



Criminal Justice Subcommittee

Wednesday, October 25, 2017

10:30 AM – 12:30 PM

404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, October 25, 2017 10:30 am
End Date and Time: Wednesday, October 25, 2017 12:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 165 Threats to Kill or Do Bodily Injury by McClain
HB 6013 Return of Property by Byrd

An overview of the Florida Commission on Offender Review and the Clemency Process

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00p.m., Tuesday, October 24, 2017.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00p.m., Tuesday, October 24, 2017.

NOTICE FINALIZED on 10/18/2017 4:11PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 165 Threats to Kill or Do Bodily Injury
SPONSOR(S): McClain
TIED BILLS: IDEN./SIM. BILLS: SB 310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Hall WH	Sumner AS
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

As the use of social media grows, the potential to use such forms of communication to make threats of violence also increases. In a recent study of online harassment, 10 percent of adult Internet users surveyed reported having been physically threatened online. A separate study found that over one-third of threats made to schools were delivered electronically, with 28 percent of those threats delivered through social media.

Currently, s. 836.10, F.S., makes it a second-degree felony to compose and send certain written threats, including electronic communications, to kill or do bodily harm. To violate this section, a person must:

- Write or compose a threat to kill or do bodily injury; and
- Send, or procure the sending of, the communication to the person threatened or family member of the person threatened.

Recently, the Second District Court of Appeals issued an opinion highlighting the difficulty of applying s. 836.10, F.S., to threats issued and shared publicly on social media, as such threats may not be communicated directly to any specific person. In this case, a juvenile's conviction for violating s. 836.10, F.S., was overturned, although the juvenile had posted multiple threats of school violence on Twitter, because the threats were not directly sent to or received by any of the threatened students or school officials.

HB 165 amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do bodily injury to another person; and
- Posting or transmitting the threat in any manner.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, written threats to kill or do bodily injury to another person that are publicly posted online, even if not specifically sent to or received by the person who is the subject of the threat, will be prohibited.

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 3, 2017, and determined that it will have a positive indeterminate impact on prison beds, meaning that the bill will increase the need for prison beds by an unquantifiable amount. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT."

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

According to a recent study, 62 percent of adult Internet users view online harassment as a major problem.¹ The study found that 18 percent of adults surveyed had experienced some form of severe harassment online, such as physical threats, harassment over a sustained period of time, sexual harassment or stalking. Ten percent of those adults had experienced physical threats directed at them online.² In a separate study regarding violent threats to schools,³ researchers found 37 percent of threats made to schools were sent electronically, using social media, text messaging, and other online resources. Of those electronic threats, 28 percent were made through social media.⁴

In 2010, the Legislature amended s. 836.10, F.S., to add “electronic communication” to the types of written threats that are prohibited, but left intact the requirement that the written threat be sent to the person who is the subject of the threat or to a person whose family member is the subject of the threat. The statute currently makes it a second-degree felony⁵ for a person to write or compose and send or procure the sending of any letter, inscribed communication, or electronic communication that contains a threat to kill or do bodily injury to the person threatened or family member of the person threatened.

Criminal defendants have challenged the statute alleging it is vague and overbroad, arguing that the statute could criminalize innocent written speech because it does not require proof that the defendant had the specific intent to cause the threatened harm.⁶ Florida courts have held that s. 836.10, F.S., does not require the actual intent to do harm or the apparent ability to carry out the threat.⁷ Additionally, the courts have upheld the statute finding it is definite enough to give notice of the behavior it proscribes and, thus, not vague. Further, it is limited enough in its objective to target threats to injure persons,⁸ and, thus, not overbroad.⁹

In a 2016 decision, a juvenile’s disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹⁰ was reversed.¹¹ The juvenile made a series of public posts on Twitter over the span of several days threatening to “shoot up” his school.¹² The tweets were discovered by an out-of-

¹ Pew Research Center, *Online Harassment 2017*, (July 11, 2017), available at http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/07/10151519/PI_2017.07.11_Online-Harassment_FINAL.pdf (last visited October 17, 2017).

² *Id.* at 13.

³ The study was conducted by National School Safety and Security Services. It reviewed 812 school threats across the country from August 1 to December 31, 2014. Ken Trump, *Study finds rapid escalation of violent school threats*, <http://www.schoolsecurity.org/2015/02/study-finds-rapid-escalation-violent-school-threats/> (last visited October 17, 2017).

