, carjacking, attempted carjacking, home invasion, attempted home invasion;
- m. poisoning of food or water;
- n. abuse of a dead human body;
- o. first degree burglary or attempted first degree burglary;
- p. arson or attempted arson;
- q. aggravated assault;
- r. aggravated stalking;
- s. aggravated battery or aggravated assault on a law enforcement officer or other specified officer;
- t. first degree trafficking in illegal substances;
- u. aircraft piracy;
- v. unlawful throwing, placing, or discharging of a destructive device or bomb;
- w. facilitating or furthering terrorism;
- x. treason; or
- y. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.

5. The person has not been declared to be one of the following: (a) Habitual Violent Felony Offender; (b) Three-time Violent Felony Offender, (c) Violent Career Criminal under, (d) Prison Releasee Reoffender, or (e) Sexual Predator.<sup>8</sup>

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<sup>7</sup> Patricia Allard and Marc Mauer, "Felon Disenfranchisement Laws," at [http://www.soros.org/initiatives/justice/articles\\_publications/publications/regainingthevote\\_20000101/regainingthevote.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/regainingthevote_20000101/regainingthevote.pdf) (last accessed October 25, 2007).

<sup>8</sup> Rules of Executive Clemency, 9A, parts 1-5, revised Apr. 5, 2007, effective Apr. 5, 2007.

## **Ex-Felon Disenfranchisement in Florida Extends Back More Than 100 Years**

Despite Constitutional protections under the 15<sup>th</sup> Amendment, for more than 100 years following the Civil War blacks were denied the right to vote in many Southern jurisdictions, including parts of Florida. Though Florida's first post-Civil War constitution drafted in 1865 continued to disenfranchise blacks, in order for re-admission to the Union it was revised in 1868 to grant universal suffrage to all males, but continued to contain a previous prohibition on ex-felon voting. In recent years, challenges to the state's Constitutional prohibition have been made in federal court alleging that the prohibition violates the Equal Protection Clause.

### Blacks in the South Denied the Right to Vote For 100 Years Following the Civil War

The United States has a long history of voter exclusion and disenfranchisement under various rules, guises, and pretenses, including race, gender, age, and property ownership. Prior to the Civil War, voting was usually limited to white male property owners over the age of 21. After the 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.<sup>9</sup>

Initially, Florida refused to comply, and denied blacks the right to vote in its 1865 Constitution. The following year, Florida rejected the 14<sup>th</sup> Amendment and established additional crimes, including a new, expansive type of larceny, in order to address the altered condition of free blacks living in the state. It was only in 1868 that the state convened a second post-war constitutional convention, which ultimately guaranteed universal suffrage to all males—including blacks.

To further strengthen voting rights for minorities, in 1870 Congress adopted the 15<sup>th</sup> Amendment, which guaranteed an equal right to vote regardless of race, color, or previous condition of servitude. Additional voting rights legislation was also enacted that year to enhance the effectiveness of the 15<sup>th</sup> Amendment. Nevertheless, despite what appeared to be a clear prohibition on race discrimination in voting, in the ensuing decades most former Confederate states adopted barriers that although neutral on the surface served to prevent many blacks from voting. Such barriers included poll taxes, literacy tests, grandfather clauses,<sup>10</sup> additional residency requirements, registration harassment, and other intimidation tactics.<sup>11</sup> As a result, voting rights continued to be a legal fiction for people of color—particularly blacks—in many parts of the South despite Constitutional protections.

Such discriminatory voting practices occurred in Florida, where for nearly three quarters of a century many of the state's black citizens were denied the right to vote by various laws and procedures. Between 1880 and 1910 Florida adopted literacy tests, property qualifications, "grandfather clauses" and other measures to disenfranchise black voters. In 1889, the Florida legislature enacted the first poll tax in the South, a measure that would not be repealed until 1938. This measure proved to be effective in

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<sup>9</sup> Florida adopted a new constitution in 1868.

<sup>10</sup> "Grandfather" and "old soldier" clauses exempted from literacy tests and other voting restrictions anyone who had served in the United States or Confederate army or navy, their descendants, and anyone who had himself voted, or whose father or grandfather had voted before January 1, 1867.

<sup>11</sup> The famous murder of three civil rights workers in Mississippi was in retaliation against voter registration efforts.

suppressing the black vote, as evidenced by black male turnout falling from 62 percent in 1888 to 11 percent by 1892. Another measure of the reaction that dominated Florida politics for nearly a century is the fact that Josiah Walls—a former slave and Union soldier, who was elected as Florida's first black member of the US Congress in 1870—would be the state's only black Congressman until the 1990s.

As part of these discriminatory practices, in 1902 the Florida Democratic Party adopted a “white primary” policy, which excluded blacks from voting to nominate Democratic candidates for general elections. Given the Democrats' ascendancy in the “one-party” South, this meant blacks were excluded from participating in the only elections that mattered. Such laws, which defined political parties as private clubs that had the right to exclude certain classes of people from voting, were adopted throughout the South. Even after the Supreme Court struck down Texas's white-only primary in 1944, the Florida legislature passed a law giving political parties inherent powers to restrict membership, and in many counties in the state blacks continued to be barred from joining the Democratic Party or participating in its primary elections.

In 1964-65, the national exposure of the murders of civil rights workers registering black voters in Mississippi and the violent attack by state troopers against voting rights marchers in Selma, Alabama, spurred passage of the Voting Rights Act of 1965 (VRA).<sup>12</sup> The VRA was an attempt to fully enfranchise all black citizens, and finally put an end to persistent voting discrimination in many parts of the country. The act prohibited the use of laws and procedures to discriminate against voters on the basis of race, color or their reading or writing knowledge of the English language.

Section 5 of the VRA targets specific jurisdictions with a history of 15<sup>th</sup> Amendment violations, and these targeted jurisdictions have to obtain approval from the U.S. Department of Justice prior to instituting any voting changes. Although Section 5 was originally conceived as an emergency provision, it has been expanded and continually extended by Congress, most recently in 2007. Under Section 5, local changes to voter laws under the review of the Department of Justice have come to include a wide variety of practices and procedures, ranging from moving a polling place to changing district lines after a decennial census.<sup>13</sup> Five counties in Florida, Collier, Hardee, Henry, Hillsborough, and Monroe, are subject to the oversight provisions of Section 5.<sup>14</sup> Federal measures have had an impact on minority voting in Florida as evidenced that after the passage of the Voting Rights Act the registration rate among black voters increased to nearly 60 percent.

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<sup>12</sup> 42 U.S. C. §§ 1973 *et seq.*

<sup>13</sup> 42. U.S.C. §1973c (2000). At present, all or part of 16 states, including Florida, are covered by Section 5. Originally Section 5 applied to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and most counties in North Carolina. Today it applies to eight states in entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, and Texas) and one or more counties or townships in eight other states (California, Florida, New York, North Carolina, South Dakota, Michigan, New Hampshire, and Virginia). See U.S. Department of Justice, Civil Rights Division, Voting Rights Section, “Section 5 Covered Jurisdictions,” no date.

<sup>14</sup> U.S. Department of Justice, Civil Rights Division, Voting Section, “Procedures For The Administration Of Section 5 Of The Voting Rights Act Of 1965,” as amended, Appendix to Part 51--Jurisdictions Covered Under Section 4(b) of the Voting Rights Act.

## Florida Ex-Felon Voting Disenfranchisement Rooted in State Constitution

Historically, Florida's policy of criminal disenfranchisement traces 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 enacted such a law. The act stated:

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, before he shall be eligible to that office. And no person who shall hereafter be convicted of bribery, perjury, or other infamous crime, shall be entitled to the right of suffrage.<sup>15</sup>

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 had denied suffrage to blacks. The 1868 Constitution did comply with the First Reconstruction Act of 1867 and guaranteed universal suffrage to all males.

However, Section 4 of the state Constitution continued to contain the prior state Constitutional disenfranchisement provision for ex-felons.<sup>16</sup> Moreover, the 1868 ex-felon disenfranchisement provision was applied more universally and could include persons convicted of certain misdemeanors such as petty larceny. In 1968 the Florida State Constitution was revised for a third time, and although the provision restricting the civil rights of convicted felons was retained in the 1968 revision, only those persons convicted of felonies could be disenfranchised.<sup>17</sup> Nevertheless, as the 11<sup>th</sup> Circuit Court noted in the first appeal of *Johnson*, the historical record gives evidence of a racial animus behind the felon disenfranchisement provision in the state's Constitution.<sup>18</sup>

Florida is not unique among the states in prohibiting ex-felons from voting. States currently deny the right to vote to about 4.2 million Americans, or one in 50 adults, on account of current or prior felony conviction.<sup>19</sup> Moreover, there is no uniform standard for voting rights among the 50 states. Prohibitions range from a denial of the right to vote to incarcerated individuals to a lifetime voting ban for convicted felons.

One-third of the people denied the right to vote because of a felony conviction have already completed their sentences. The disenfranchisement rate in the states that permanently deny voting rates is 5.1 percent—a rate that is three times that of the states that impose no disability beyond the period of incarceration, probation, and parole. Moreover, felony disenfranchisement has a particularly high impact on the black electorate. Nearly 7 percent of black Americans cannot participate in the electoral process because of a felony conviction.<sup>20</sup>

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<sup>15</sup> 1845 Fla. Laws. Ch. 38, art. 2 § 3.

