

FLORIDA

# Voter Right Restoration Fact Sheet

## WHO CAN LOSE THE RIGHT TO VOTE?<sup>1</sup>

➔ Any person who served a sentence for a felony conviction (Fla. Const. art. VI, § 4; Fla. Stat. § 97.041; see also Fla. Stat. §§ 98.0751, 944.292)

## WHO DOES NOT LOSE THE RIGHT TO VOTE?

➔ Any person for whom adjudication was withheld (<https://www.fcor.state.fl.us/docs/clemency/Clemency%20Information%20Sheet.pdf>)

- The court documents for the person indicate whether adjudication was withheld
- This indication is usually located on the first page of the judgment and sentence document
- If a person violated probation or community control, a review of the subsequent court order (modification or revocation order) should be made
- This can only apply for cases with second or third degree felony convictions (<https://ccresourcecenter.org/state-restoration-profiles/florida-restoration-of-rights-pardon-expungement-sealing/>)
- The statutes are not completely clear in that withholding of a non-first degree felony conviction does not revoke a person's right to vote. Instead, this appears to be based on a 1964 Attorney General opinion that is not well advertised. (Fla. R. Crim. P. 3.670; Fla. Stat. Ann. § 921.0026; Fla. Stat. Ann. § 775.08435; Fla. Stat. Ann. § 948.01; Florida Op. Atty. Gen., 064-163, Nov. 6, 1964 (“If court in felony prosecution exercises its discretion under this section and withholds imposition of sentence and places defendant on probation without adjudging him guilty, then he has not been convicted and does not lose any of his civil rights.”))

## WHO CAN REGAIN THE RIGHT TO VOTE?

➔ Someone who is: (Fla. Stat. § 97.041)

- Is at least 18 years of age;
- Is a citizen of the United States;
- Is a legal resident of the State of Florida;
- Is a legal resident of the county in which that person seeks to be registered;
- Has not been determined mentally incompetent (“insane”) with respect to voting;
- Has completed all terms of their sentence including parole or probation (Fla. Const. art. VI, § 4; Fla. Stat. § 98.0751)
  - If a person has not completed their sentence, they can seek a pardon from the governor to regain their right to vote (Fla. Stat. § 98.0751(1))
- Has paid restitution, fines or fees as ordered by a court as part of a sentence (Fla. Stat. § 98.0751)
  - This includes completion of any community service hours performed instead of paying money
  - The person does not need to pay any money that accumulated after the sentencing to regain their right to vote (but likely should for other reasons)

➔ In addition to the above, if the person's felony was for murder or a sexual offense: (Fla. Const. art. IV, § 8; Fla. Stat. Ann. § 940.01; <https://www.fcor.state.fl.us/docs/clemency/Clemency%20Information%20Sheet.pdf>; <https://www.fcor.state.fl.us/docs/clemency/ClemencyApplication.pdf>; <https://offender.fdle.state.fl.us/offender/sops/faq.jsf>)

<sup>1</sup> Contributed by Joel D. Couenhoven, an associate at Fish & Richardson.

- The person cannot have any outstanding pending criminal charges or any outstanding detainers (<https://www.fcor.state.fl.us/docs/clemency/Clemency%20Information%20Sheet.pdf>; [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf))
    - This is likely implied in the statute based on the requirements that probation and community control be terminated and the person fulfill any term that is part of their sentence (Fla. Stat. § 98.0751)
  - They can apply for a Restoration of Civil Rights from the governor to regain the right to vote
    - If they previously regained their right to vote and were subsequent convicted of another felony, they must wait at least seven years after completing all non-financial terms of sentence before again requesting the right to vote
  - If the person wants a full pardon from the governor, they must wait until ten years after they complete all terms of their sentence, and:
    - The person must pay restitution for all cases in their entire criminal record
    - Must owe less than \$1,000 for any charge in their entire criminal record
- ➔ In addition to the above, if the person's felony was for treason: (Fla. Const. art. IV, § 8)
- The person needs a pardon from the legislature instead of the governor
  - The Clemency Rules do not indicate the need for a legislative pardon for treason even though that is in Florida's constitution
- ➔ If a person is unsure whether they meet the requirements, they can get an advisory opinion about their right to vote from the Florida Division of Elections: <https://dos.myflorida.com/elections/laws-rules/advisory-opinions/>