⁴ *Id.*

⁵ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 and 775.083, F.S.

⁶ *Saidi v. State*, 845 So. 2d 1022, 1026 (Fla. 5th DCA 2003).

⁷ *Id.* at 1027.

⁸ The First Amendment permits a state to ban a “true threat.” “‘True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

⁹ *Reilly v. Department of Corrections*, 847 F. Supp. 951, 958 (M.D. Fla. 1994); See also *Smith v. State*, 532 So. 2d 50, 52 (Fla. 2d DCA 1988).

¹⁰ “Twitter allows users to send ‘updates’ (or ‘tweets’: text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application.” Gnoted, *What Is Twitter and How Does It Work- Beginner’s Guide*, <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited October 17, 2017).

¹¹ *J.A.W. v. State*, 210 So. 3d 142 (Fla. 2d DCA 2016).

¹² The following tweets were posted: “can’t wait to shoot up my school”; “it’s time”; “My mom and dad think I’m serious about shooting up my school I’m dying”; “school getting shot up on a Tuesday”; “night fl[***]king sucked can’t wait to shoot up my school

state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S. The court specifically highlighted the difficulty of applying the current statute to modern forms of social media communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the communication to be sent directly to a specific person.¹³

Effect of the Bill

HB 165 amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do bodily injury to another person; and
- Posting or transmitting the threat in any manner.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, written threats to kill or do bodily injury to another person that are publicly posted online, even if not specifically sent to or received by the person who is the subject of the threat, are prohibited.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 836.10, F.S., relating to written threats to kill or do bodily injury; punishment.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 3, 2017, and determined that it will have a positive indeterminate impact on prison beds, meaning that that bill will increase the need for prison beds by an unquantifiable amount. According to the CJIC, per the Department of Corrections, in FY 15-16, there were 66 (adj.) offenders sentenced for written threats to kill or do bodily injury, and 26 (adj.) of these offenders were sentenced to prison (mean sentence length=47.0 m, incarceration rate: 39.4% adj.-40.0% unadj.). It is not known how many additional offenders would fall under the more expanded definition.¹⁴

soon”; and “I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way.” Id.

¹³ Id.

¹⁴ Email from Matthew Hasbrouck, Office of Economic & Demographic Research, March 1, 2017 (on file with the Criminal Justice Subcommittee).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to threats to kill or do bodily
 3 injury; amending s. 836.10, F.S.; prohibiting a person
 4 from making a threat to kill or do bodily injury in a
 5 writing or other record and transmitting that threat
 6 in any manner; deleting requirements that a threat be
 7 sent to a specific recipient to be prohibited;
 8 providing a penalty; providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Section 836.10, Florida Statutes, is amended to
 13 read:

14 836.10 Written threats to kill or do bodily injury;
 15 punishment.—A Any person who makes a threat in a writing or
 16 other record, including an electronic record, ~~writes or composes~~
 17 ~~and also sends or procures the sending of any letter, inscribed~~
 18 ~~communication, or electronic communication, whether such letter~~
 19 ~~or communication be signed or anonymous, to any person,~~
 20 ~~containing a threat~~ to kill or to do bodily injury to another
 21 the person and posts or transmits the threat in any manner to
 22 ~~whom such letter or communication is sent, or a threat to kill~~
 23 ~~or do bodily injury to any member of the family of the person to~~
 24 ~~whom such letter or communication is sent~~ commits a felony of
 25 the second degree, punishable as provided in s. 775.082, s.

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26 775.083, or s. 775.084.

27 Section 2. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative McClain offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 836.10, Florida Statutes, is amended to
8 read:

9 836.10 Written threats to kill or do bodily injury;
10 punishment.— A Any person who makes a threat in a writing or
11 other record, including an electronic record, writes or composes
12 and also sends or procures the sending of any letter, inscribed
13 communication, or electronic communication, whether such letter
14 or communication be signed or anonymous, to any person,
15 containing a threat to kill or to do bodily injury to another
16 the person and posts or transmits the threat in any manner that



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17 ~~would allow another person to view the threat to whom such~~
18 ~~letter or communication is sent, or a threat to kill or do~~
19 ~~bodily injury to any member of the family of the person to whom~~
20 ~~such letter or communication is sent~~ commits a felony of the
21 second degree, punishable as provided in s. 775.082, s. 775.083,
22 or s. 775.084.