<sup>16</sup> Section 4 provided: No person under guardianship, non compos mentis, or insane, shall be qualified to vote at 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.

<sup>17</sup> See footnote 4.

<sup>18</sup> See *Johnson*, 353 F.3d 1287, 1296.

<sup>19</sup> See National Commission on Federal Election Reform, *supra* note 18.

<sup>20</sup> *Ibid.*

**Table 1: Restrictions on Voting Rights for Ex-Felons in States With Lifetime Bans**

<b>Vote by Legislature Required to Restore Voting Rights</b>	<b>Pardon Required to Restore Voting Rights</b>	<b>Granting of Clemency by State Cabinet Required to Restore Voting Rights</b>
Mississippi <sup>1</sup>	Iowa <sup>2</sup> Alabama <sup>3</sup> Arizona <sup>4</sup> Kentucky <sup>5</sup> Nevada <sup>6</sup> Tennessee <sup>7</sup> Virginia <sup>8</sup>	Florida

*Note 1. Right to vote may be regained by two-thirds vote of legislature or executive pardon. Miss. Const. art. 12, § 253.*

*Note 2. On July 4, 2005, Governor Tom Vilsack issued an executive order restoring the vote to offenders who have completed their court-imposed sentences, and announced that he would continue this automatic restoration policy on an ongoing basis. See <http://www.governor.state.ia.us/legal/index.html>.*

*Note 3. Persons convicted of serious violent offenses and sex offenses must apply to the Board of Pardons and Parole for a Pardon. Ala. Code §15-22-36.1.*

*Note 4. Repeat offenders, including federal offenders, must apply for judicial restoration or pardon. Ariz. Rev. Stat. Ann. §§ 13-906, 13-908.*

*Note 5. Persons convicted of a felony lose the right to vote, and is restored only by personal action of the Governor. See Ky. Const. Sec. 145(1).*

*Note 6. Persons with more than one conviction, and persons convicted of Class A and violent Class B offenses must either petition the Board of Pardons Commissioners for a pardon, or seek restoration of civil rights in the court in which they were convicted. Nev. Rev. State. Sec. 213.090(2).*

*Note 7. Persons convicted of murder, rape, treason or voter fraud are permanently ineligible to vote unless pardoned. Tenn. Code Ann. Sec. 40-29-204.*

*Note 8. Right to vote regained only by action of the Governor, through restoration of rights or pardon. Va. Const. Art. V, Sec. 12.*

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

Though some form of felony disenfranchisement exists in 48 states, lifetime bans are the exception and only present in nine states—including Florida. In the nine states that permanently ban ex-felons from voting, there are opportunities for a restoration of voting rights. Table 1 lists the prohibitions on voting rights for ex-felons in the nine states with lifetime bans.

Florida is unique among the state’s with a lifetime ban on voting rights for ex-felons in that a formal declaration of clemency from the Governor and cabinet is required to have voting rights restored. Presently there are nearly 100,000 persons incarcerated in Florida state prisons and federal penitentiaries.<sup>21</sup> Another 50,000 persons are in local and county jails and prisons.<sup>22</sup> Minorities and males are disproportionately represented in the state’s prison system. Blacks comprise nearly half of the inmate population, though they make-up only about 15 percent of Florida’s total population,<sup>23</sup> and the state’s male to female imprisonment ratio is 14:1.<sup>24</sup>

<sup>21</sup> FDC Annual Report, 2004-2005, *Inmate Population*.

<sup>22</sup> Fair Sentencing Project at [www.fairsentencing.org](http://www.fairsentencing.org) (last accessed October 30, 2007).

<sup>23</sup> FDC Annual Report, 2004-2005, *Inmate Population*. and U.S. census.

<sup>24</sup> Institute on Women and Criminal Justice, Women’s Prison Association, *Imprisonment in Florida*, p. 2.

**Table 2: Restrictions on Voting Rights for Ex-Felons for States Without Lifetime Bans**

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	Ex-Felons Prohibited From Voting Until Specified Years Have Elapsed After Sentence
Maine	Hawaii	California	Alaska	Delaware <sup>1</sup>
Vermont	Indiana	Colorado	Arkansas	Nebraska <sup>2</sup>
	Illinois	Connecticut	Georgia	Wyoming <sup>3</sup>
	Massachusetts	New York	Kansas	
	Michigan	South Dakota	Idaho	
	Montana		Louisiana	
	New Hampshire		Maryland	
	North Dakota		Minnesota	
	Ohio		Missouri	
	Oregon		New Jersey	
	Pennsylvania		New Mexico	
	Rhode Island		North Carolina	
	Utah		Oklahoma	
			South Carolina	
			Texas	
			Washington	
			West Virginia	
			Wisconsin	

*Note 1. Persons convicted of certain serious offenses (murder, manslaughter, bribery or public corruption, sex offense) are constitutionally barred from voting unless pardoned. Del. Const. art. V, § 2.*

*Note 2. The right to vote is restored automatically two years after completion of sentence, including and period of parole. Neb. Rev. State. § 29-112.*

*Note 3. First-time non-violent felony offenders can apply for a certificate that restores voting rights five years after successful completion of sentence, but all others must apply to Governor for either a pardon or a restoration of rights. Wyo. Stat. Ann. § 7-13-105(b).*

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

Among the 39 states without lifetime bans, 13 restrict the right to vote from persons incarcerated, but the right to vote is returned upon release from prison. Five states prohibit individuals from voting while they are incarcerated and while they are on parole. In 18 states, the right to vote is withheld from an individual until the entire sentence is completed, and persons in those states may not vote while incarcerated, nor while on parole, nor until the probation period has been completed and all restitution has been made.

In three states, Delaware, Nebraska, and Wyoming, ex-felons are prohibited from voting until a specified period of years after they have completed their prison term. In Delaware, however, persons convicted of certain serious offenses are constitutionally barred from voting unless pardoned. And in Wyoming, only first-time non-violent felony offenders have their right to vote restored, and must formally apply for a right to vote certificate. Table 2 lists the prohibitions on voting rights for ex-felons in those states without lifetime bans.

## Florida Law Challenged in Federal Court As Violation of Equal Protection Clause

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 as well the fact that the system as constituted does not seem to efficiently and successfully facilitate the re-entry of ex-offenders into society. Critics of Florida's felon disenfranchisement law also argue that the clemency process is unfair and cumbersome. The requirement to petition for clemency to a decision-making body that has struggled to respond to the volume of demand was seen as unfair to those ex-felons who sought restoration of their civil rights.

In 2000 a class action suit was filed against the Governor of the State of Florida and others in federal court on behalf of all Florida citizens who had been convicted of a felony and had completed all terms of their incarceration, probation, and parole but who were barred from voting under the state's felon disenfranchisement law. In taking legal action, the petitioners argued that the Florida law is discriminatory towards blacks, notwithstanding the fact that the state's use of criminal disenfranchisement laws predates the state's formal disenfranchisement of blacks in its rejection of the 14<sup>th</sup> Amendment.

The plaintiffs petition noted that Florida is one of only seven states that permanently disenfranchise first-time convicted felons unless they receive clemency. Moreover, the plaintiffs argued: (1) the Florida Constitution's provision mandating felon disenfranchisement was adopted in 1868 with the intent to discriminate against black voters, (2) the intent of the 1868 framers remains operative despite the provision's reenactment in 1968, and (3) the provision had and continues to have the discriminatory effect intended.<sup>25</sup> As such, the plaintiffs contended that the felon disenfranchisement law violated the *Equal Protection Clause*.<sup>26</sup>

The district court denied the petition, but the plaintiffs appealed and the court's opinion was overruled and remanded in a first appeal by the 11<sup>th</sup> Circuit in 2003.<sup>27</sup> In remanding the district court decision, the 11<sup>th</sup> Circuit Court citing *Richardson v. Ramirez* noted that felon disenfranchisement laws are not *per se* unconstitutional.<sup>28</sup> The court also cited the Supreme Court's unanimous opinion in *Hunter v. Underwood* on the unconstitutionality of Alabama's criminal disenfranchisement provision. The Court found in *Hunter* that the Alabama Constitution's criminal disenfranchisement provision passed in 1901 was motivated by racially discriminatory intent, and as the law would not have been enacted at that time without the racially discriminatory intent it therefore violated the *Equal Protection Clause*.<sup>29</sup>

The 11<sup>th</sup> Circuit, however, noted that the *Johnson* case "fits neither the *Hunter* nor the *Richardson* model" and further noted that the Supreme Court has yet to confront this question in the context of felon disenfranchisement. However, courts have considered the legal effect of race-neutral policies that serve to perpetuate intentional racial discrimination in other contexts. In these cases, when original discriminatory intent has been demonstrated, the state has been required to show the original 'taint' has been

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<sup>25</sup> *Johnson v. Governor of the State of Florida*, 405 F.3d 1214 (11<sup>th</sup> Cir. 2005).

<sup>26</sup> U.S. Const., amend. XIV, § 1. The Fourteenth Amendment prohibits a state from "denying to any person within its jurisdiction the equal protection of the laws."

<sup>27</sup> *Johnson*, 405 F.3d 1214 (2005).

<sup>28</sup> *Johnson v. Governor of the State of Florida*, 353, F.3d 1287, 1297 (2003) (citing *Richardson v. Ramirez*, 418 U.S. 24 (1974)).

