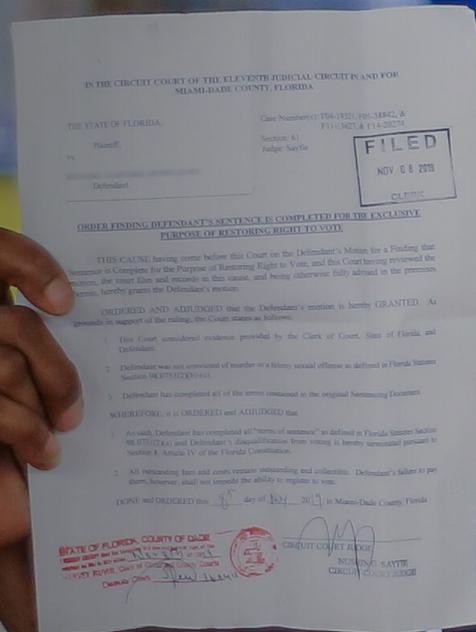


## Voting With a Criminal Record in Florida

# WHAT YOU NEED TO KNOW

Determining Someone's Eligibility to Register and Vote Under Amendment 4 and SB 7066



This guidance is not intended for the general public and should not be relied upon as legal advice.

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(cover image) Photo by Zak BENNETT / AFP / Getty Images



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Prepared by the American Civil Liberties Union of Florida, the Brennan Center for Justice at NYU School of Law, the Legal Defense Fund, and the American Civil Liberties Union Voting Rights Project.

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Published August 2022

# INTRODUCTORY INFORMATION ABOUT USING THIS DOCUMENT

This document is the product of drafting and feedback by various attorneys and non-attorneys who have worked on issues related to implementation of 2018's Amendment 4 (the Voting Restoration Amendment) and Florida's subsequent adoption of SB 7066 in 2019. See Fla Statute 98.0751. **This guidance is not intended for the general public and should not be relied upon as legal advice.** This guidance is intended for lawyers and other individuals and organizations who are familiar with Florida's laws on voting and voter registration, and it is intended to serve as a **starting point** for researching the records for and advocating on behalf of a returning citizen (someone with one or more felony convictions, who has completed their terms of incarceration, probation, parole, and supervised release). Because this document details various rules, exceptions, and exceptions to exceptions, it is important to review this entire document before beginning to assist any person.

When advising a returning citizen on their right to register to vote in Florida and then vote in Florida elections, it is very important to make clear to them that Florida has criminal laws that prohibit submission of false voter registration information and illegally voting, as well as aiding, abetting, advising, or conspiring with others in doing so. These prohibitions can be found in Chapter 104 of the Florida Statutes.

When assisting a returning citizen to determine if they have satisfied the requirements to restore their right to vote in Florida, it is important to ensure that they have done so for every felony conviction they have. As discussed in this document, each felony conviction provides an independent and potentially sufficient basis for the loss of the right to vote. Following the steps outlined in this document for some, but not all, of a returning citizen's felony convictions can result in criminal liability under Florida voting laws; so it is essential to be thorough and address all of their felony convictions.

Please be aware that the State of Florida continues to make it exceedingly difficult to obtain basic information a person needs to be able to determine their ability to register and vote, and that different elections officials and clerks' offices have different policies based on varying interpretations and understandings (sometimes clear misunderstandings) of the applicable laws and policies. When in doubt, please consult with a lawyer who is experienced in these matters. The interpretations of state and county officials will ultimately matter for purposes of prosecutorial decisions, not whether the law in fact permits the prosecution. The assertions below are made based on the best information currently available to the public.

Unfortunately, this guide is necessary because of the State's own refusal to provide this information. Again, this document is **not legal advice** and should not be taken as such, and it is not for the general public. Again, it is a starting point for advocates to begin their own inquiry into determining how they might best assist another person. **When in doubt, please consult an attorney licensed to practice law in Florida who is experienced in these matters.**

The League of Women Voters of Florida (LWV) provides referrals to free *pro bono* counsel who can assist. Contact LWV by calling (407) 710-5496 or emailing [canivote@lwvfl.org](mailto:canivote@lwvfl.org). The Florida Rights Restoration Coalition (FRRC) also provides certain assistance to returning citizens, such as referrals to free *pro bono* counsel, community support, help with paying off legal financial obligations (LFOs), help seeking court modification of LFOs, and more. Contact the FRRC by calling (407) 901-3749 or emailing [info@floridarrc.org](mailto:info@floridarrc.org).

**This guidance is not intended for the general public and should not be relied upon as legal advice.**

## Quick Contacts:

### League of Women Voters of Florida (LWV)

*For pro bono counsel referrals.*

(t) 407-710-5496

(e) [canivote@lwvfl.org](mailto:canivote@lwvfl.org)

### The Florida Rights Restoration Coalition (FRRC)

*For assistance to returning citizens with free pro bono counsel referrals, community support, help paying off LFOs, help seeking court modifications to LFOs, and more.*

(t) 407-901-3749

(e) [info@floridarrc.org](mailto:info@floridarrc.org)

## STEP ONE GET THE DOCKET SHEET AND JUDGMENT/SENTENCING DOCUMENTS FOR EACH CRIMINAL CONVICTION.

A first step to confirming whether a returning citizen is eligible to register and then to vote is to get the **docket sheet** and **judgment/sentencing documents** from their criminal case(s) to determine if they have outstanding LFOs.

Under Florida law, LFOs include “fines,” “fees,” “costs,” and “restitution.” The docket sheet and judgment/sentencing documents should have most of the LFO information needed. If a returning citizen has multiple felony convictions, it is important to obtain the docket sheet and judgment/sentencing documents for each of those convictions.

It is important to follow these steps for **each felony conviction** they have before registering to vote or voting in an election. Otherwise, **they could be prosecuted and convicted** for fraudulent registration or illegal voting under Chapter 104 of the Florida Statutes. A returning citizen may have felony convictions from more than one county in Florida, from other jurisdictions outside of Florida, or in federal court. Follow these steps for each conviction in each relevant jurisdiction.

### 1. How to obtain docket sheets and judgment/sentencing documents.

For help finding their court records, call the relevant county clerk or federal clerk, or contact the lawyer or public defender’s office(s) who represented them.