23 Section 2. For the purpose of incorporating the amendment
24 made by this act to section 836.10, Florida Statutes, in a
25 reference thereto, Subsection (1) of section 794.056, Florida
26 Statutes, is reenacted to read:

27 794.056 Rape Crisis Program Trust Fund.—

28 (1) The Rape Crisis Program Trust Fund is created within
29 the Department of Health for the purpose of providing funds for
30 rape crisis centers in this state. Trust fund moneys shall be
31 used exclusively for the purpose of providing services for
32 victims of sexual assault. Funds credited to the trust fund
33 consist of those funds collected as an additional court
34 assessment in each case in which a defendant pleads guilty or
35 nolo contendere to, or is found guilty of, regardless of
36 adjudication, an offense provided in s. 775.21(6) and (10)(a),
37 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
38 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
39 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
40 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
41 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.



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42 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 43 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 44 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 45 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 46 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 47 fund also shall include revenues provided by law, moneys
 48 appropriated by the Legislature, and grants from public or
 49 private entities.

50 Section 3. For the purpose of incorporating the amendment
 51 made by this act to section 836.10, Florida Statutes, in a
 52 reference thereto, paragraph (f) of subsection (3) of section
 53 921.0022, Florida Statutes, is reenacted to read:

54 921.0022 Criminal Punishment Code; offense severity
 55 ranking chart.—

56 (3) OFFENSE SEVERITY RANKING CHART

57 (f) LEVEL 6

58

Florida	Felony	
Statute	Degree	Description

59

316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
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60



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61	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
62	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
63	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
64	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
65	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
66	775.0875(1)	3rd	Taking firearm from law enforcement officer.
	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.



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67	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
68	784.041	3rd	Felony battery; domestic battery by strangulation.
69	784.048(3)	3rd	Aggravated stalking; credible threat.
70	784.048(5)	3rd	Aggravated stalking of person under 16.
71	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
72	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
73	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
74	784.081(2)	2nd	Aggravated assault on specified official or employee.



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75	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
76	784.083(2)	2nd	Aggravated assault on code inspector.
77	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
78	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
79	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
80	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or



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			use of firearms in violent manner.
81			
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
82			
	794.011(8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
83			
	794.05(1)	2nd	Unlawful sexual activity with specified minor.
84			
	800.04(5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
85			
	800.04(6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
86			



Amendment No.

87	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
88	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
89	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
90	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
91	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
92	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.



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93	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
94	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
95	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
96	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
97	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
98	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
99	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.



Amendment No.

100	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
101	827.03(2)(c)	3rd	Abuse of a child.
102	827.03(2)(d)	3rd	Neglect of a child.
103	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
104	836.05	2nd	Threats; extortion.
105	836.10	2nd	Written threats to kill or do bodily injury.
106	843.12	3rd	Aids or assists person to escape.
107	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

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108	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
109	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
110	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
111	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
112	944.40	2nd	Escapes.
113	944.46	3rd	Harboring, concealing, aiding escaped prisoners.



Amendment No.

114 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

115 951.22(1) 3rd Intoxicating drug, firearm, or
116 weapon introduced into county
117 facility.

118 Section 4. For the purpose of incorporating the amendment
119 made by this act to section 836.10, Florida Statutes, in a
120 reference thereto, Section 938.085, Florida Statutes, is
reenacted to read:

121 938.085 Additional cost to fund rape crisis centers.—In
122 addition to any sanction imposed when a person pleads guilty or
123 nolo contendere to, or is found guilty of, regardless of
124 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
125 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
126 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
127 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
128 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
129 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
130 796.07(2)(a)–(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
131 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
132 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.
847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and

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133 (14)(c); or s. 985.701(1), the court shall impose a surcharge of
 134 \$151. Payment of the surcharge shall be a condition of
 135 probation, community control, or any other court-ordered
 136 supervision. The sum of \$150 of the surcharge shall be deposited
 137 into the Rape Crisis Program Trust Fund established within the
 138 Department of Health by chapter 2003-140, Laws of Florida. The
 139 clerk of the court shall retain \$1 of each surcharge that the
 140 clerk of the court collects as a service charge of the clerk's
 141 office.