<sup>29</sup> *See id.* at 1296 (citing *Hunter v. Underwood*, 471 U.S. 222 (1985)).

eliminated. Citing Justice Thomas, the 11<sup>th</sup> Circuit noted, “once the state has impermissibly discriminated on the basis of race through a particular law and continuing discriminatory effects have been established, then the state must disavow any connection to the law’s original discriminatory purpose by showing that it was later reenacted for independent, non-discriminatory reasons.”<sup>30</sup>

The 11<sup>th</sup> Circuit Court went on to note the plaintiffs have presented evidence that Florida’s disenfranchisement of felons has a disproportionate impact on blacks. According to that evidence, Florida currently disenfranchises over 613,000 men and women based on a prior felony conviction. When Florida enacted its most recent constitution in 1968, voting-age blacks were more than twice as likely as non-blacks to be barred from the vote because of a prior felony conviction. This disparity is even more pronounced today as approximately 10 percent of voting-age blacks in Florida are now disenfranchised as ex-felons, compared with about 4 percent of the non-black population in the state. Moreover, using arrest rates as a proxy for criminal involvement, the plaintiffs presented further support of disproportionate impact.<sup>31</sup>

However, the court noted that disproportionate impact alone is not sufficient to prove invidious racial discrimination in violation of the 14th Amendment. A racially discriminatory intent must also be demonstrated. To that end the Appellate Court noted that a reasonable fact-finder could conclude that there was a discriminatory animus behind the felon disenfranchisement provision adopted in 1868. In particular, the court noted that the 1868 constitutional convention established a legislative apportionment scheme that diminished representation from densely populated black counties. It also proposed a new suffrage article that automatically disenfranchised those persons convicted of infamous crimes while restoring suffrage to ex-Confederates. Then, at the last moment, the delegates substituted yet another, arguably even more stringent suffrage article that changed the disenfranchisement provision’s scope from infamous crimes to all felonies and specifically enumerated in the list of crimes that of larceny, which the 1865 legislature had expanded to address the emancipation of blacks.<sup>32</sup>

Accordingly, the 11<sup>th</sup> Circuit ruled, “because the Plaintiffs’ showing of racial animus in the 1868 provision creates a genuine issue of material fact as to whether it was adopted with a discriminatory purpose, and because on this record the defendants have not met their burden of showing that this provision was reenacted in 1968 with an independent, non-discriminatory purpose, summary judgment in favor of the defendants was improperly granted. We therefore reverse and remand to the district court for further proceedings on the equal protection claim.”<sup>33</sup>

The district court again heard the petition of the plaintiffs and again granted summary judgment to the defendants. Plaintiffs again appealed the ruling to the 11<sup>th</sup> Circuit. In the second appeal, the Appellate Court affirmed the district court opinion, applying the legal precedent articulated by the Supreme Court in *Hunter v. Underwood*.<sup>34</sup>

In *Hunter*, the Court examined an equal protection challenge to an Alabama criminal disenfranchisement provision. The equal protection challenge in that case was upheld when the Court found extensive evidence indicating the 1901 disenfranchisement provision was adopted in order to minimize the political power of Alabama’s black

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<sup>30</sup> See *id.* at 1297, 1298-99.

<sup>31</sup> See *id.* at 1293.

<sup>32</sup> See *id.* at 1294-96.

<sup>33</sup> See *id.* at 1214, 1222-23.

<sup>34</sup> See *id.* (citing *Hunter v. Underwood*, 471 U.S. 222 (1985)).

population. In holding Alabama's 1901 criminal disenfranchisement provision a violation of the *Equal Protection Clause* previously articulated in *Arlington Heights v. Metro Housing Authority*, the Supreme Court ruled:<sup>35</sup>

Official action will not be held unconstitutional solely because it results in a racially disproportionate impact....Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.... Once racial discrimination is shown to have been a "substantial" or "motivating" factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor.<sup>36</sup>

Following the Supreme Court's rationale in *Hunter*, the 11<sup>th</sup> Circuit applied this test to Florida's disenfranchisement provisions. The court first examined whether racial discrimination was a substantial or motivating factor in Florida's decision to deny the right to vote to felons. Unlike the first decision of the 11<sup>th</sup> Circuit, the second panel did not find discriminatory intent or purpose in the adoption of the 1868 disenfranchisement law stating that "(p)laintiffs introduced no contemporaneous evidence showing that racial discrimination motivated the adoption of the 1868 provision."<sup>37</sup>

The court next used the equal protection analysis articulated in *Hunter* to determine whether racial animus was a substantial or motivating factor in the adoption of the 1968 felon disenfranchisement provision. In a departure from the ruling in the first appeal, the 11<sup>th</sup> Circuit in the second appeal determined that even assuming discriminatory intent in the 1868 provision, Florida's 1968 re-enactment of the felon disenfranchisement provision eliminated any taint from the allegedly discriminatory 1868 provision. Examining Florida's 1968 Constitution and background, the court determined that Florida would have chosen to disenfranchise felons even without an impermissible motive. The court pointed to the absence of allegations of racial discrimination in 1968 and the legislators' decision to include a felon disenfranchisement provision in the revised constitution only after considerable deliberations. Accordingly, on second appeal of the same issue a differently constituted appellate court dismissed the plaintiffs petition that Florida's felon disenfranchisement provision violated the *Equal Protection Clause* and was re-enacted in 1968 for race-neutral reasons.<sup>38</sup>

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<sup>35</sup> *Village of Arlington Heights et al. v. Metropolitan Housing Development Corp. et al* 429 U.S. 252 (1977).

<sup>36</sup> *Johnson v. Governor of the State of Florida*, 405 F.3d 1214, 1223 (2005).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1214, 1224.

## **Several Hundred Thousand Persons Disenfranchised in Florida, 200,000 Alone Disenfranchised Between 1995 and 2005**

An estimated 200,000 persons were disenfranchised in Florida between 1995 and 2005, and as many as 1,000,000 adults in the state may presently be permanently banned from voting.<sup>39</sup> However, under state law the Governor—with the approval of two members of the cabinet—has the authority to grant clemency to an ex-felon and restore his/her civil rights to include the right to vote. A Governor’s Task Force recently examined ways to reduce recidivism rates in the state among ex-felons, and reported that the loss of civil rights is an impediment to successful re-entry to society.

### 200,000 Persons Disenfranchised In Florida Between 1995 and 2005

The Florida Advisory Committee independently estimates that 200,000 former offenders in Florida were disenfranchised from the right to vote between 1995 and 2005 (the last year data was available for analysis). Moreover, the total number of persons in the state estimated to be disenfranchised from voting ranges from 600,000 to 1.2 million, or from about 3 to 6 percent of the voting population. The estimated percentage of voting-age blacks disenfranchised is substantially higher, ranging from about 10 percent to 14 percent.<sup>40</sup>

In Florida, the number of individuals incarcerated in state and federal prisons has risen over the past decade and now approaches 100,000 persons and with the inclusion of persons incarcerated in local jails the number of prisoners in the state swells to nearly 150,000. In 1995 there were 63,879 individuals in a state or federal penal facility, and 11 years later in 2005, there were 86,563 persons incarcerated in those facilities.<sup>41</sup> (See Table 3.) The top five categories of offenses for which inmates are incarcerated in state or federal prison are: drugs (20.2 percent), burglary (14.5 percent), murder/ manslaughter (12.8 percent), aggravated assault (12.3 percent), and robbery (12 percent).<sup>42</sup>

In fiscal year 2006, there were 33,348 offenders released from Florida’s prisons, a rate of about 38 percent. The majority of these releases, 21,336, were released by expiration of the sentence; followed by conditional release, 5,326 (16 percent); and expiration of sentence to probation/community control, 4,658 (14 percent). In addition, similar to the general inmate population in the state, the majority of offenders released from Florida’s prisons were black, 16,343 (49 percent), and male, 29,808 (89 percent).<sup>43</sup>

A large number of prisoners released, however, are re-incarcerated. Recidivism is the term used to define the return to prison of a previous offender for a new offense, and recidivism rates have a substantial impact on estimates regarding the number of persons disenfranchised because of a prior felony conviction. The recidivism rate is computed as the number of persons who return to prison divided by the total number of releases for a given time period, and depends both on the parole system of the state and the time period of study.

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<sup>39</sup> There is no one agreed-upon figure as to the number of individuals disenfranchised. Evidence presented to the court by plaintiffs in *Johnson v. Governor of the State of Florida* state that 613,000 persons are disenfranchised; the “Sentencing Project” estimates the number of the disenfranchised at 1,179,687.

<sup>40</sup> See e.g., *Johnson v. Governor of the State of Florida*, 353 F.3d 1287 (2003); National Commission on Federal Election Reform, *supra* note 18.

<sup>41</sup> U.S. Department of Justice, Bureau of Justice Statistics, “Prisoners Under State of Federal Jurisdiction.”

<sup>42</sup> Florida Department of Corrections, 2005-2006 Annual Report.

<sup>43</sup> Florida Department of Corrections, FY 2005-2006 Release Report.

**Table 3: Prisoners in Florida Under State or Federal Jurisdiction, 1995-2005**

Year	Incarcerated Prisoners
1995	63,879
1996	63,763
1997	64,626
1998	67,224
1999	69,596
2000	71,319
2001	72,404
2002	75,210
2003	82,012
2004	85,533
2005	86,563

Source: Florida Advisory Committee to the U.S. Commission on Civil Rights from U.S. Department of Justice, Bureau of Justice Statistics.