The Florida Department of Law Enforcement (FDLE) provides a criminal-records-check service that can

generate a report that lists a returning citizen’s arrest and conviction history in the State of Florida, including the county of arrest and possibly the relevant uniform case number.

- The website for requesting this report is here: <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx>
- This report will cost \$24 or \$25, depending on the type of report selected.
- The report can be difficult to decipher and only offers a snapshot in time of the records, and it is unclear how often it is updated. It also often contains incomplete information, especially as to LFOs. As such, an FDLE report should not be treated as a replacement for a docket sheet and judgment/sentencing documents, but it can be a helpful starting point for returning citizens, especially when those other documents are unavailable.
- **Note:** this report will not contain information from federal law enforcement or law enforcement from other states.

If they were convicted by a **Florida state court** (not a non-Florida state court or U.S. federal court), their docket sheet and judgment can probably be found on the website of the clerk of court for the county where they were convicted. Links to each clerk’s website are available here: <https://www.stateofflorida.com/clerks-of-court/>

- On each county clerk website, locate the link for “Court Records” or “Court Case Inquiry.” Don’t use the separate “Official Records” search.
- Search court records by their first and last name, or by case numbers if known. If searching by name, be sure to confirm the records are not of someone else with the same name. The records returned by name searches should indicate full name and date of birth to help distinguish.
- After locating the docket for each felony conviction, review all the items listed on the docket. One of these will be their sentencing document, with the name “Judgment and Sentence,” and that document will include line items for each fine or fee imposed.
- The Judgment and Sentence document should be available to download and review from the court. If the court does not provide a link in the search results, call the clerk of court to request a copy. Still, there may be a fee, and you may be able to obtain a waiver of that fee.

This guidance is not intended for the general public and should not be relied upon as legal advice.

- The court may have imposed restitution or other financial obligations such as court fees or public defender fees separately from the Judgment and Sentence. A proper reading of the four-corners provision of SB 7066 (discussed below in Step Four, question #8) should not require repayment of restitution that is not included in the judgment or sentence document. Despite this straightforward reading in the statute, it may be that the relevant supervisor of elections or the Division of Elections would improperly assert that restitution would have to be repaid despite not being provided for within the four corners of the sentencing document.
- A thorough search of the docket may be required to identify all relevant LFOs that may be—properly or improperly—deemed to be disqualifying and thus required to be paid back in order for the returning citizen to register and then vote.
- **Note:** if they have more than one conviction by a Florida state court, collect this information for each of their convictions.
- If they have multiple convictions from different Florida counties, obtain information about the convictions in those counties separately.
- Please also note that county clerk websites can vary in terms of what’s available for download online. For example, some counties do not have older cases, such as those before the 1990s or early 2000s, available for download on their websites. In those situations you will have to contact the county clerk’s office in order to request copies of paper records (which may also be in storage and entail a fee).

If they were convicted by a **United States federal court**, determine which judicial district they were convicted in and find contact information for the clerk below:

- **Federal U.S. District Court for the Southern District of Florida**, find contact information for the clerk here: <https://www.flsd.uscourts.gov/court-info/court-locations>
- **Federal U.S. District Court for the Middle District of Florida**, find contact information for the clerk here: <https://www.flmd.uscourts.gov/locations>
- **Federal U.S. District Court for the Northern District of Florida**, find contact information for the clerk here: <http://www.flnd.uscourts.gov/court-info/court-locations>
- **Federal courts outside of Florida**, find contact information for those courts from the U.S. Courts website here: <https://www.uscourts.gov/about-federal-courts-public/courtwebsite-links>

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## STEP TWO DETERMINE THE BASIC FACTS ABOUT EACH OF THEIR CONVICTIONS.

These questions are key facts about their criminal case(s). They may know these already, but if not, the answers can be found in the **docket sheet** or **judgment** from their case(s). Obtain this information about each of their cases.

### 2. Is their conviction from Florida or another state?

The first thing to know about their felony conviction(s) is the state it happened in.

**If they were convicted in Florida**, their voting rights are governed by Florida’s rules.

- They lose their right to vote only for a felony conviction, and only while completing their sentence. According to the Florida Supreme Court, this includes paying off certain disqualifying LFOs associated with their felony conviction (which that court interpreted to include fines, fees, costs, and restitution). See Advisory Op. re: Implementation of Amend. 4, 288 So.3d 1070 (Jan. 16, 2020).
- They regain their right to vote after they serve any term of incarceration, probation, and parole, and after paying off their LFOs, which may include fines, fees, costs, and restitution related to their felony conviction(s).

- **Exception:** if they received a conviction for murder or a felony sexual offense, they do not regain their right to vote even if they pay off their LFOs. See Fla. Stat. § 98.0751(2)(b) & (c). If they have any such convictions, to restore their right to vote they have to apply for clemency from the Board of Executive Clemency. Here is a link for more information about the clemency process: <https://www.fcor.state.fl.us/restoration.shtml>

**If they were convicted outside of Florida**, their voting rights are governed by the state where they were convicted.

- The Florida Division of Elections (DOE) website states: “A felony conviction in another state makes a person ineligible to vote in Florida only if the conviction would make the person ineligible to vote in the state where the person was convicted.” For example, if you were convicted of a felony in the State of Kentucky, you may be ineligible to vote in Florida if you remain ineligible to vote in the State of Kentucky. The DOE’s website is: <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/>