142 Section 5. This act shall take effect July 1, 2018.

144 -----
 145 **T I T L E A M E N D M E N T**

146 Remove lines 6-8 and insert:



147 in any manner that would allow another person to view the
 148 threat; deleting requirements that a threat be sent to a
 149 specific recipient to be prohibited; providing a penalty;
 150 reenacting ss. 794.056(1), 921.0022(3)(f), and 938.085, F.S.,
 151 relating to the Rape Crisis Program Trust Fund, the offense
 152 severity ranking chart of the Criminal Punishment Code, and
 153 additional costs to fund rape crisis centers, respectively, to
 154 incorporate the amendments made by the act; providing an
 155 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6013 Return of Property

SPONSOR(S): Byrd

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno 	Sumner 
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 933.14(3), F.S., requires law enforcement to retain a firearm until a court orders its return when the firearm has been taken either:

- Pursuant to a search warrant, or
- Without a search warrant upon an officer viewing a breach of the peace.

Section 877.03, F.S., addresses the statutory crime of breach of the peace, criminalizing such acts as are of a nature to corrupt the public morals; or outrage the sense of public decency; or affect the peace and quiet of persons who may witness them; or engages in brawling or fighting; or engages in such conduct as to constitute a breach of the peace or disorderly conduct. A person who violates s. 877.03 commits a second degree misdemeanor.

In interpreting s. 933.14(3), F.S., courts have defined breach of the peace broadly to include *all* violations of the public peace, order or decorum. While broad, the common law definition does not apply to displays of mental illness that do not result in a criminal investigation or charges, as when law enforcement involuntarily commits an individual under the Baker Act.

HB 6013 repeals s. 933.14(3), F.S., which requires a court order for the return of a firearm that was confiscated either pursuant to a warrant or without a warrant upon law enforcement viewing a breach of the peace. Law enforcement will be able to return a firearm that was seized under those circumstances without a court order but may still retain the firearm if otherwise authorized by law.

The bill does not have a fiscal impact on state or local governments.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

In Florida, a law enforcement agency is required to take possession of any firearms found on a person pursuant to an arrest and must retain the firearm until after the disposition of the case.¹ If the person is later acquitted or the charges are dismissed, he or she is entitled to the return of the firearm.² If a person has been arrested for committing or attempting to commit a felony offense while carrying, displaying, using, threatening, or attempting to use a firearm³, the firearm is automatically forfeited to the state if that person is later convicted of the offense.⁴

Additionally, s. 933.14(3), F.S., requires law enforcement to retain firearms that are confiscated under specific circumstances. A firearm must be retained by law enforcement until there is a court order for its return when the firearm was taken either:

- Pursuant to a search warrant; or
- Without a search warrant, by an officer upon viewing a breach of the peace.

Section 877.03, F.S., criminalizes “such acts as are of a nature to corrupt the public morals; or outrage the sense of public decency; or affect the peace and quiet of persons who may witness them; or engages in brawling or fighting; or engages in such conduct as to constitute a breach of the peace or disorderly conduct.”⁵ A person who violates s. 877.03 commits a second degree misdemeanor.⁶ In interpreting s. 933.14(3), F.S., courts have used a broad common law definition of breach of the peace, which includes “all violations of the public peace, order or decorum.”⁷

Law enforcement agencies used s. 933.14(3), F.S., to retain the firearms of persons they encounter related to an involuntary commitment under Florida’s Baker Act.⁸ In response to this trend, the Florida Attorney General’s Office issued an advisory opinion in 2009 concluding that if law enforcement involuntarily commits a person under the Baker Act but does not arrest or charge that person for a criminal offense of any kind, the law enforcement agency is not authorized to retain firearms taken from that person.⁹

In 2016, the Fourth District Court of Appeals addressed law enforcement’s authority to retain a firearm that was confiscated during a safety check.¹⁰ In that case, the plaintiff was neither arrested nor involuntarily committed pursuant to the Baker Act; however, law enforcement impounded his lawfully-owned firearm. When the plaintiff later requested the return of the firearm, the law enforcement agency declined to do so without a court order, citing to s. 933.14(3), F.S. Relying on the legislative intent of the Baker Act¹¹, as well as the prior Florida Attorney General opinion, the court found that persons do not commit a breach of the peace constituting a violation of the law simply for exhibiting behavior

¹ “Every officer making an arrest under s. 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.” s. 790.08(1), F.S.