It should be noted, however, that not all offenders who return to prison are convicted of a new crime; one-fifth of the total recidivism rate is due to technical violations by the offender, such as violation of parole.<sup>44</sup> In addition, research has shown that there are higher rates of recidivism for prisoners who are young, male, gang involved, or with substance abuse histories. Certain crime categories also have higher recidivism rates. For example, data show that property offenders are more likely to be rearrested and reconvicted than other types of offenders.<sup>45</sup>

The 60 month (5-year) recidivism re-incarceration rate for offenders is 37 percent.<sup>46</sup> Moreover, the recidivism rate in Florida has been shown to be relatively stable over the past several years. For example in 1994 it was 45 percent with 27 percent of the re-incarcerated offenders re-imprisoned for a new offense.<sup>47</sup>

Controlling for recidivism, the Florida Advisory Committee independently estimates that nearly 200,000 ex-felons have been disenfranchised in Florida between 1995 and 2005 (the latest year data was available). Table 4 explains the basis for calculating this estimate, considering both the prison population and recidivism rates.

The second column in Table 4 lists the number of persons incarcerated in state and federal prisons while the third column of Table 4 estimates the number of individuals released each year based on a rate of release estimated at 38 percent (33,348 of the 86,496 inmates in Florida prisons were released in 2006). The fourth column estimates the number of persons who return to prison based upon a recidivism rate of 40 percent.

*Combining the rate of recidivism with the incarceration rates and making a cumulative calculation, the Florida Advisory Committee independently estimates that approximately 188,982 ex-felons were disenfranchised in the State of Florida during the period 1995 through 2005. (See ‘Cumulative Total’ in Table 4.)*

<sup>44</sup> Ryan G. Fisher, “Are California’s Recidivism Rates Really the Highest in the Nation?,” Center for Evidence-Based Corrections, University of California at Irvine, September 2005.

<sup>45</sup> Ibid.

<sup>46</sup> Florida Department of Corrections, “Recidivism Report,” July 2003.

<sup>47</sup> Florida Department of Corrections, “Factors Affecting Recidivism Rates,” July 2003 at <http://www.dc.state.fl.us/pub/recidivism/2003/results.html> (last accessed July 23, 2007).

**Table 4: Calculated Estimate of Number of Ex-Felons Disenfranchised in Florida Between 1995 and 2005**

<b>Year</b>	<b>State and Federal Prisoners</b>	<b>Estimated Number of Releases</b>	<b>Estimated Number of Recidivists</b>	<b>Estimated Number Disenfranchised</b>
1995	63,879	24,274	9,224	15,050
1996	63,763	24,230	9,207	15,023
1997	64,626	24,558	9,332	15,226
1998	67,224	25,545	9,707	15,838
1999	69,596	26,446	10,050	16,397
2000	71,319	27,101	10,298	16,803
2001	72,404	27,514	10,455	17,058
2002	75,210	28,580	10,860	17,719
2003	82,012	31,165	11,843	19,322
2004	85,533	32,503	12,351	20,152
2005	86,563	32,894	12,500	20,394
<b>Cumulative Total</b>				<b>188,982</b>

Source: Florida Advisory Committee to the United States Commission on Civil Rights.

Clemency Board Has Authority To Restore Civil Rights Estimated 6,500 Petitions Granted Annually Since 1994

It is possible under the Constitution of Florida for an individual convicted of a felony to again obtain the right to vote along with the restoration of other civil rights through clemency. Clemency is an act that absolves the individual from all or any part of the punishment that the law imposes, including the restoration of civil rights. Executive Clemency is a power vested by the Florida Constitution, and the Clemency Board has the authority to grant full or part clemency.<sup>48</sup> The Clemency Board is composed of the Governor and members of the Florida Cabinet: the Attorney General, Chief Financial Officer, and Commissioner of Agriculture.<sup>49</sup> The Clemency Board meets four times a year to vote on clemency applications.

Clemency restores civil rights and all other rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms. Florida law establishes that convicted felons may be entitled to the restoration of civil rights if the individual has either (1) received a full pardon from the board of pardons, (2) served the maximum term of the sentence imposed upon him or her, or (3) been granted final release by the Parole Commission.<sup>50</sup>

The first step by an individual seeking the restoration of his/her civil rights—including voting rights—is an application to the Office of Executive Clemency for the purpose of having their civil rights restored. The Office of Executive Clemency then processes applications for clemency in advance of a decision by the Clemency Board.

<sup>48</sup> FL. Const. art. IV, § 8 (a). See footnote 5.

<sup>49</sup> Florida Const. Art. IV Sec. 8(a). In 2007 the Clemency Board is: Charlie Crist, Governor; Alex Sink, Chief Financial Officer; Charles H. Bronson, Commissioner of Agriculture; and Bill McCollum, Attorney General.

<sup>50</sup> Florida Stat. § 940.05 (2003).

The large number of petitions for clemency attest to the high interest among ex-offenders in having their civil rights restored. In the most recent reporting year, the Florida Parole Commission processed an all-time high 49,010 petitions for clemency.<sup>51</sup> As the Clemency Board only meets four times a year and can only hear the personal appeals of about 200 persons annually, 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.

The rule changes allowed felons who have 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. Anyone arrest-free for 15 years or more could have their rights restored without a hearing regardless of their crime unless they owe victim restitution. However, cases must be reviewed for eligibility in accordance with the rules of executive clemency.

Since 1994, about 80,000 former offenders have had their civil rights restored, an average of about 6,500 per year. However, the number of individuals having their civil rights restored is inconsistent. Two decades ago the number of persons in Florida granted clemency started to decline before the upward movement observed in recent years. In 1986, almost 15,000 persons that year had their civil rights restored.

After 1986 the number of those granted clemency by the Executive Board started to decline sharply so that less than 10 years later, by 1993, only about 2,000 individuals had their civil rights restored during—this despite a constant number of petitions for clemency over those years.<sup>52</sup> In the ensuing 5-year period from 1994 and 1998, the number of individuals receiving clemency remained at historic low levels, and only 6,669 persons had their civil rights restored during this period—an annual average of about 1,300 persons. That number started to increase substantially in the next few years, and between 1999 and 2005 the Executive Clemency Board received restored the civil rights of nearly 75,000 individuals, an average of about 15,000 per year.<sup>53</sup>

#### Governor's Task Force Notes Loss of Civil Rights Impediment to Successful Return to Community

Following changes made to the rules of clemency in 2004, 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.<sup>54</sup> The former Governor stated that "without successful re-entry into one's community, recidivism is likely to occur, to the great detriment of the public safety, Florida's communities, families, taxpayers, and individual ex-offenders."<sup>55</sup>

The task force began its work by studying the magnitude of the challenge making reentry successful. It noted that Florida has the third largest prison population in America, and over 30,000 people in that state return home from prison each year. It also noted that the continual growth of imprisonment in the state has created an unprecedented

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<sup>51</sup> Florida Parole Commission, 2005-2006 Annual Report, p. 6.

<sup>52</sup> American Civil Liberties, Brochure on Ex-Felon Voting Rights, at <http://www.aclufl.org> (last accessed October 29, 2007).

<sup>53</sup> Florida Parole Commission, 2005-2006 Annual Report, p. 6.

<sup>54</sup> Final Report, *Governor's Ex-Offender Task Force*, November 2006, p. 7. (Hereafter cited as Task Force Report.)

<sup>55</sup> Governor of Florida, Executive Order 05-28.

challenge for the state and for the local communities who must absorb these individuals upon release.

The task force heard testimony from state and local experts, reviewed scores of reports and studies, deliberated with state and local political and agency officials, held focus groups with ex-offenders and with inmates, and conducted site visits to prisons and a work release facility.<sup>56</sup> On November 30, 2006, the task force submitted its final report to the Governor, with an overriding finding:

Almost ninety 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. This trend must be reversed.<sup>57</sup>

Focusing only on custody and control does not reduce recidivism. This focus protects the public safety by segregating people who have committed crimes from the public..., but those are not the only public safety concerns.<sup>58</sup>

The Task Force concluded that people returning home from prison face new and additional kinds of sanctions related to their criminal convictions, and in order to prevent recidivism concluded that it was 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.<sup>59</sup>

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, seeking public office and other matters. It recommended a "re-commissioned Task Force should study ... additional issues such as community supervision, graduated sanctions, *the loss of civil rights upon conviction of a felony* (emphasis added), and the over-representation of African Americans among the inmate population with the aim of additional reform recommendations."<sup>60</sup> This is evidenced by the previously reported fact that in Florida, blacks comprise only about 16 percent of the state's total population, yet are half the inmate population in Florida prisons.<sup>61</sup>

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<sup>56</sup> Task Force Report, letter from the Chairman to Governor Bush.

<sup>57</sup> Task Force Report, p. 1. The task force also recommended with respect to the restoration of civil rights for ex-felons that "state laws, rules and policies that require a person to have his or her civil rights restored as a condition of employment or licensing be repealed and that employment restrictions for those occupations currently subject to restoration of civil rights requirements instead be built into a single background check law." (p. 22)

<sup>58</sup> Ibid., p. 5.

<sup>59</sup> Ibid., letter from Chairwoman to Governor Bush.

<sup>60</sup> Ibid., p. 3.

<sup>61</sup> See footnote 23.