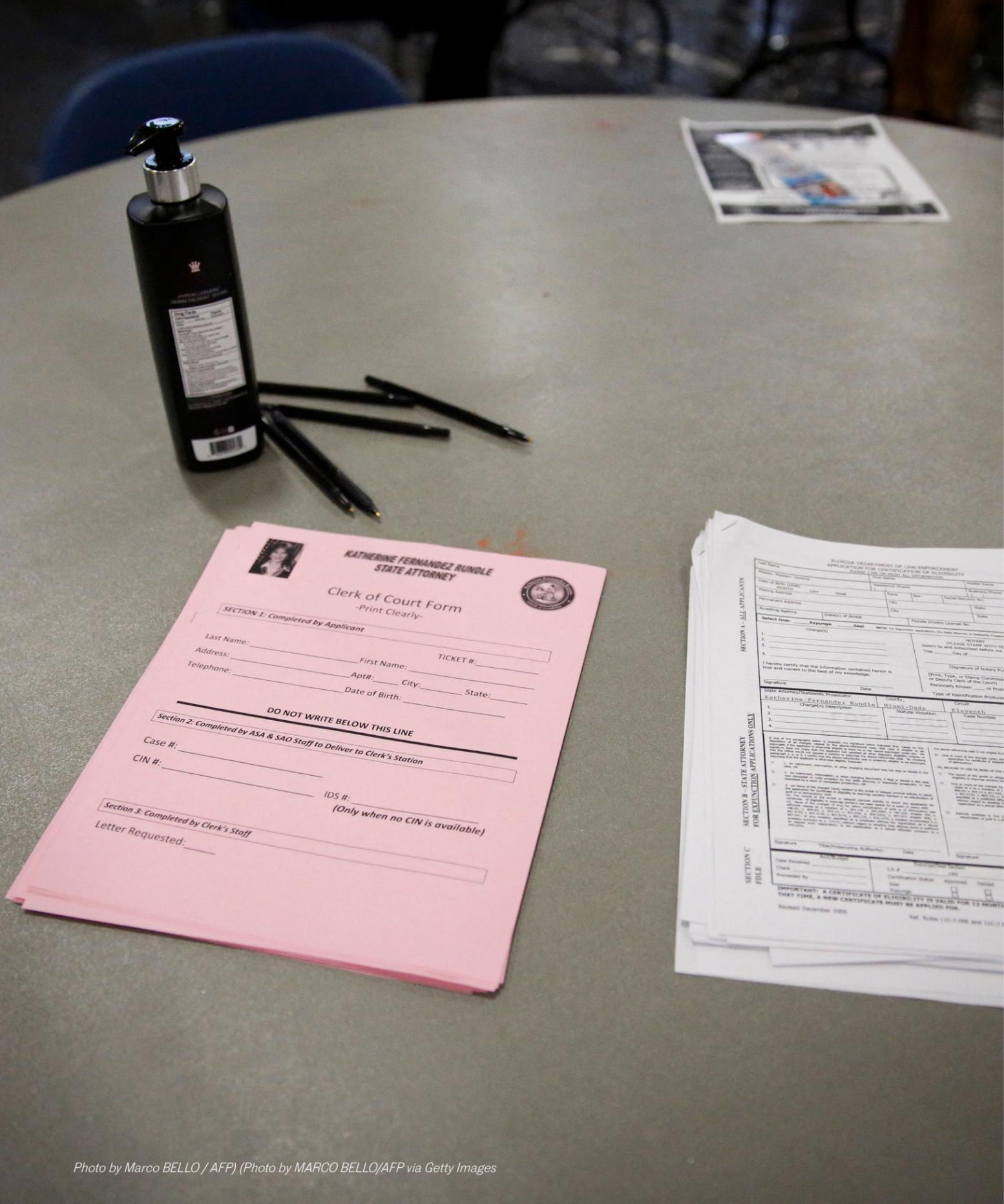


Photo by Marco BELLO / AFP (Photo by MARCO BELLO/AFP via Getty Images)

- In many other states, returning citizens automatically regain their voting rights upon release from prison or completion of probation, parole, or supervised release. These states are in blue and orange on the Brennan Center’s “Criminal Disenfranchisement Laws Across the United States” website, which is available here: <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states>. If a returning citizen was convicted in a jurisdiction that is **blue** on the Brennan Center’s map (and was not convicted of a felony in Florida or barred from voting in another state), they can vote in Florida. If a returning citizen was convicted in a jurisdiction that is **orange** on the Brennan Center’s map and they have been discharged from parole and/or probation (and were not convicted of a felony in Florida or barred from voting in another state), they can vote in Florida.
  - However, if they were convicted in another state of murder or a felony sexual offense, their voting rights may be governed by Florida law. See discussion below at question #4 and Fla. Stat. § 98.0751(2)(b) & (c).
- If you need more information about rights restoration outside of Florida, you can contact state and local election officials where the non-Florida conviction(s) occurred, or visit <https://campaignlegal.org/restoreyourvote>. You can also contact the lawyer or public defender’s office(s) who represented the returning citizen in those non-Florida proceedings.

### 3. Is the conviction for a felony or misdemeanor?

- Only a **felony** conviction affects their voting rights.
- If they were convicted **only** of a misdemeanor, they can register and then vote! They never lost their right to vote. Even if they were sentenced to jail, have a fine, or owe other money as part of that misdemeanor conviction, they can register and then vote!
- They may have been **charged** with a felony, but were only convicted of a misdemeanor. If so, they can register and then vote! It doesn’t matter if they were charged with felonies as long as their convictions are just misdemeanors.

### 4. Is the conviction for murder/felony sexual offense or something else?

- If they were convicted of **murder** or a **felony sexual offense**, their voting rights are not automatically restored upon completion of their sentence. Find the list of specific crimes encompassing murder or a felony sexual offense under Florida law at Fla. Stat. § 98.0751(2)(b), (c). They must apply for restoration of civil rights from the Florida Board of Executive Clemency. They can apply for clemency to restore their civil rights here: <https://www.fcor.state.fl.us/restoration.shtml>

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- Even if they were convicted of murder or a felony sexual offense **in another state**, their voting rights are **not** automatically restored in Florida.
  - Concerning sexual offenses, the Florida statute bars voting for those convicted of: “Any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in violation of the laws of this state.” Fla. Stat. § 98.0751(2)(b)(12) and (c)(2).
  - However, it is unclear how Florida would treat a returning citizen with a murder or sexual felony conviction from a state where their voting rights have been restored. The clemency process in Florida may not be available to restore voting rights in Florida based on murder or sexual felony convictions from other states.
- If they were convicted at trial or after **pleading guilty**, their voting rights were lost. They must have completed all terms of their sentence (including certain LFOs) before their right to vote is restored.
  - If their charges were dropped, they can register and then vote!
  - If they pleaded guilty but **adjudication was withheld** or **imposition of sentence was suspended** (until they finished probation, complied with certain conditions, or completed certain programs), they can register and then vote!
    - They can even vote while on probation or working on those programs that are a condition of their adjudication being withheld or sentence being imposed.
  - If they went back to court because the conditions were violated, and the court then entered a felony conviction, their voting rights were lost.