² S. 790.08(3), F.S.

³ S. 790.07(2), F.S.

⁴ S. 790.08(2), F.S.

⁵ S. 877.03, F.S.

⁶ A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. Ss. 775.082, F.S. and 775.083, F.S.

⁷ *Dougan v. Bradshaw*, 198 So.3d 878, 883 (Fla. 4th DCA 2016) (quoting *B.A.A. v. State*, 333 So.2d 552, 554 (Fla. 3d DCA 1976)).

⁸ Also known as “The Florida Mental Health Act,” the Baker Act provides for emergency services and temporary detention of an individual for evaluation when required. S. 394.453(1)(b)(1), F.S.

⁹ 09-04 Fla. Op. Att’y Gen. (2009)

¹⁰ *Dougan v. Bradshaw*, 198 So. 3d 878, 880 (Fla. 4th 2016).

¹¹ The court relied on portions of the Baker Act directing that procedures, facilities, vehicles, and restraining devices used in connection with those accused of a crime shall not be used in connection with those who have a mental illness, except for the protection of the patient or others. S. 394.459(1), F.S.

related to mental health issues.¹² Additionally, the court held that s. 933.14(3), F.S., did not require or permit law enforcement agencies to retain firearms that were taken “in response to a safety call which did not result in a criminal investigation or charges.”¹³

A. EFFECT OF PROPOSED CHANGES:

HB 6013 repeals s. 933.14(3), F.S., requiring a court order prior to the return of a pistol or firearm that was impounded pursuant to a warrant or upon a view by the officer of a breach of the peace. Law enforcement will be able to return a firearm that was seized under those circumstances without a court order but may hold the firearm if otherwise authorized by law.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 933.14, F.S., relating to return of property taken under search warrant.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹² *Dougan v. Bradshaw*, 198 So. 3d 878, 882 (Fla. 4th 2016).

¹³ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not impact the holding in *Dougan v. Bradshaw*, which will remain the law regarding safety checks that do not result in criminal charges or a criminal investigation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to return of property; amending s.
 3 933.14, F.S.; deleting a provision requiring a court
 4 to order the return of a pistol or firearm when the
 5 pistol or firearm is taken by an officer with a search
 6 warrant or without a search warrant upon viewing a
 7 breach of the peace; providing an effective date.
 8

9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (3) of section 933.14, Florida
 12 Statutes, is amended to read:

13 933.14 Return of property taken under search warrant.—
 14 ~~(3) No pistol or firearm taken by any officer with a~~
 15 ~~search warrant or without a search warrant upon a view by the~~
 16 ~~officer of a breach of the peace shall be returned except~~
 17 ~~pursuant to an order of a trial court judge.~~

18 Section 2. This act shall take effect upon becoming a law.

Florida Commission on
Offender Review and
the Clemency Process



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Mission Statement:

To ensure public safety and provide victim assistance through the post prison release process.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Agency Overview

- A Governor and Cabinet Agency created in 1941
- Composed of three (3) full time Commissioners appointed by the Governor & Cabinet
- Commissioners may serve no more than two (2) consecutive six-year terms
- Commission holds hearings approximately 36 times annually
- Commission is comprised of a Central Office and 12 Field Offices throughout the state
- Commission has 132 FTEs and a budget of \$10.5 million for FY 17-18