## **New Clemency Rules Give Automatic Restoration of Civil Rights to Most Ex-Felons**

Under the revised Rules of Executive Clemency, ex-offenders are automatically reviewed by the Parole Commission to determine their eligibility for restoration of civil rights without a hearing. Non-violent offenders who have completed all terms of their sentence will have an executive order granting the restoration of their civil rights signed by the Clemency Board without a hearing. Despite general support among public officials for the rules change, some express reservations.

### Non-Violent Offenders Have Civil Rights Restored Automatically Upon Completion of Sentence

Under the new Rules of Executive Clemency, many ex-offenders will now have their civil rights restored automatically by the Clemency Board without a hearing or the need for petition. The Parole Commission operates as the investigative arm of the Clemency Board. Under the new rules for clemency, when an ex-offender has completed his or her sentence the Parole Commission automatically reviews the eligibility of the person for his/her eligibility for restoration of civil rights. After review, the Parole Commission places the ex -felons into one of three RCR categories.

LEVEL 1: Committed less severe offense

LEVEL 2: Committed severe offense except for murder or sex offense

LEVEL 3: Committed murder or sex offense<sup>62</sup>

Ex-felons given placed in Level-1 status are non-violent offenders, who are eligible for automatic restoration of civil rights.

For persons categorized as Level-1 offenders, the Parole Commission begins the process of automatic civil rights restoration. During this process the Parole Commission acts to verify the following:

1. There are no outstanding detainers or pending criminal charges, or terms of supervised release against the individual;
2. The individual owes no victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations;
3. The individual does not have a conviction for a capital or life felony; and
4. The individual does not have a felony conviction or functional equivalent in another jurisdiction involving any of the following:
  - (i) trafficking or conspiracy to traffic in a controlled substance; ;
  - (ii) crime described as a “dangerous crime” under Florida Statutes;
  - (iii) declaration that the individual is a Habitual Violent Felony Offender, a Three-time Violent Felony Offender, a Violent Career Criminal, or a Prison Release Re-offender;
  - (iv) lewd, lascivious, indecent, or unnatural acts;
  - (v) crime that required registration under the Florida Sexual Predators Act;
  - (vi) sexual battery;

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<sup>62</sup> Presentation by Parole Commission, “Restoration of Civil Rights,” Jul. 20, 2007.

- (vii) battery, aggravated assault, or aggravated battery of a law enforcement officer, firefighter, emergency medical care provider, public transit employee or agent, or other specified officer;
- (viii) DUI manslaughter or DUI resulting in serious bodily injury;
- (ix) homicide;
- (x) public corruption or violations of election laws;
- (xi) crime committed by an elected official;
- (xii) shooting or throwing missiles into or from a vehicle or dwelling;
- (xiii) leaving scene of accident with serious injury or death;
- (xiv) false imprisonment; or
- (xv) possession of a firearm by a convicted felon.<sup>63</sup>

Under the revised Rules of Executive Clemency, such individuals will now have an executive order granting the restoration of their civil rights signed by the Clemency Board without a hearing with a Restoration of Rights certificate issued and mailed to their last known address.<sup>64</sup>

In other cases the Parole Commission will grant Level-2 status to ex-offenders who have committed severe offenses. These individuals may also receive restoration of their voting and other civil rights without the need for a hearing.<sup>65</sup> Level-2 individuals must undergo a mid-level investigation by the Parole Commission before having their names submitted to the Clemency Board. The Clemency Board then has 30 days to review the Parole Commission's investigation findings and grant approval, in which case a Restoration of Rights certificate is issued. If the Clemency Board does not grant approval, a full hearing and investigation is required for restoration of civil rights. Level-2 status is generally denied ex-offenders who have committed murder, sex offenses and like crimes, but can be granted when the ex-offender has remained crime and arrest free for 15 years.<sup>66</sup>

All other individuals not determined to be Level-1 or Level-2 must contact the Office of Executive Clemency to begin the process for restoration of their civil rights, as was the required procedure for all ex-felons prior to the revised rules. For these persons, approval by the Clemency Board can only be obtained after full investigation and hearing that includes a victim statement and Parole Commission recommendation.

It is to be noted, however, that the newly issued revised Rules of Executive Clemency that automatically restore civil rights and voting rights to most felons upon release from prison is only a procedural change. The rules change do not change the state's ex-felon disenfranchisement provision contained in the state's Constitution, and in that sense are not permanent changes. The Constitutional ban prohibiting persons convicted of a felony from voting remains the law of the state.

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<sup>63</sup> Florida Parole Commission, New Process for Level 1 (automatic approval of RCR) at <http://fpc.state.fl.us/policies/ExecutiveClemency/newcrprocess.pdf> (last accessed Feb. 10, 2008).

<sup>64</sup> Florida Rules of Executive Clemency, Rule 9

<sup>65</sup> Florida Rules of Executive Clemency, Rule 10A

<sup>66</sup> Florida Rules of Executive Clemency, Rule 10B.

## Public Officials Divided in Their Opinions Concerning the Revised Rules for Clemency

The Florida Advisory Committee sought out a wide range of opinions on the revised rules. The Committee and staff members interviewed members of the Florida Cabinet, local law enforcement officers, prison officials, elected officials, members of victims advocate groups, public defenders, and other persons and parties with an expressed interest in the issue. Though the Committee found general support for the changes, public officials in particular were divided in their opinion over the revisions to the Executive Clemency board procedures.

For example, Pam Iorio, Mayor of Tampa, was strongly supportive of the changes. She said, “I have felt for a long time that ... it is very important for these individuals to get their voting rights back. I feel it is very important for ex-felons to get back into the community.”<sup>67</sup>

But Max Pullen, Mayor of Lady Lake, expressed the opinion that the ex-felon ban should remain permanent. He said, “If you want to maintain your civil rights, then don’t commit a felony crime. We need to keep it in effect that if you commit a felony you lose your right to vote.”<sup>68</sup>

The contrasting positions by public officials are summarized in comments made by two members of the Florida Cabinet, Charles H. Bronson, Commissioner of Agriculture, and Bill McCollum, the Attorney General of Florida.<sup>69</sup>

Commissioner Bronson stressed that the revisions are not a change in the law, but a change in the operations of the Clemency Board that came about with Governor Crist’s initiative and the two new Cabinet members. He added that, he “basically support(s) the revision. It is structured so that it is divided into classes of convicted felons. In class I, pretty much every one is given their rights back when they apply, assuming their case is without extenuating circumstances. In the second category, most who apply are getting their rights restored. The third category requires a much stricter review.”<sup>70</sup>

Attorney General McCollum said that he did not agree with the change by the Clemency Board to grant automatic restoration of civil rights for most ex-felons without a hearing. The Attorney General said, “Florida has a recidivism rate of nearly 50 percent within the first five years after release from state prison and 60 percent within ten years of release. In my judgment because of this high rate of return to prison, those who have committed major crimes should not be granted restoration of civil rights without a hearing within the first five years after release. And even with a hearing, the Board should be selective with granting the rights and in some cases of really heinous crimes, civil rights should never be restored. The new rules that were adopted provided for a

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<sup>67</sup> Pam Iorio, Mayor, City of Tampa, interview with Kevin Palmer, July 10, 2007, Southern Regional Office, USSCR, files.

<sup>68</sup> Max Pullen, Mayor, Lady Lake, interview with Kevin Palmer, Aug. 7, 2007, Southern Regional Office, USSCR, files.

<sup>69</sup> The revised Rules of Clemency were enacted by a 3-1 vote during a special meeting of the Florida Board of Executive Clemency on Apr. 5, 2007. Governor Charlie Crist, Chief Financial Officer Alex Sink, and Commissioner of Agriculture Charles H. Bronson voted in favor of the revisions. Attorney General Bill McCollum voted against the revisions.

<sup>70</sup> Charles H. Bronson, Commissioner of Agriculture, State of Florida, interview with Frances Bohnsack, July 31, 2007, Southern Regional Office, USSCR, files (hereafter referred to as Commissioner Bronson interview).

waiting period ... for some serious crimes such as murder, major sexual assaults, etc., but the list is far too short.”<sup>71</sup>

Commissioner Bronson commented that the revisions improve efficiency in the clemency process and appear to be working. “The benefits are that there are now less manpower hours spent on class I felons, who are basically non-violent offenders. Not as much time and money is absorbed in the process for this first class. The second group requires more effort, and consequently there are less savings to the state, but this group still seems to move along fairly well. Class III takes much more time and effort because we must assure that felons with violence in their histories are subject to a thorough review before receiving restoration of their rights.... So far the new rule is working. Today in Florida there are somewhere in the neighborhood of 25,000 felons who are not required to have a hearing to have their rights back. I also feel like the victims of violent crimes have to be listened to; they have a right to speak before the Clemency Board. The Clemency Board review required of class II and class III felons ensures that the victims have not lost in the new rule process.”<sup>72</sup>

Attorney General McCollum noted that the revisions were not necessary to reduce the backlog of applications. “The expedited procedure will reduce the backlog for those should have had their rights restored. This will mean that released felons can now get an occupational license which will help them in their search for employment and will be able to vote. But the backlog of those seeking restoration of civil right could have been worked off quickly by other means and procedures than granting ‘automatic’ restoration to major drug dealers, kidnappers, armed robbers, etc.”<sup>73</sup> He also added, “I am hopeful that I am wrong, however I am very concerned about heinous criminals who are getting their rights restored without a hearing. For most who have committed major crimes, (given the recidivism rate in the state) the Clemency Board should require a wait of at least five years before the civil rights are restored to determine if they are going to commit additional crimes.”<sup>74</sup>

On April 5, 2007, during a special meeting of the Florida Board of Executive Clemency, new Rules of Executive Clemency were approved that provided for the automatic restoration of civil rights for many ex-offenders. Governor Charlie Crist, in announcing the Clemency Board’s decision, said: “If we believe people have paid their debt to society, then that debt should be considered paid in full, and their civil rights should in fact be restored. By granting ex-offenders the opportunity to participate in the democratic process, we restore their ability to be gainfully employed, as well as their dignity.”<sup>75</sup>

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<sup>71</sup> Bill McCollum, Attorney General, State of Florida, interview with Mike Hill, July 19, 2007, Southern Regional Office, USCCR files (hereafter referred to as Attorney General McCollum interview).