### 5. Did the conviction result from adjudication of guilt or some other procedure?

- They only lose their voting rights **after** they are **convicted (adjudicated guilty)**.

This is not legal advice.

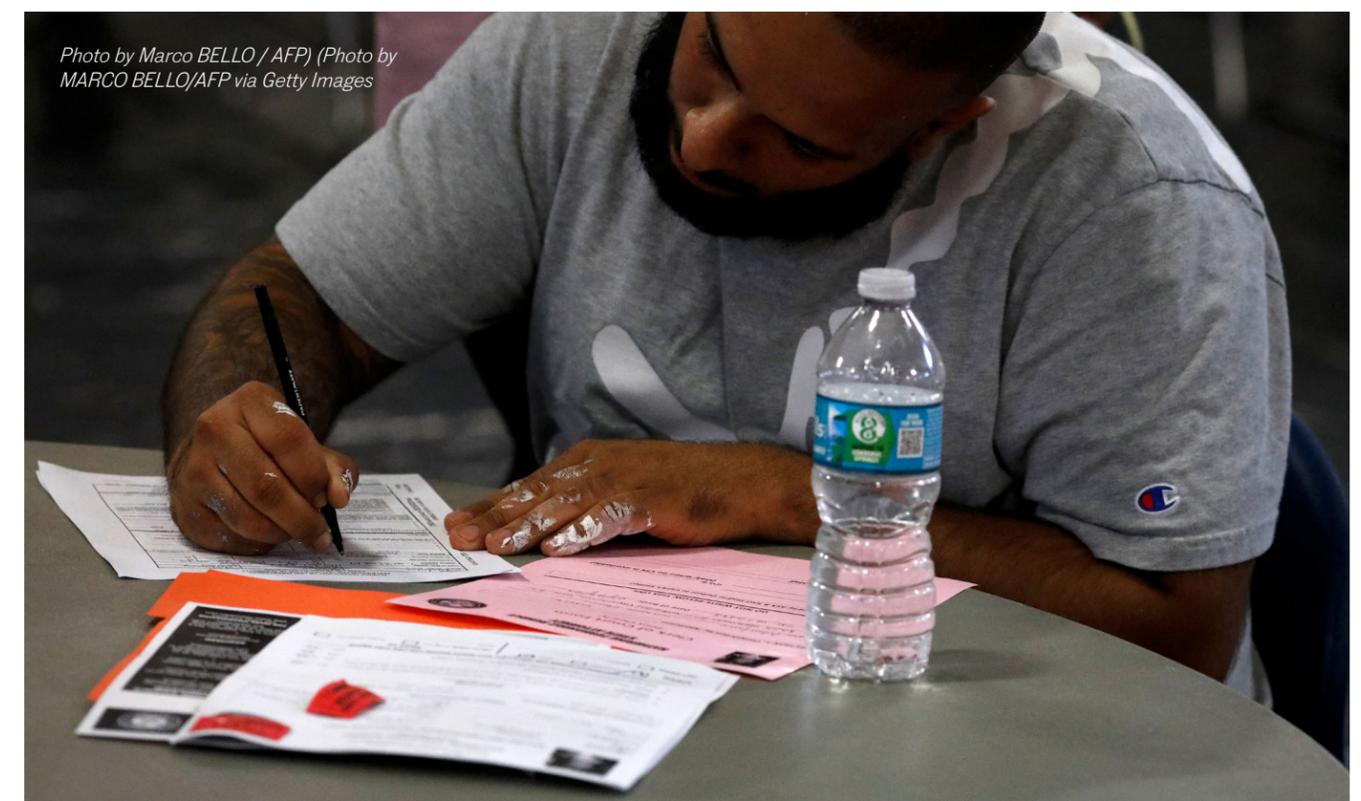


Photo by Marco BELLO / AFP (Photo by MARCO BELLO/AFP via Getty Images)

# STEP THREE

## DETERMINE THEIR TERMS OF SENTENCE FOR EACH CONVICTION.

These questions apply if they were (1) **adjudicated guilty** of (2) a **felony** (3) in **Florida**, and (4) it's **not murder** or a **sexual offense**.

### 6. Were there custodial terms of sentence?

If they were sentenced to jail, prison, probation, or supervised release, they must complete all of those terms before their voting rights are restored.

### 7. What types of Legal Financial Obligations (LFOs) do they have?

Their sentence probably has financial terms (i.e., money obligations) as well. There are several different types of “money.” Some “money” they have to pay to vote, and some money does not affect their voting rights (even if they still owe them).

As discussed in more detail below, this “money” may be collected by the FDLE, the Florida Department of Corrections (FDOC), or the clerk of court where the conviction(s) occurred. Some debts may have been turned over to collection agencies as well. In addition, restitution is sometimes paid directly to the victim.

**Fines:** Fines are penalties the court orders as punishment for a crime. These are considered part of their sentence, and are usually found in the same “Judgment” or “Sentence” document like any jail or prison term. Returning citizens must usually pay all fines before their voting rights are restored. That said, a proper reading of the four-corners provision of SB 7066 (discussed below in Step Four, question

#8) should not require repayment of fines that are not included in the judgment or sentence document. However, it is unclear whether the Division of Elections or supervisors of elections have adopted this interpretation.

**Court costs, fees, and charges:** There are many costs and fees that may be connected to their sentence, including costs of prosecution; the purpose of these is generally to fund the court system, not to punish for a crime.

- These typically add up to hundreds of dollars.
- Usually, the amount is indicated directly on the online docket sheet, but the amount on the docket sheet may be more than what they actually must pay to register and vote (because a particular cost may not be money they need to pay to register and vote, or because the clerk may not have accurate records of what payments they’ve already made).
- Often, they can pay these to the county clerk in the county of their conviction(s), including by paying online. Unfortunately, it may not be possible to pay only the amounts assessed in the sentencing document without also paying interest, collection fees, “convenience” fees, or other debts imposed after sentencing.

- **Note:** Policies and practices vary from county to county, including for example, that some counties may not permit payments to the clerk, but instead will require payment to a collections agency (for debts that have gone into collection).

**Restitution:** Restitution is money the court orders paid to victims to compensate them for the damage caused by the crime. Restitution can be ordered on their “Judgment” document, or in a separate order in their case(s).