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Core Mission

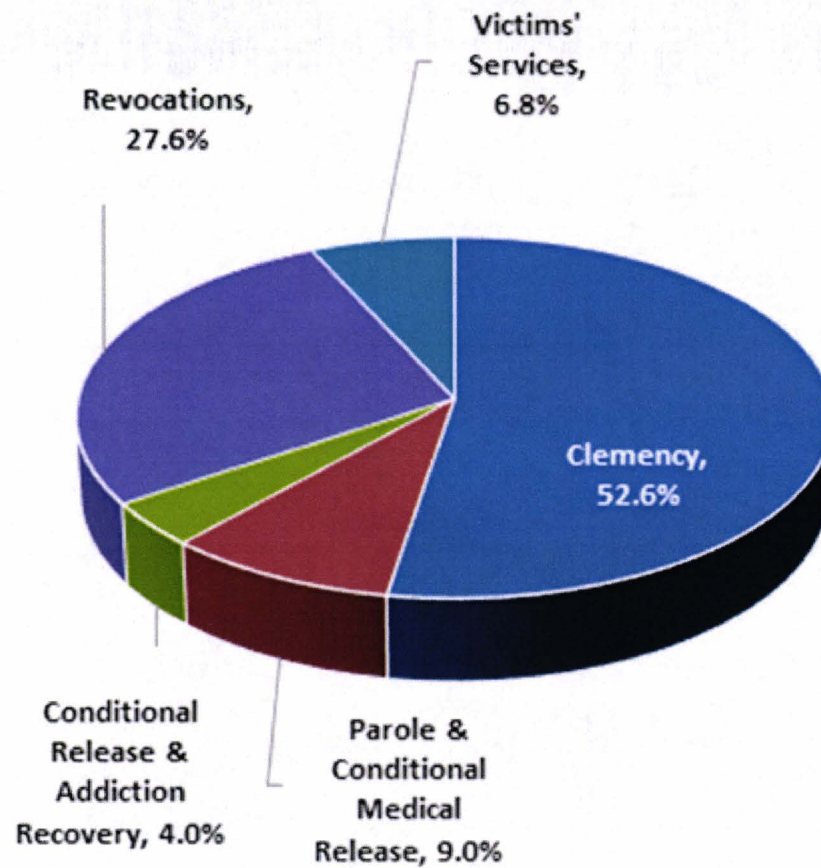
- Identifying, through careful consideration, offenders to be transitioned back into society
- Setting terms and conditions of supervision for releases
- Returning offenders to incarceration when conditions of supervision are violated
- Providing accurate information to the Clemency Board
- Locating victims/victims' families to afford them a voice in the release or clemency processes



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Workload Hours by Budget Activity





FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Parole

- A discretionary prison release administered by the Florida Commission on Offender Review, which allows an inmate who has been granted parole to serve the remainder of his prison sentence outside the confines of the institution. Once released, the parolee is subject to strict conditions of supervision set by the Commission. The Commission monitors the progress through supervision reviews and conducts revocation hearings when alleged violations are reported.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Who is Eligible for Parole?

Eligible Offenses include:

- Any felony committed prior October 1, 1983, or those who elected to be sentenced “outside the guidelines” for felonies committed prior to July 1, 1984;
- All capital felonies committed prior to October 1, 1995, except:
 - murder or felony murder committed after May 25, 1994;
 - making, possessing, throwing, placing, or discharging a destructive device or attempt to do so which results in the death of another person after May 25, 1994;
 - first degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
 - first degree murder of a justice or judge committed after October 1, 1990.
- Any continuing criminal enterprise committed before June 17, 1993; and
- Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Supervision Types

- **Conditional Medical Release** - A *discretionary* release allowing the Commission to release inmates on supervision who the Florida Department of Corrections deems “terminally ill” or “permanently incapacitated” and who are not a danger to others.
- **Conditional Release** - A *non-discretionary release* program which requires mandatory post prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment at a state or federal correctional institution, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal or sexual predator.



FLORIDA COMMISSION ON OFFENDER REVIEW

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Supervision Types

- **Addiction Recovery** - A *non-discretionary release* program which requires mandatory post prison supervision for offenders released from a state correctional facility who are convicted of a non-violent crime, and have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense.
- **Control Release** – A discretionary release utilized as a prison population management tool. The Commission is not currently reviewing the inmate population for control release, but a small number of control releasees remain under supervision.



FLORIDA COMMISSION ON OFFENDER REVIEW

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Revocations

When the Commission finds that an offender has willfully and substantially violated his or her conditions of supervision, the supervision can be revoked and the offender may be returned to prison.

The following are duties of the Commission in the revocation process:

- Investigation of Violations
- Issuing Warrants for Arrests
- Hold Quasi-Judicial Hearings by Commission Investigators
- Ensure Offender is Afforded Due Process
- Prepare and docket final commission actions



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Victims' Services

A victim, according to Florida Statutes, is a person who suffers personal injury or death as a direct result of a crime or a personal loss; or a person less than 16 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured.