<sup>72</sup> Commissioner Bronson interview.

<sup>73</sup> Attorney General McCollum interview.

<sup>74</sup> Ibid.

<sup>75</sup> Press Release, Office of the Governor, State of Florida, “Governor Crist Announces Clemency’s Board to Restore Civil Rights,” Apr. 5. 2007.

## **Findings**

An independent assessment by the Florida Advisory Committee estimates that 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.

As blacks comprise nearly half of the inmate population though they make-up only about 15 percent of Florida's total population and males comprise 90 percent of the prison population, the state 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.

Under the revised Rules of Executive Clemency, immediately upon completion of his/her sentence, each ex-offender is automatically reviewed by the Parole Commission to determine his/her eligibility for restoration of civil rights without a hearing. For those individuals granted Level-1 status by the Parole Commission and absent any other mitigating circumstances, an executive order is automatically issued that grants a restoration of civil rights signed by the Clemency Board without the need for a hearing.

## **Recommendations**

### Recommendation 1.

The Florida Advisory Committee unanimously supports the revised Rules of Executive Clemency.

Further, the Florida Advisory Committee unanimously recommends 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, succeeding Governors and cabinet officials endorse and retain these revisions to the Rules of Executive Clemency.

### Recommendation 2.

The recent revisions to the Rules of Executive Clemency that automatically grant restoration of civil rights to Level-1 ex-offenders is a significant policy change. The Florida Advisory Committee recommends that the Parole Commission immediately act to put in place data collection systems that will allow future studies to be conducted on the impact of this policy change. Specifically, the Florida Advisory Committee recommends that data be collected so that in the foreseeable future, at a minimum, the effect of the policy change on minority and male voter participation will be able to be studied.

## **Appendix I – Rules of Executive Clemency**

### **1. Statement of Policy**

Executive Clemency is a power vested in the Governor by the Florida Constitution of 1968. Article IV, Section 8(a) of the Constitution provides: Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

The Governor and members of the Cabinet collectively are the Clemency Board. 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.

### **2. Administration**

A. These rules were created by mutual consent of the Clemency Board to assist persons in applying for clemency. However, nothing contained herein can or is intended to limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative.

B. The Office of Executive Clemency was created to assist in the orderly and expeditious exercise of this executive power.

C. The Governor, with the approval of at least two members of the Clemency Board, appoints a Coordinator who hires all assistants. The Coordinator and assistants comprise the Office of Executive Clemency. The Coordinator must keep a proper record of all proceedings and is the custodian of all records.

### **3. Parole and Probation**

The Clemency Board will neither grant nor revoke parole or probation.

### **4. Clemency**

The Governor has the unfettered discretion to deny clemency at any time, for any reason. The Governor, with the approval of at least two members of the Clemency Board, has the unfettered discretion to grant, at any time, for any reason, the following forms of clemency:

#### **I. A. Full Pardon**

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.

#### **B. Pardon Without Firearm Authority**

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.

#### **C. Pardon for Misdemeanor**

A Pardon for a Misdemeanor Conviction releases a person from punishment and forgives guilt.

#### **D. Commutation of Sentence**

A Commutation of Sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms. (See also Rule 15 on commutation of death sentences.)

#### **E. Remission of Fines and Forfeitures**

A Remission of Fines or Forfeitures suspends, reduces, or removes fines or forfeitures.

#### **F. Specific Authority to Own, Possess, or Use Firearms**

The Specific Authority to Own, Possess, or Use Firearms restores to an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal firearms laws, the Clemency Board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts. In order to comply with the federal laws, a Presidential Pardon or a Relief of Disability from the Bureau of Alcohol, Tobacco and Firearms must be issued in cases involving federal court convictions. A pardon or restoration of civil rights with no restrictions on firearms must be issued by the state where the conviction occurred.

#### **G. Restoration of Civil Rights in Florida**

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. Such restoration shall 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.

#### **H. Restoration of Alien Status under Florida Law**

The Restoration of Alien Status Under Florida Law restores to an applicant who is not a citizen of the United States such rights enjoyed by him or her, under the authority of the State of Florida, which were lost as a result of a conviction of any crime that is a felony or would be a felony under Florida law, except the specific authority to own, possess, or use firearms. However, restoration of these rights shall not affect the immigration status of the applicant (i.e., a certificate evidencing Restoration of Alien Status Under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

### **II. Conditional Clemency**

All of the preceding forms of clemency may be granted subject to various conditions. If the conditions of clemency are violated or breached, such clemency may be revoked by the Clemency Board, returning the applicant to his or her status prior to receiving the conditional clemency.

## **5. Eligibility**

### **I. A. Pardons**

A person may not apply for a pardon unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release and conditional release, for a period of no less than 10 years. The applicant may not have outstanding detainers, or any pecuniary penalties or

liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes. Persons who had adjudication of guilt withheld and were not convicted, may apply for a pardon if they otherwise meet the eligibility requirements of this rule.

**B. Commutations of Sentence**

A person may not be considered for a commutation of sentence unless he or she has been granted a waiver pursuant to Rule 8 or has had his or her case placed upon a Clemency Board agenda pursuant to Rule 17.

**C. Remission of Fines and Forfeitures**

A person may not apply for a remission of fines and forfeitures unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including, but not limited to, parole, probation, community control, control release, and conditional release.

**D. Specific Authority to Own, Possess, or Use Firearms**

A person may not apply for the specific authority to own, possess, or use firearms unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release, for a period of no less than eight (8) years. The applicant may not have outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes. Persons convicted in a federal, military, or out-of-state court are not eligible to apply.

**E. Restoration of Civil Rights or Alien Status under Florida Law**

A person who meets the requirements of Rule 9, shall have his or her civil rights immediately restored by automatic approval of the Clemency Board. Persons who do not qualify for automatic approval under Rule 9, may qualify for restoration of civil rights without a hearing under Rule 10.<sup>76</sup>

All others may request restoration of civil rights pursuant to Rule 6 after completion of 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, has no pending outstanding detainers or pending criminal charges, and has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes. Restoration of civil rights includes all rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess or use firearms.

If the person was convicted in a court other than a court of the State of Florida, he or she must be a legal resident of the State of Florida at the time the application is filed, considered, and acted upon. If the person is applying for

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<sup>76</sup> Effective April 5, 2007, persons released from incarceration and/or supervision shall have their names electronically transmitted from the Department of Corrections to the Office of Executive Clemency to begin the process for the automatic approval of restoration of civil rights or for restoration of civil rights without a hearing.

Restoration of Alien Status under Florida Law, he or she must be domiciled in the State of Florida at the time the application is filed, considered, and acted upon.

Notwithstanding any provision of this rule, an individual who has previously had his or her civil rights or Alien Status under Florida Law restored and is subsequently convicted of any offense listed in Rule 9(A)(4) or 9(A)(5) shall be ineligible for restoration of civil rights or Alien Status under Florida law unless the individual has remained crime and arrest free for a period of no less than ten (10) years after completing all sentences and conditions of supervision (including but not limited to, parole, probation, community control, control release and conditional release) arising from the subsequent conviction.

## **6. Applications**

### **I. A. Application Forms**

All correspondence regarding an application for clemency should be addressed to Coordinator, Office of Executive Clemency, 2601 Blair Stone Road, Building C, Room 244 Tallahassee, Florida, 32399-2450. Those persons seeking clemency shall complete an application and submit it to the Office of Executive Clemency. Persons eligible for automatic approval of Restoration of Civil Rights or Alien Status under Florida Law under Rule 9, or approval without a hearing under Rule 10 need not submit an application. (See Rule 9 or 10.) Application forms will be furnished by the Coordinator upon request or they may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. All applications for clemency must be filed with the Coordinator on the form provided by the Office of Executive Clemency.

### **B. Supporting Documents**

Each application for clemency, except for requests seeking only restoration of civil rights, shall have attached to it a certified copy of the charging instrument (indictment, information, or warrant with supporting affidavit) for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor, and a certified copy of the judgment and sentence for each felony conviction, or misdemeanor conviction if seeking a pardon for misdemeanor. (*Note: The Office Executive Clemency or Parole Commission may assist in preparation of applications in unique situations.*) Each application for clemency may include character references, letters of support, and any other documents that are relevant to the application for clemency.

### **C. Applicant Responsibility**

It is the responsibility of the applicant to answer all inquiries fully and truthfully and to keep the Office of Executive Clemency advised of any change in the information provided in the application, specifically change of address and phone number.