- Courts commonly order restitution in a separate document.
- In general, they need to pay restitution to register and then vote.
- But they may not need to pay restitution as described below in response to Question 9.
- In addition, a proper reading of the four-corners provision of SB 7066 (discussed below in Step Four, question #8) should not require repayment of restitution that is not included in the judgment or sentence document. Despite this straightforward reading in the statute, it may be that the relevant supervisor of elections or the Division of Elections would improperly assert that restitution would have to be repaid despite not being provided for within the four corners of the sentencing document.

**Costs that arise after the court hands down their sentence:** They may owe other “money” that comes up after the court hands down their sentence. This could include things like monthly probation costs, room & board for work-release programs, and fees for GPS monitoring.

- In general, they do not need to pay these amounts to register and to vote.

- The general rule: if “money” is not part of what the court ordered at/around the time they received their sentence, they do not need to pay it to register and to vote.

**Debts that have been sent to a collection agency:** If the returning citizen you are helping is aware that their LFOs have been turned over to a debt collection agency, which many in Florida have, you need to contact that business to potentially determine their LFOs. Many of these debt collection agencies add a host of additional debt on LFOs, much of which are not supposed to matter for purposes of registering and voting in Florida as discussed below regarding the “First-Dollar” policy.

The FDLE criminal records check service may help identify convictions and terms of sentence, including LFOs, and may include some of the information described above. This report will cost \$24 or \$25, depending on the type of report selected. As discussed at Step One above, this report may not be up-to-date or accurate, but it can provide a starting point for identifying the dates of arrests and potentially the uniform case numbers for all in-state convictions so you can locate more accurate information on county court dockets. The website for requesting this report is here: <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx>

Additionally, if a returning citizen was ever under the custody or supervision of FDOC—whether that be because they were incarcerated or sentenced to court-ordered supervision—you may be able to identify potentially relevant LFOs, including whether any payments have been made, by requesting their records from FDOC. However, like other sources of information about LFOs provided by the state of Florida, the records provided by FDOC may not be up-to-date or accurate. It is also possible, depending on the year of conviction, that FDOC may have deleted the relevant records.

# STEP FOUR

## DETERMINE WHETHER THE STATE OF FLORIDA CONSIDERS THEIR SENTENCE “COMPLETED” FOR PURPOSES OF VOTING.

### 8. Have they paid off their court-imposed fines, fees, costs, and restitution (LFOs)?

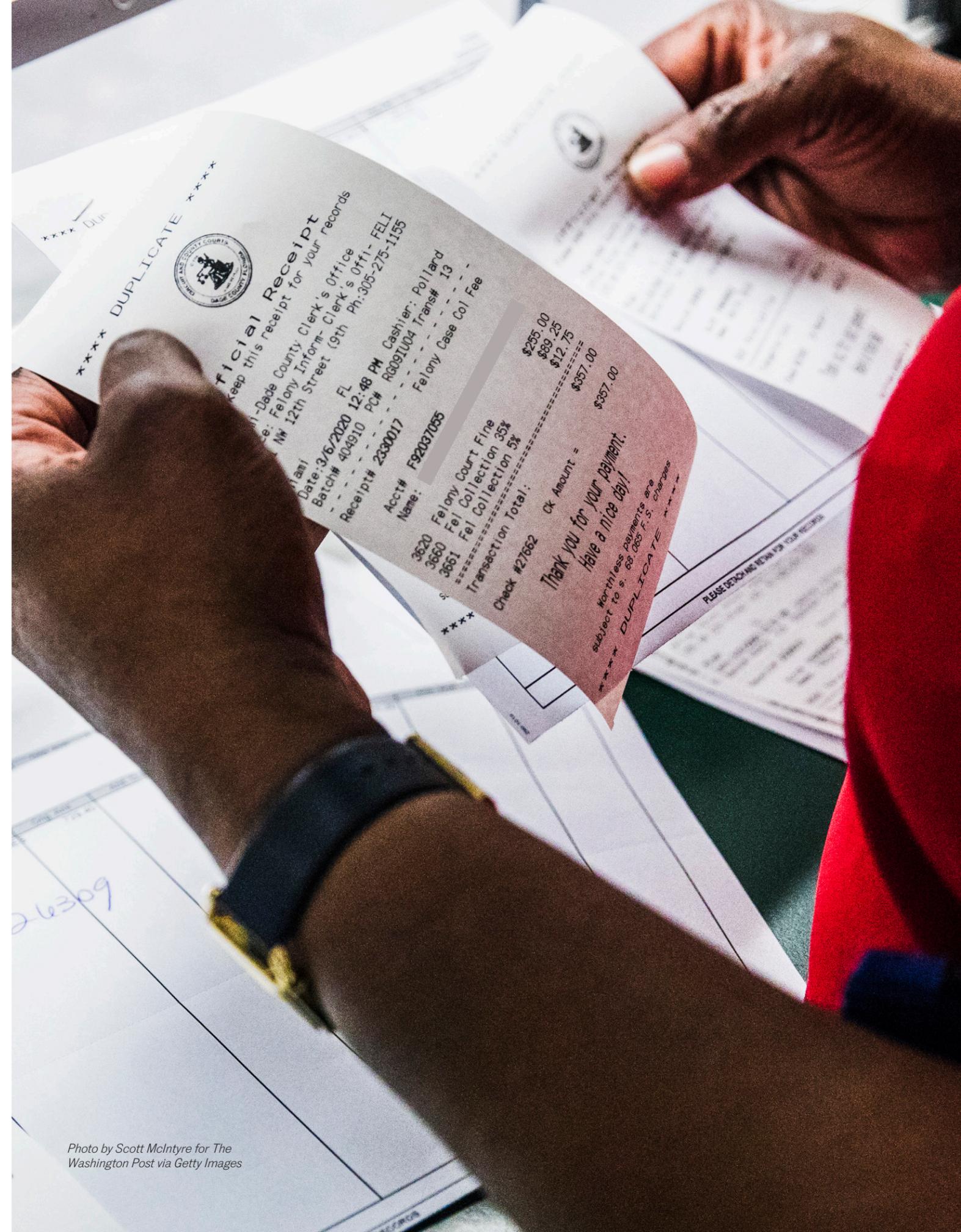
**Savings Clause:** As discussed in this section below, there are many unresolved legal issues related to determining which LFOs disqualify a returning citizen from being able to register and to vote. The statute that controls this process explicitly states that provisions should be interpreted in favor of the returning citizen: “For the purpose of determining a voter registrant’s eligibility, the provisions of this section [Fla. Stat. § 98.0751, which governs restoration after felony conviction] shall be strictly construed. If a provision is susceptible to differing interpretations, it shall be construed in favor of the registrant.” Fla. Stat. § 98.0751(4) (emphasis added). Although it is not clear that state or local elections officials give any weight to this provision, in any legal disputes over a returning citizen’s voting rights, this language can be quoted at all opportunities.