- Victims have the right to be present, informed and heard in the parole, conditional medical, conditional release, addiction recovery, and clemency process.
- The Commission provides direct, personal assistance to crime victims and their families.
- Victim input plays a critical role in assisting the Commission and Clemency Board to make informed decisions.
- Victims' Services ensures that a victim's rights are protected and they are not subjected to further victimization by fostering an environment of compassion, dignity, and respect.





FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Board of Executive Clemency

- Authority – Florida Constitution of 1968
- Chapter 940, Florida Statutes
- Governor and members of the Cabinet collectively are the Clemency Board
- Rules of Executive Clemency are created by mutual consent of the Clemency Board
- Clemency Board establishes policy related to the clemency process



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Clemency Facts

- The Commission operates as the administrative and investigative arm of the Clemency Board.
- The Governor, with the approval of at least two members of the Clemency Board, has the discretion to grant clemency at any time for any reason.
- Individuals seeking any form of clemency apply by submitting an application and required court documents to the Office of Executive Clemency.
- Clemency applications are processed in the order they are received.
- Offenders granted clemency do not have the crime expunged from their record.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Office of Executive Clemency

- Coordinator appointed by Governor and Cabinet
- Custodian of official records of Clemency Board
- Provides assistance to applicants during the clemency process
- Schedules all clemency hearings and refers all applications for investigation to Commission
- Clemency Hearings held four times a year at Capitol
- Prepares official responses to criminal justice agencies regarding an individual's history of previous board actions



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Clemency Investigations

- Acts as investigative arm of the Clemency Board
- Determines eligibility of all clemency applicants utilizing multiple criminal justice databases and resources
- Conducts investigations and prepares a written confidential case analysis on each applicant
- Obtains advisory recommendations from Commissioners for applications requiring a hearing



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Clemency Types

- Restoration of Civil Rights in Florida
- Restoration of Alien Status under Florida Law
- Full Pardon
- Pardon Without Firearm Authority
- Pardon for Misdemeanor
- Specific Authority to Own, Possess, or Use Firearms
- Commutation of Sentence
- Remission of Fines and Forfeitures
- Commutation of Death Sentence



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Restoration of Civil Rights (RCR)

A person convicted of a felony cannot vote, serve on a jury, or hold public office until their civil rights have been restored.

RIGHTS ARE NOT LOST FOR OFFENDERS WITH:

- Misdemeanor convictions only
- Felony offenses where adjudication of guilt was withheld
- Juvenile offenses adjudicated delinquent by a juvenile court



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

RCR Eligibility Requirements

- All sentences/supervision must be completed
- No detainers, warrants, or pending criminal charges
- All court-ordered restitution, including civil judgments, must be satisfied
- Meets the timeframes established by the Board
 - Pardons –10 years*
 - Firearms (Gun Rights) –8 years*
 - Restoration of Civil Rights –5 or 7 years*

**Upon completion of sentence or supervision*



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Types of RCR

RCR Without a Hearing

- Less serious offenses
- **Five year** waiting period upon completion of sentence or supervision
- Cannot have committed any crimes or been arrested in the past five years

RCR With a Hearing

- More serious offenses
- **Seven year** waiting period upon completion of sentence or supervision



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Investigations for Restoration of Civil Rights

1. Eligibility Review
2. Felony Convictions
3. Circumstances of the Offense
4. Applicant's Version of the Offense
5. Co-defendant Identification
6. Prior record
7. Subsequent Record
8. Traffic Record
9. Domestic Violence Information
10. Citizenship Verification
11. Alcohol/Drug Abuse History
12. Employment
13. Military History
14. Judicial/State Attorney Input
15. Statement or Reason for Requesting RCR and Attitude of Applicant
16. Voter Registration History
17. May include confidential victim memorandum
18. Commission Recommendation



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Other Types of Clemency

- **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.
- **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.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Other Types of Clemency

- **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.
- **Pardon for Misdemeanor**
 - A Pardon for Misdemeanor conviction releases a person from punishment and forgives guilt.
- **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.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Other Types of Clemency

- **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.
- **Remission of Fines and Forfeitures**
 - A Remission of Fines or Forfeitures suspends, reduces, or removes fines or forfeitures.
- **Commutation of Death Sentences**
 - The Commission may conduct capital punishment investigations at the direction of the Governor for consideration of a commutation of death sentence to life.