### **D. Failure to Meet Requirements**

If any application fails to meet the requirements of the Rules of Executive Clemency, the Coordinator may return it without further consideration.

## **II. Notification**

Upon receipt of a completed application that meets the requirements of the Rules of Executive Clemency, the Coordinator shall make reasonable attempts to notify the victims of record, the respective State Attorney's Office, the Office of

the Statewide Prosecutor, if applicable, and the Office of the Attorney General, Bureau of Advocacy and Grants.

## **7. Applications Referred to the Florida Parole Commission**

Every application which meets the requirements of these Rules may be referred to the Florida Parole Commission for an investigation, report, and recommendation.

All persons who submit applications shall comply with the reasonable requests of the Florida Parole Commission in order to facilitate and expedite investigation of their cases. Failure to comply with such requests by the Commission, without adequate explanation, may result in denial of the application without further consideration.

## **8. Waiver of the Rules to Apply for Clemency**

### **I. A. Request for Waiver**

If an applicant cannot meet the requirements of Rule 5, he or she may seek a waiver of the rules so long as at least two years have elapsed since the applicant was first convicted and, except for waivers for commutation of sentence, no restitution is owed by the applicant. However, an applicant who receives a mandatory minimum sentence must serve at least one-third of the sentence before applying for a waiver of the rules. If an otherwise ineligible applicant demonstrates extraordinary merit, based upon a concise statement of compelling need, the two-year time period or the serving of one-third of the mandatory minimum sentence may be waived by the Governor. Individuals eligible for waiver consideration may receive a "Request for Waiver" application form by contacting the Office of Executive Clemency or it may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. Upon receipt of the original and four (4) copies of the Request for Waiver form, clemency application, and any other material to be considered, the Coordinator shall forward copies of the documents to the Clemency Board and the Florida Parole Commission. The Commission shall review the documents and make an advisory recommendation to the Clemency Board. Notification of receipt by the Office of Executive Clemency of such a request for waiver shall be provided as indicated under Rule 6. A waiver of the rules may only be granted by the Governor with the approval of at least one member of the Clemency Board. Rule 17 may also be invoked by any member of the Clemency Board.

### **B. Denial of Waiver**

Waiver cases which have not been acted upon by the Clemency Board within 90 days of receipt of the Parole Commission's waiver report by the Office of Executive Clemency, shall be summarily denied, unless the period is extended by the Governor.

### **C. Referral to Commission**

Upon receipt by the Coordinator of written notification from the Governor and at least one member of the Clemency Board, or such notification invoking Rule 17, the Coordinator may refer the request to the Parole Commission for a full investigation and place the case on the next possible agenda to be heard by the Clemency Board.

#### **D. Notification**

The Coordinator shall attempt to provide individuals seeking waivers of the rules, and the respective prosecuting authority, with approximately 20 days notice prior to any such request being heard by representatives of the Clemency Board.

#### **II. §944.30 Cases**

All remaining §944.30, Florida Statutes, cases will be processed under this rule.

#### **III. Domestic Violence Case Review**

Domestic violence cases that meet the criteria as enumerated within the special waiver procedures adopted by the Clemency Board on December 18, 1991, as amended, will be processed as requests for waivers of the rule.

### **9. Automatic Approval of Restoration of Civil Rights or Alien Status under Florida Law**

#### **A. Criteria for Eligibility**

A person shall have his or her civil rights or alien 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:

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 obligations pursuant to Chapter 960, Florida Statutes;
4. The person has never been convicted of one of the following crimes:
  - a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);
  - b. DUI manslaughter (F.S. 316.193(3));
  - c. sexual battery, attempted sexual battery (F.S. 794.011)
  - d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (F.S. Chapter 800);
  - e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);
  - f. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
  - g. aggravated child abuse (F.S. 827.03);
  - h. failure to register as a sexual predator (F.S. 775) or sexual offender (F.S. 943.0435);
  - i. computer pornography, transmission of computer pornography, buying or selling of minors (F.S. Chapter 847);
  - j. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (F.S. Chapter 787);
  - k. aggravated battery, attempted aggravated battery (F.S. 784.045);

- l. armed robbery, attempted armed robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (F.S. Chapter 812);
  - m. poisoning of food or water (F.S. 859.01);
  - n. abuse of a dead human body (F.S. 872.06);
  - o. first degree burglary or attempted first degree burglary (F.S. 810.02);
  - p. arson or attempted arson (F.S. 806.01);
  - q. aggravated assault (F.S. 784.021);
  - r. aggravated stalking (F.S. 784.048);
  - s. aggravated battery or aggravated assault on a law enforcement officer or other specified officer (F.S. 784.07);
  - t. first degree trafficking in illegal substances (F.S. 893.135);
  - u. aircraft piracy (F.S. 860.16);
  - v. unlawful throwing, placing, or discharging of a destructive device or bomb (F.S. 790.161);
  - w. facilitating or furthering terrorism (F.S. 775.31);
  - x. treason (F.S. 876.32); or
  - y. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.
5. The person has not been declared to be one of the following:
- a. Habitual Violent Felony Offender under F.S. 775.084(1)(b);
  - b. Three-time Violent Felony Offender under F.S. 775.084(1)(c);
  - c. Violent Career Criminal under F.S. 775.084;
  - d. Prison Releasee Reoffender under F.S. 775.082(9)(a);
  - e. Sexual Predator under F.S. 775.21;
6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.
7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

**B. Action by the Clemency Board**

The Florida Parole Commission shall review the records of individuals released by the Department of corrections by expiration of sentence or from community supervision, who are identified as eligible for automatic restoration of civil rights. If an individual meets all requirements under Rule 9(A), then the Coordinator shall provide that information to the Clemency Board, and pursuant to executive order, issue a certificate that grants restoration of civil rights or alien status under Florida Law in the State of Florida, without the specific authority to own, possess or use firearms. Article IV, Section 8 of the Florida Constitution provides that an executive order granting a clemency requires the signature of the Governor and two members of the Clemency Board. A person who is not eligible for automatic restoration of civil rights under Rule 9(A), and is not eligible for restoration of civil rights without a hearing under Rule 10, may request restoration of civil rights pursuant to Rule 6.

**C. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule

9(A) are met. If the Commission certifies that all of the requirements in Rule 9(A) are met, the Coordinator shall follow procedures for the automatic restoration of civil rights as enumerated herein.

## **10. Restoration of Civil Rights or Alien Status under Florida Law Without a Hearing**

### **A. Criteria for Eligibility**

As provided in paragraph 10 C, an individual may have his or her civil rights or alien status under Florida law restored, excluding the specific authority to own, possess, or use firearms, without a hearing, if the following requirements are met:

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 obligations pursuant to Chapter 960, Florida Statutes;
4. The person has never been convicted of one of the following crimes:
  - a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);
  - b. DUI manslaughter (F.S. 316.193(3));
  - c. sexual battery, attempted sexual battery (F.S. 794.011);
  - d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (F.S. Chapter 800);
  - e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);
  - f. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
  - g. aggravated child abuse (F.S. 827.03);
  - h. failure to register as a sexual predator (F.S. 775) or sexual offender (F.S. 943.0435);
  - i. facilitating or furthering terrorism (F.S. 775.31);
  - j. treason (F.S. 876.32); or
  - k. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.
5. The person has not been declared to be a Sexual Predator under F.S. 775.21;
6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.
7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

### **B. Criteria for 15 Year Eligibility**

Except as provided in paragraph 10 C, an individual may have his or her civil rights or alien status under Florida law restored, excluding the specific

authority to own, possess, or use firearms, without a hearing, if the following requirements are met:

1. The person has remained crime and arrest free for a period of 15 years or more after completion of 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 paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;

3. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

4. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

### **C. Approval by Clemency Board**

The Florida Parole Commission shall review the records of all individuals released by the Department of Corrections by expiration of sentence or community supervision to certify their eligibility for restoration of civil rights or alien status under Florida law without a hearing. The Coordinator shall issue a preliminary review list of individuals eligible for restoration of civil rights or alien status under

Florida law without a hearing to the Clemency Board members. If the Governor plus two members approve an individual's restoration of civil rights or alien status under Florida law without a hearing within 30 days of issuance of the preliminary review list, the Coordinator shall, by executive order, issue a certificate that grants the individual restoration of civil rights or alien status under Florida law in the State of Florida, without the specific authority to own, possess, or use firearms. If approval is not granted, that candidate will be notified, and may pursue restoration of these rights pursuant to Rule 6.

### **D. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule 10(A) are met. If the Commission certifies that all of the requirements in Rule 10(A) are met, the Coordinator shall follow procedures for the restoration of civil rights or alien status without a hearing as enumerated herein.

## **11. Hearings by the Clemency Board on Pending Applications**

### **A. Cases on the Agenda**

After the Parole Commission investigation is complete, the Coordinator may place upon the agenda for consideration by the Clemency Board at its next scheduled meeting:

1. Timely applications that meet the eligibility requirements under Rule 5 for which any investigation, report and recommendation, conducted under Rule 7, has been completed;

2. Cases in which an applicant has obtained a waiver under Rule 8 or when Rule 17 has been invoked so long as any investigation, report and recommendation conducted under Rule 7 has been completed.

**B. Distribution of Agenda**

The Coordinator shall prepare an agenda which shall include all cases that qualify for a hearing under Subsection A of this Rule. A preliminary agenda shall be distributed to the Clemency Board at least 10 days before the next scheduled meeting.