**Felony debts only:** If their debts are from a misdemeanor conviction, **they do not have to pay them to register and then vote**, even if a court clerk’s office claims that they still owe LFOs. If their debts are from a case that includes both misdemeanor and felony convictions, and the debts cannot be disaggregated, the state may err in favor of the returning citizen and determine that none of that debt is required to be paid for purposes of registering to vote and voting. Div. of Elections Advisory Op. F-20-6 (Aug. 17, 2020).

They should be sure to **keep all receipts for payments** made to satisfy any LFO debts. This is important to prove payment and to defend against any prosecution for fraudulent registration or illegal voting.

**“Four Corners” Policy:** This policy is imposed by statute and seeks to limit the LFO obligation to the point in time when the returning citizen was sentenced, not to include subsequent assessments, or interest or collection agency fees. But absent court enforcement against local election administrators, which has not occurred to date, many local officials may attempt to include later assessments within the unpaid and disqualifying LFOs. Also, it may be difficult or impossible for a returning citizen to disaggregate the LFOs that in fact do and do not prevent them from registering and voting.

- The restoration statute defines “completion of all terms of sentence” as “any portion of a sentence that is contained in the four corners of the sentencing document,” Fla. Stat. § 98.0751(2)(a).
- The statute further states that “full payment” of “restitution” and “fines or fees” only includes “the amount specifically ordered by the court as part of the sentence and do not include any fines, fees, or costs that accrue after that date the obligation is ordered as a part of the sentence,” Fla. Stat. § 98.0751(2)(a)5.a, 5.b, 5.c.
- However, we know that some elections officials take a broader (albeit improper) view that LFOs entered on the docket later in time than the “Judgment” or “Sentence” document must nevertheless be paid back before a returning citizen can register and then vote. Ways to challenge these determinations are discussed below.



**“First Dollar” or “Every-Dollar” Policy.**

- According to the state’s policy on the website of the Florida Division of Elections (DOE), all money returning citizens pay to satisfy their LFOs counts for their repayment, even if the government or private entity credits that payment to other fees (like a financing fee, partial-payment fee, or interest) that arose after they were sentenced. Search for the “first dollar policy” at this link: <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/>
- This policy does not appear to have been codified anywhere, and the state may seek to avoid following it. Try to hold the state to its commitments made under oath in federal litigation (between 2019 and 2020). The doctrine of judicial estoppel may apply to these previous litigation statements. This is also why it’s important to save the above-mentioned receipts towards any LFO payments.
- The policy seems to follow logically from the “four corners” statutory language discussed above because interest and collection agency fees are assessed subsequent to sentencing, often many years later.
- The U.S. Court of Appeals for the Eleventh Circuit described it this way: “Under this policy, the State credits all payments a felon makes for any obligations related to his sentence toward the original obligation imposed in the sentence.” *Jones v. Governor of Fla.*, 975 F.3d 1016, 1040 (11th Cir. 2020) (en banc).
- A federal district court summarized the state’s representations about the “first dollar” policy like this: “The State decided . . . an individual would be required only to make total payments on any related obligation, whether or not included in the

sentence itself, that added up in the aggregate to the amount of the obligations included in the sentence. Put differently, the State decided to retroactively reallocate payments, now applying every payment to the obligations in the original sentence, regardless of the actual purpose for which the payment was made or how it was actually applied.” *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1225 (N.D. Fla. 2020), *rev’d and vacated sub nom Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc).

- For example, if they were sentenced to pay \$500, and then a \$50 financing fee was added to that amount, and then they pay \$500, they have completed their LFO for the purposes of registering and voting, even though they still owe \$50.
- Another example: They were sentenced to pay \$300. The county clerk then charged a \$25 fee to set up a payment plan. They paid the \$25 fee. They also paid \$275 to a collection agency. The collection agency kept \$110 and gave \$165 to the clerk. Under the first-dollar policy, they have completed the \$300 LFO for the purposes of registering and voting, since the total amount they paid equals \$300, even though the clerk’s records may show that they have only paid \$165 and that they still owe \$135.

**9. How can a returning citizen who has outstanding debts alleviate those debts without having to pay?**

The Florida Rights Restoration Coalition may have funds available to help pay off these debts. <https://floridarrc.com/> The FRRC is discussed in depth below at Step Six.

**Forgiving restitution**

- The victim can forgive restitution, either the entire amount or an unpaid portion (if the returning citizen has paid some but not all of their restitution amount).
- To forgive restitution, the victim must either come into court and declare the forgiveness or sign a notarized letter to the returning citizen saying that the victim forgives the restitution amount. Fla. Stat. § 98.0751(2)(a)(5)(e)(II). The returning citizen should present a copy of that notarized letter when registering to vote. They should also file that letter with the court where they were convicted.
- It is also possible that restitution may not need to be paid if the victim (or their heirs, if they’re deceased) cannot be located, or if the victim is a business that no longer exists. If that’s the case, you may be able to petition the court that imposed the restitution to forgive the obligation or clarify that the obligation no longer exists.

**Requesting a modification of sentence**

- If the returning citizen is unable or unwilling to contest the validity of the LFO debt or other aspects of their sentence that preclude their ability to register to vote and vote, they can instead petition their sentencing court to modify their sentence to alleviate the debts or other aspects of their sentence at issue.
- “A term required to be completed in accordance with this paragraph shall be deemed completed if the court modifies the original sentencing order to no longer require completion of such term.” Fla. Stat. § 98.0751(2)(a). A court may hear petitions for LFO modification at any time. See Fla. Stat. § 98.0751 (2)(a)5.d.