### **BY WHAT PROCESS CAN A PERSON REGAIN THE RIGHT TO VOTE?**

- ➔ If the person qualifies under option “a” above, register to vote at <https://www.registertovoteflorida.gov/home>
- The person will need:
    - Their Florida driver's license or Florida identification card
    - The last four digits of their Social Security Number
  - If the person does not have a social security number, or a Florida driver's license, or identification card, they can either fill out the paper form or use the online system to prefill a voter registration application form that they print, sign, and then mail or deliver to their county Supervisor of Elections' office (<https://dos.elections.myflorida.com/supervisors/>)
  - It is a felony to submit false information during the registration process, which can result in a \$5,000 fine, 5 years in prison, or both, which is likely a deterrent for returning citizens to register to vote (<https://www.registertovoteflorida.gov/home>)
- ➔ If the person qualifies under option “b” above, request a pardon from the governor (<https://www.fcor.state.fl.us/restoration.shtml>)
- This includes filling out a “Clemency Application” and requesting a “Full Pardon” or a “Restoration of Civil Rights” (<https://www.fcor.state.fl.us/docs/clemency/ClemencyApplication.pdf>)
    - If a person has a Florida conviction for murder or a sexual offense, they become eligible to request a full pardon ten years after completing all terms of their sentence or regaining their civil rights seven years after completing all non-financial terms of their sentence
    - It appears that a person can request a Restoration of Civil Rights without waiting for any particular time period as long as the person did not previously regain their civil rights by way of a clemency application
    - If a person has a conviction for murder or a sexual offense outside of Florida, they become eligible to request a full pardon after completing all terms of their sentence other than paying any legal financial obligations
  - For a person to regain their right to vote when they have a murder or sexual offense conviction, they will have a hearing to have their application granted (attendance by the returning citizen is optional, the injured party may also attend the hearing)
    - However, if the Clemency Board makes an initial determination to deny the application, there might be no hearing if no member of the Clemency Board objects to the denial without a hearing

- There is no indication why an applicant will not get a hearing if the Clemency Board makes an initial denial hearing, as the hearing appears likely to give applicants an opportunity to share and increase their chances of receiving clemency (and regaining the right to vote)
  - This denial is not based solely on errors in the application for which the applications are reviewed before they are sent to the Clemency Board
  - It is unclear whether a Pardon without Firearm Authority would also restore a returning citizen's right to vote
  - Details of the requirements to apply for a full pardon are at: <https://www.fcor.state.fl.us/docs/clemency/Clemency%20Information%20Sheet.pdf>; [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf)
  - If the person was convicted in a federal or other out-of-state court, the best option is likely to request a "Restoration of Civil Rights" in part because of federal firearms laws ([https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) (4)(I)(F))
  - The Clemency Rules indicate that a person whose clemency application is denied must wait at least two years before reapplying as long as they did not request Restoration of Civil Rights
    - There is no indication if there is a waiting period, or what such a waiting period would be, if the person requested Restoration of Civil Rights (alone or in combination with a request for a full pardon)
- ➔ If the person qualifies under option "b" above, request a pardon from the legislature and then follow the steps for option "a" above to register to vote
- There is no information online about how to request a legislative pardon, any documentation for such a request, to whom to submit a request, or requirements to apply for such a request (other than being convicted of treason)
- ➔ Of the 4,748 clemency cases completed in fiscal year 2018-19, only 387 Restoral of Civil Rights applications were granted (about 8.15%). The data readily available online does not indicate whether any other clemency cases were granted. There were 6,278 clemency cases completed in fiscal year 2020-21 but no data is available online to indicate how many were granted. (<https://www.fcor.state.fl.us/statistics.shtml>; <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202021.pdf>; <https://www.fcor.state.fl.us/docs/reports/AnnualReport2019.pdf>; <https://www.fcor.state.fl.us/docs/reports/Recidivism%20Report%202018-2019.pdf>)