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Clemency Figures

- FY 2015-16 completed RCR cases: 3,996
 - Cases completed does not indicate the amount of cases deemed eligible.
- Calendar year 2015 RCR grants: 428
- Calendar year 2016 RCR grants: 474
- *Without a Hearing* average wait time: One year or less
- *With a Hearing* average wait time: RCR and non-RCR cases heard at the last four Clemency Board Meetings in FY 16/17 had an average completion time of 9.2 years (from received date to hearing date).



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

Contact Information

Florida Commission on Offender Review

4070 Esplanade Way

Tallahassee, Florida 32399-2450

(850) 922-0000

www.fcor.state.fl.us

Commission Clerk

Toll Free:(800) 335-3396

inmatesuporters@fcor.state.fl.us

Victims' Services

Toll Free:(855) 850-8196

victimquestions@fcor.state.fl.us

Executive Clemency

Toll Free:(800) 435-8286

Clemencyweb@fcor.state.fl.us

9. Restoration of Civil Rights or Alien Status under Florida Law Without A Hearing

A. Criteria for Eligibility

A person may have his or her civil rights or alien status under Florida Law restored by approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, without a hearing if the person has committed no crimes and has not been arrested for a misdemeanor or felony for five (5) years from the date of completion of all sentences and conditions of supervision imposed and 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, DUI Serious Bodily Injury (F.S. 316.193);
 - c. leaving the Scene of Accident involving Injury or Death;
 - d. sexual battery, attempted sexual battery, unlawful sexual activity with a minor, female genital mutilation (F.S. Chapter 794)
 - e. any violation of F.S. Chapter 800;
 - f. 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);
 - g. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
 - h. aggravated child abuse (F.S. 827.03);
 - i. failure to register as a sexual predator (F.S. 775) or sexual offender (F.S. 943.0435);
 - j. computer pornography, transmission of computer pornography, or any crime involving a minor in violation of F.S. Chapter 847;
 - k. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (F.S. Chapter 787);
 - l. aggravated battery, attempted aggravated battery (F.S. 784.045), felony battery, domestic battery by strangulation (F.S. 784.041);
 - m. robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (F.S. Chapter 812);
 - n. poisoning of food or water (F.S. 859.01);
 - o. abuse of a dead human body (F.S. 872.06);
 - p. burglary of a dwelling, first degree burglary, or attempted first degree burglary (F.S. 810.02);
 - q. arson, attempted arson, or conspiracy to commit arson (F.S. 806.01);
 - r. aggravated assault (F.S. 784.021);

- s. aggravated stalking (F.S. 784.048);
 - t. aggravated battery, battery, or aggravated assault on a law enforcement officer or other specified officer (F.S. 784.07);
 - u. trafficking or conspiracy to traffic in illegal substances (F.S. 893.135); all other first and second degree felonies described in F. S. Chapter 893. v. aircraft piracy (F.S. 860.16);
 - w. unlawful throwing, placing, or discharging of a destructive device or bomb (F.S. 790.161);
 - x. facilitating or furthering terrorism (F.S. 775.31);
 - y. treason (F.S. 876.32);
 - z. possession of a firearm by a convicted felon (F.S. 790.23) or possession of a firearm or ammunition by a violent career criminal (F.S. 790.235);
 - aa. bribery, misuse of public office (F.S. Chapter 838); extortion by officers of the state (F. S. 839.11); misappropriations of moneys by commissioners to make sales (F.S. 839.17);
 - bb. any crime committed by an elected official while in office;
 - cc. illegal use of explosives;
 - dd. RICO;
 - ee. exploitation of the elderly;
 - ff. public corruption;
 - gg. any felony violation of an election law;
 - hh. any crime designated a “dangerous crime” under F.S. 907.041;
 - ii. 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.

10. Restoration of Civil Rights or Alien Status under Florida Law With a Hearing

A. Criteria for Seven (7) Year Eligibility

An individual who does not qualify to be granted clemency under Rule 9 must comply with Rule 6 by filing an application to have his or her civil rights or alien status under Florida law restored, excluding the specific authority to own, possess, or use firearms, with a hearing. An individual is eligible to apply only if the following requirements are met:

1. The person has had no new felony convictions for a period of seven (7) years or more after completion of all sentences imposed for the applicant's most recent felony conviction and all conditions of supervision for the applicant's most recent felony conviction 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.