- Requesting a modification is an effective way to satisfy LFOs that would otherwise prevent the restoration of the returning citizen’s ability to register and to vote.
- The League of Women Voters of Florida, as described below, offers continuing legal education courses that explain this procedure. The link to register for training is here: <https://lwvfl.org/amendment4cle/>

**Repayment through community service**

- From the DOE website: “A person also has the option to petition a court to terminate, upon consent of the person or entity owed, a financial obligation (i.e., fine, fee, cost, and restitution), or convert such obligation to community service. See Fla. Stat. § 98.0751(2)(a)5.e. If converted, the terms of the sentence are deemed complete when the person completes the community service.” Website link: <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights>

**Forgiveness through Presidential pardons**

- Only available for federal convictions.
- “A pardon is an expression of the President’s forgiveness and ordinarily is granted in recognition of the applicant’s acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or completion of sentence. It does not signify innocence. It does, however, remove civil disabilities—e.g., restrictions on the right to vote, hold state or local office, or sit on a jury—imposed because of the conviction for which pardon is sought, and should lessen the stigma arising from the conviction.” From the Presidential Pardon FAQ

**REGISTER  
TO VOTE  
HERE!  
INSCRÍBETE**

here: <https://www.justice.gov/pardon/frequently-asked-questions>

- If pardoned, that felony conviction no longer prevents them from voting. (They may still have other convictions or impediments to voting that are unaffected by the pardon.)

#### 10. How can they get clarity on whether they have debts that preclude them from registering to vote?

##### Declaratory statement request under Fla. Stat. § 120.565.

- Returning citizens can request a declaratory statement from the Florida DOE as to their eligibility to register to vote and to vote based on the statute that provides this restoration, Fla. Stat. § 98.0751.
- The required contents of the declaratory statement request are described in the statutory language, Fla. Stat. § 120.565. The statute requires describing the returning citizen's circumstances with particularity and citing to the statute, Fla. Stat. § 98.0751, that provides the basis for the request. Provide the DOE with details of all their felony convictions and ask them for their opinion as to whether the returning citizen is eligible to register and to vote.
- The declaratory statement request can be sent by email to [DivElections@dos.myflorida.com](mailto:DivElections@dos.myflorida.com) or by paper mail to: Florida Department of State, Division of Elections, Director's Office, Room 316, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250.
- Once the DOE receives the declaratory statement request, they are required by law to publish notice

of their receipt in the Florida Administrative Register, which is published nearly every business day. This notice of receipt will include the returning citizen's name and the nature of their request, which means their request is publicly available. It is a good practice to advise them prior to filing that this will happen. The Florida Administrative Register is available here by daily volume: <https://www.flrules.org/bigdoc/default.asp> and can be searched with the Florida Administrative Register search boxes here: <https://www.flrules.org/>

- Once the DOE issues a declaratory statement, it should list all remaining LFOs that the returning citizen owes for the convictions you identified. However, the DOE may be incorrect or may include amounts that are no longer owed or valid. These answers may also be published online.
- If the returning citizen agrees with the amounts of LFOs remaining to be paid that are listed in their declaratory statement, they may pay them to clear the way to restore their ability to register to vote and to vote. The Florida Rights Restoration Coalition may have funds available to help pay off these debts. <https://floridarrrc.com/>
- If they disagree with the declaratory statement, they may appeal to the District Court of Appeal (DCA), and may challenge the amount listed in the declaratory statement. Fla. Stat. § 120.565(3) makes clear that a declaratory statement is a "final agency action" subject to judicial review under Fla. Stat. § 120.68. According to the judicial review statute, the petitioner may seek review either in the First DCA in Tallahassee, where the DOE is headquartered, or in the petitioner's home DCA.
- The proceedings before the DCA are "de novo" (i.e., the court will review everything anew), so counsel for the returning citizen may raise all

issues that need clarification, and may challenge determinations made by the DOE or the relevant Florida supervisor of election, such as the extent to which the proper calculation of remaining debt from LFOs is affected by the “Four Corners” and/or “First Dollar” policies discussed above.

- For example, under the “First Dollar” policy discussed above in question #8, they may have already paid the full amount of their disqualifying LFOs, but the state/county credited their payment to subsequent fees that are not part of their disqualifying LFOs. As long as they have paid the amount imposed, their disqualifying LFOs have been satisfied, even if they still owe extra fees that were imposed subsequent to sentencing.
- It may also occur that the DOE refuses to provide any information about the returning citizen’s eligibility. If the DOE declines to provide an answer, the returning citizen may pursue an appeal to the DCA, or may wish to seek an advisory opinion as described below.

#### Advisory Opinion Process

- The DOE offers an advisory opinion process to obtain the same information that would be obtained through a declaratory statement request. The process is described by Fla. Stat. § 106.23(2) and Rule 1S-2:010. The Rule provides a detailed list of the information to be submitted to obtain an advisory opinion. The opinion must be issued “in a timely manner,” but no specific timeline is prescribed for when the DOE must respond.
- The response should include the DOE’s calculation of the outstanding LFO amount required to restore eligibility to vote, and should include supplemental files from the criminal records supporting this calculation.
- Contact information to submit an advisory opinion request can be found on the DOE website here: <https://dos.myflorida.com/elections/laws-rules/advisory-opinions/>. The request can be submitted by email to [DivElections@dos.myflorida.com](mailto:DivElections@dos.myflorida.com) or by paper mail to: Florida Department of State, Division of Elections, Director’s Office, Room 316, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250.
- The declaratory-statement process discussed above may be preferred because state law imposes a notice requirement that officials received the request and then requires the DOE provide an answer within 90 days, while there are no official timelines or requirements for advisory opinions. The two processes may prove in practice, however, to follow the same procedures and timelines.
- As of July 1, 2022, the DOE had issued one advisory opinion in 2022. (They published many more in 2020.) According to the response letter, they received the request in early February 2022 and issued the response in early May 2022. This matches the 90-day timeline required for declaratory statement responses, so it may be that the DOE follows the same timeline (or it may be coincidental).
- The DOE response to an advisory opinion request is publicly released with the name and identifying information of the requester redacted, although redaction is not required by law and names of opinion requesters can be obtained through a public records request. For returning citizens who are concerned about public disclosure of their status or their request for LFO information, both the declaratory statement and advisory opinion process can expose their identity publicly.