**C. Failure of Applicant to Comply With Rules**

An applicant's failure to comply with any rule of executive clemency may result in refusal, without notice, to place an application on the agenda for consideration.

**12. Hearings Before the Clemency Board**

**A. Scheduled Meetings**

The Clemency Board will meet in the months of March, June, September, and December of each year, or at such times as set by the Clemency Board. The Governor may call a special meeting at any time for any reason. 11

**B. Notice of Appearance**

Applicants are not required to appear at the hearing, but the Clemency Board encourages applicants to attend. The applicant, or any other person intending to speak on behalf of the applicant, must notify the Office of Executive Clemency at least 10 days prior to the scheduled meeting of the Clemency Board.

**C. Time Limits**

Any person making an oral presentation to the Clemency Board will be allowed no more than five minutes. All persons making oral presentations in favor of an application shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an application, including victims, shall be allowed cumulatively no more than 10 minutes.

**D. Filing of Executive Orders**

Subsequent to the hearings of the Clemency Board, the Coordinator shall prepare executive orders granting clemency as directed and circulate them to the members of the Clemency Board. After the Executive Orders are fully executed, the Coordinator shall certify and mail a copy to the applicant. The original executive order shall be filed with the custodian of state records. The Coordinator shall send a letter to each applicant officially stating the disposition of his or her application. A seal is not used by the Office of Executive Clemency.

**13. Continuance and Withdrawal of Cases**

An interested party may apply for a continuance of a case if the continuance is based on good cause. The Governor will decide if the case will be continued. Cases held under advisement for further information desired by the Governor will be marked "continued" and noted on each subsequent agenda until the case is decided.

The applicant may withdraw his or her application by notifying the Office of Executive Clemency at least 20 days prior to the next scheduled meeting of the Clemency Board. A request to withdraw a case made within 20 days of the hearing on the application will be allowed if the Governor or the Coordinator for

the Office of Executive Clemency determines that there is good cause. Cases that are withdrawn from the agenda will not be considered again until the application is re-filed.

#### **14. Reapplication for Clemency**

Any otherwise eligible person who has been granted or denied any form of executive clemency may not reapply for further executive clemency for at least two years from the date that such action became final. Any person who was granted a waiver of the Rules but was subsequently denied any form of executive clemency, must apply for another waiver prior to seeking any form of executive clemency in the future, if otherwise ineligible. However, he or she may not apply for another waiver for at least three years from the date that such action became final. Any person who has been denied a waiver under Rule 8 may not apply for another waiver for at least three years from the date the waiver was denied. Any person who (i) has been convicted of a capital or life felony, (ii) has been denied a waiver pursuant to Rule 8 and, 12

(iii) is currently incarcerated, may not apply for another waiver for at least five years from the date the waiver was denied.

#### **15. Commutation of Death Sentences**

This Rule applies to all cases where the sentence of death has been imposed. The Rules of Executive Clemency, except Rules 1, 2, 3, 4, 15 and 16 are inapplicable to cases where inmates are sentenced to death.

##### **A. Confidentiality**

Notwithstanding incorporation of Rule 16 by reference in cases where inmates are sentenced to death, the full text of Rule 16 is repeated below for clarification: Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor and no other member of the Clemency Board, nor any other state entity that may be in the possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials shall not constitute a waiver of confidentiality.

##### **B. Parole Commission Investigation**

In all cases where the death penalty has been imposed, the Florida Parole Commission may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board. The investigation shall include, but not be limited to, (1) an interview with the inmate, who may have clemency counsel present, by the Commission; (2) an interview, if possible, with the trial attorneys who prosecuted the case and defended the inmate; (3) an interview, if possible, with the presiding judge and; (4) an interview, if possible, with the defendant's family. The Parole Commission shall provide notice to the Office of the Attorney General, Bureau of Advocacy and Grants, that an investigation has been initiated. The Office of the Attorney General, Bureau of Advocacy and Grants shall then provide notice to the victims of record that an investigation is pending and at that time shall request written comments from the victims of record. Upon receipt of comments from victims of

record or their representatives, the Office of the Attorney General, Bureau of Advocacy and Grants shall forward such comments to the Parole Commission to be included in the final report to the Clemency Board.

**C. Monitoring Cases for Investigation**

The investigation by the Parole Commission shall begin at such time as designated by the Governor. If the Governor has made no such designation, the investigation shall begin immediately after the defendant's initial petition for writ of habeas corpus, filed in the appropriate federal district court, has been denied by the 11th Circuit Court of Appeals, so long as all post-conviction pleadings, both state and federal, have been filed in a timely manner as determined by the Governor. An investigation shall commence immediately upon any failure to timely file the initial motion for postconviction relief in state court, and any appeal therefrom, or the initial petition for writ of habeas corpus in federal court, and any appeal therefrom. The time frames established by this rule are not tolled during the pendency of any petition for rehearing or reconsideration (or any similar such motion for clarification, etc.), request for rehearing en banc in the 11th Circuit Court of Appeals, or petition for writ of certiorari in the U.S. 13

Supreme Court. Failure to conduct or complete the investigation pursuant to these rules shall not be a ground for relief for the death penalty defendant. The Parole Commission's Capital Punishment Research Specialist shall routinely monitor and track death penalty cases beyond direct appeal for this purpose. Cases investigated under previous administrations may be reinvestigated at the Governor's discretion.

**D. Parole Commission Report**

After the investigation is concluded, the Commissioners who personally interviewed the inmate shall prepare and issue a final report on their findings and conclusions. The final report shall include (1) any statements made by the defendant, and defendant's counsel, during the course of the investigation; (2) a detailed summary from each Commissioner who interviewed the inmate; and (3) information gathered during the course of the investigation. The final report shall be forwarded to all members of the Clemency Board within 120 days of the commencement of the investigation, unless the time period is extended by the Governor.

**E. Request for Hearing by any Clemency Board Member**

After the report is received by the Clemency Board, the Coordinator shall place the case on the agenda for the next scheduled meeting or at a specially called meeting of the Clemency Board if, as a result of the investigation, or final report, any member of the Clemency Board requests a hearing within 20 days of transmittal of the final report to the Clemency Board. Once a hearing is set, the Coordinator shall provide notice to the appropriate state attorney, the inmate's clemency counsel, the victim's rights coordinator in the Executive Office of the Governor and the Office of Attorney General, Bureau of

Advocacy and Grants. The Office of the Attorney General, Bureau of Advocacy and Grants shall then notify the victims of record of the hearing.

**F. Request for Hearing by Governor**

Notwithstanding any provision to the contrary in the Rules of Executive Clemency, in any case in which the death sentence has been imposed, the

Governor may at any time place the case on the agenda and set a hearing for the next scheduled meeting or at a specially called meeting of the Clemency Board.

**G. Transcript of Interview**

Upon request, a copy of the actual transcript of any statements or testimony of the inmate relating to a clemency investigation shall be provided to the state attorney, the inmate's clemency counsel, or victim's family. The attorney for the state, the inmate's clemency counsel, the victim's family, the inmate, or any other interested person may file a written statement, brief or memorandum on the case within 90 days of initiation of the investigation under Rule 15, copies of which will be distributed to the members of the Clemency Board. The person filing such written information should provide five (5) copies to the Coordinator of the Office of Executive Clemency.

**H. Time Limits**

At the clemency hearing for capital punishment cases, the inmate's clemency counsel and the attorneys for the state may make an oral presentation, each not to exceed 15 minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five minutes collectively. The Governor may extend these time frames at his or her discretion. 14

**I. Distribution and Filing of Orders**

If a commutation of a death sentence is ordered by the Governor with the approval of at least two members of the Clemency Board, the original order shall be filed with the custodian of state records, and a copy of the order shall be sent to the inmate, the attorneys representing the state, the inmate's clemency counsel, a representative of the victim's family, the Secretary of the Department of Corrections, and the chief judge of the circuit where the inmate was sentenced. The Office of the Attorney General, Bureau of Advocacy and Grants shall inform the victim's family within 24 hours of such action by the Clemency Board.

**16. Confidentiality of Records and Documents**

Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor, and no other member of the Clemency Board nor any other state entity that may be in the possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials, as approved by the Governor, does not constitute a waiver of confidentiality.

**17. Cases Proposed by the Governor or Members of the Clemency Board**

**A.** In cases of exceptional merit, any member of the Clemency Board may place a case on an upcoming agenda for consideration.

## **18. Effective Dates**

History. - Adopted September 10, 1975, Rule 6 (formerly Rule 9) effective November 1, 1975; Rule 7 adopted December 8, 1976; Rule 6 amended December 8, 1976, effective July 1, 1977; revised September 14, 1977; Rule 12 amended October 7, 1981; revised December 12, 1984; amended January 8, 1985; amended July 2, 1985; Rule 12 amended September 18, 1986; Rules amended December 18, 1991, effective January 1, 1992; Rule 10 and Rule 15 amended June 22, 1992; Rules amended December 29,

1994, effective January 1, 1995. Rules amended January 7, 1997, effective January 15, 1997; Rule 4 and Rule 9 revised October 28, 1999, effective January 1, 2000; Rules revised June 14, 2001, effective June 14, 2001; Rules revised March 27, 2003; effective March 27, 2003; Rules revised June 20, 2003; effective June 20, 2003; Rules revised December 9, 2004; effective December 9, 2004; Rules revised April 5, 2007, effective April 5, 2007.