- There is no specifically prescribed appeal process for challenging the accuracy of information provided in the advisory opinion, and it may not be possible to seek judicial review of the advisory opinion as a “final agency action” under general administrative law provisions in Fla. Stat. § 120.68. See *Sullivan v. Div. of Elections*, 413 So. 2d 109 (Fla. 1st DCA 1982). The uncertainty of this appeal process is another reason a declaratory-statement request may be the more effective approach if the returning citizen plans to contest the amount of LFOs claimed to be precluding them from being eligible to register and then vote.
- If the returning citizen agrees with the amounts of LFOs remaining to be paid that are listed in their declaratory statement, they may pay them to clear the way to restore their ability to register and to vote. The Florida Rights Restoration Coalition may have funds available to help pay off these debts. <https://floridarrc.com/>

#### Language from the Eleventh Circuit’s 2020 opinion suggests that people should be protected from prosecution under certain circumstances.

- A person with a felony conviction “may not vote or register to vote if he knows that he has failed to complete all terms of his criminal sentence.” *Jones v. Governor of Florida*, 975 F.3d 1016, 1047 (11th Cir. 2020) (en banc).
- “[N]o [person] who honestly believes he has completed the terms of his sentence commits a crime by registering and voting, see Fla. Stat. ss. 104.011(2), 104.15 (establishing scienter requirements for voting violations).” *Jones v. Governor of Florida*, 975 F.3d 1016, 1047 (11th Cir. 2020) (en banc).

- However, this language from the federal courts does not bind Florida state courts or state prosecutors. We have already seen some prosecutions in Alachua County for individuals who registered and voted while in jail pending other matters and who allegedly have outstanding LFOs, even though the state may not have clearly communicated the LFO amounts prior to the registration and election. Even if all of these prosecutions do not ultimately lead to convictions, the risk of being prosecuted remains, even if there is a possibility that a returning citizen could obtain dismissal or acquittal based on lack of intent to register and vote with outstanding LFOs.



Photo by Scott McIntyre for The Washington Post via Getty Images

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# STEP FIVE

## NEXT STEPS IF THEIR VOTER REGISTRATION IS REJECTED OR THEY GET A NOTICE THAT THEY'RE INELIGIBLE AFTER REGISTRATION.

### 11. Was their voter registration erroneously denied or retracted after initially being allowed?

Each county in Florida maintains voter registration through the local supervisor of elections office (SOE).

The SOE review process is set forth in Fla. Stat. § 98.075. The SOE can be notified of a registered voter's ineligibility due to a felony conviction or other criteria listed in the statute.

- Once the SOE becomes aware that a registered voter may be ineligible to vote, Fla. Stat. § 98.075(7) provides detailed procedures the SOE must follow before revoking voter registration. The SOE must send a notice with a statement for the basis of potential ineligibility along with supporting documentation such as conviction or sentencing documents.
- Upon receipt of the notice, the returning citizen has 30 days to respond, which can include contesting the basis of the alleged ineligibility and requesting a hearing with the SOE.
- If the returning citizen admits the allegations in the SOE's notice of potential ineligibility, the SOE may remove them from the voter rolls. But if the returning citizen contests and requests a hearing, the SOE must hold the hearing before determining eligibility and can only remove the voter from the rolls after a hearing and then issuing a decision explaining the rationale.
- Unless the SOE issues a decision with rationale for removing the returning citizen from the voter rolls and sends the notice by certified mail, the SOE cannot lawfully remove them from the rolls.

Once the SOE removes the returning citizen from the voter rolls, the returning citizen can challenge the SOE's determination through a trial in the circuit court of the same county. Fla. Stat. § 98.0755 provides details on this trial, which is conducted "de novo" (i.e., starting anew and without any deference to the SOE decision or record).

- The returning citizen should be able to contest their removal by the SOE regardless of whether the SOE followed the procedures for removal laid out in § 98.075(7). But the returning citizen may be required (or their circuit court appeal dismissed if they did not try) to comply with the procedures for requesting a hearing with the SOE.
- The ACLU of Florida on June 6, 2022 filed a circuit court appeal on behalf of a returning citizen. This complaint details the procedural errors that a SOE may inflict upon a returning citizen and highlights the need to obtain legal representation and meticulously document the process provided by the SOE.

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# STEP SIX

**CONSULT DEDICATED ORGANIZATIONS FOR FURTHER ASSISTANCE.**

## 12. What organizations provide assistance with voting rights restoration?

### Florida Rights Restoration Coalition (FRRRC)

FRRRC is committed to ending the disenfranchisement and discrimination against people with convictions. They are an excellent resource for returning citizens and can provide referrals to free *pro bono* counsel, community and support, and they can connect returning citizens with coalition members in other states.

FRRRC has funds available to assist in paying off LFO debts to assist with restoring their right to register to vote and then vote.

**Web:** [floridarrc.com](http://floridarrc.com)  
**Phone:** 407-901-3749  
**Email:** [info@floridarrc.org](mailto:info@floridarrc.org)

### League of Women Voters of Florida (LWV)

LWV has assembled a team of free *pro bono* lawyers who may be able to answer questions about the rights restoration process.

LWV may be able to assist a returning citizen in filing petitions for sentence modification, LFO forgiveness, or challenging determinations by the SOE that a returning citizen is unable to register or actions by the SOE to remove them from the voter rolls.

LWV also offers a Continuing Legal Education course (approved for 2 hours of Florida CLE credit) on filing a petition to modify a sentence to alleviate LFO debt.

**Web:** [lwvfl.org/amendment4cle](http://lwvfl.org/amendment4cle)  
**Phone:** 407-710-5496  
**Email:** [canivote@lwvfl.org](mailto:canivote@lwvfl.org)

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C. Isaiah Smalls II/Miami Herald/Tribune News Service via Getty Images

Voting With a Criminal Record in Florida

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# WHAT YOU NEED TO KNOW

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Determining Someone's Eligibility to  
Register and Vote Under [Amendment 4](#)  
and [SB 7066](#)



Prepared by the American Civil Liberties Union of Florida, the Brennan Center for Justice at NYU School of Law, the Legal Defense Fund, and the American Civil Liberties Union Voting Rights Project.

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