

JUSTICE VOTER: STATE ATTORNEY POLICY GUIDE

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THE POWER OF STATE ATTORNEYS

State Attorneys in Florida have tremendous power to impact the everyday lives of millions of people, their families, and entire communities. No other person, elected or otherwise, has more power to end the injustices tearing Florida's families apart.

In Florida, we incarcerate people more often and for longer periods of time than the national average. There are 94,000 people sleeping in Florida's prisons tonight, with another 55,000 in our jails and 2,300 youth in juvenile justice residential programs and more cycling through detention centers.

This comes at a heavy cost. Not only is our state spending billions to warehouse people in deplorable conditions, the consequences of incarceration are ripping through our communities, where the vast majority of incarcerated people will return. In these communities, families struggle to make ends meet after losing providers. Kids struggle under enormous trauma, forever altering their lives and triggering a generational cycle of increased risk. These consequences also aggravate another cycle, as a third of those released from prison return to prison within a few years. Along the way, our taxpayers, churches and charities share these burdens where they can, but the burden falls to our families. Our prisons don't correct problems; they warehouse people.

Floridians know this. More than 80% surveyed believe our criminal justice system needs reform. More than two-thirds believe that our prisons do not do a good job of rehabilitating people and preparing them to successfully return to their communities. And the majority, 60%, believe the primary purpose of the criminal justice system should be to rehabilitate.

State officials know this: "The status quo cannot continue because that's, that's — pick your metaphor — the death spiral, or the plane crashing into the side of a cliff or, you know, the tipping point." Florida Department of Corrections Secretary Mark Inch.

Our elected officials know this: "This is not a prison system that anybody can look you in the eye and tell you a person ... will be safe in the state's care." — Senator Jeff Brandes, R-St. Petersburg.

State Attorneys are the primary gatekeepers of this mass incarceration system. If someone is accused of committing a crime, it is not the police but the State Attorney who has the sole power to decide if criminal charges are filed and the severity of those charges. It is not a judge or jury, but the State Attorney, who decides what punishment the state will dole out. The vast majority of criminal cases never make it to trial — instead of the state proving what it has accused, defendants sacrifice their rights in exchange for a plea deal. Others never make it that far, as the State Attorney chooses to dismiss charges.

This policy guide aims to lay out the actions State Attorneys can take to correct these injustices and counterproductive practices. In nearly all cases, they hold the power to make these changes unilaterally. In others, they can use their power of influence to stand apart from their colleagues blocking reforms to be a voice for reason and justice that our state so desperately needs.

POLICY RECOMMENDATIONS FOR STATE ATTORNEYS AND CANDIDATES

End Mass Incarceration

THE PROBLEM: Too many of Florida’s families are being ripped apart by the mass incarceration system. Despite broad public support for reforming our criminal legal system to prioritize rehabilitation, policies that criminalize poverty and lifestyle persist at the expense of our communities and families.

Many in prison have years left to serve with no ability or incentive to engage in programs to improve their chances of success when they return to their communities. When they do leave prison, a third return within a few years. Current state law creates an arbitrary limit on rehabilitation credits that can be applied toward one’s sentence. It is critical that we reduce this limit to stop the revolving door and ensure people can successfully return to society.

Why it Matters

Floridians spend \$2.7 billion on incarcerating people in prison, \$321 million on incarcerating juveniles in detention centers and residential programs, and millions more on jails.

Direct financial costs pale in comparison to the human cost of separating families and disrupting lives. Rather than remedying the issues that led to criminal activity, our carceral system drains people’s resources, breaks communal ties, adds to trauma, and returns people to their communities more overburdened than ever. The yoke of a felon label makes employment and even housing hard to come by. It is no wonder that many return to the criminal justice system before long, often finding that there is no socially acceptable path to self sufficiency. These disruptions echo through generations, with children who’ve experienced the incarceration of a loved one more likely to be incarcerated as they grow.

Lesson From Trailblazers:

Dallas County District Attorney John Creuzot ran on a promise to decrease jail and prison admissions by 15-20% within four years. Shortly after his election, his office stopped prosecuting theft of necessary items under the value threshold of \$750.¹

Prosecuting Attorney Dan Satterberg of Seattle has been resentencing people in prison who are serving a life sentence for relatively minor crimes. Often, these individuals are in prison under a three strikes law. Satterberg and his staff review old cases and sign onto clemency petitions where appropriate. So far, Satterberg and his committee have re-sentenced 16 people who were unfairly incarcerated. “I think a prosecutor has a continuing obligation to justice, past the sentencing date,” he said.²

¹ACLU of Texas Comment on Dallas County District Attorney-Elect John Creuzot Victory, Nov. 6, 2018.

²The Marshall Project, The DAs Who Want to Set the Guilty Free, March 20, 2018.

Voters Support This

89% of U.S. voters say it is important for their prosecutor to prioritize decarceration by using alternatives to prison.

75% of Florida voters believe the prison population is costing our country too much money.

85% of U.S. voters are much more likely to support a prosecutor who believes in making a prosecutors' decisions transparent by sharing data, information and policies with the public.

77% of Florida voters want judges, rather than prosecutors, to decide whether a minor should be prosecuted as an adult when they commit serious felonies.

75% Florida voters agree that minors charged with crimes should stay in the juvenile system.

72% of Florida voters support allowing people in prison to earn more rehabilitation credits, also known as gain time, that could reduce the time they serve in prison through good behavior including education, job training and doing good deeds while in prison.

What State Attorneys Can Do

- Commit to a specific, measureable decarceration goal.
- Adopt a policy to charge only what you intend to prove at trial, avoiding unnecessarily stacking or inflating charges.
- Do not direct file youth in the adult system.
- Support legislation to increase the amount of rehabilitation credits available to those in prison who participate in rehabilitative programs and exhibit model behavior.



Direct File: Shortchanging our kids hurts everyone

Since 2005, the U.S. Supreme Court has been acknowledging the developmental differences in youth and adults that require youth to be treated differently than adults.³ As such, courts must consider their individual circumstances and development before meting out the most severe punishments. Much of this same rationale applies to decisions to charge youth as if they are adults, exposing them to such punishments.⁴

Yet, for the more than 5,000 kids who have been sent to the adult criminal court in the last five years, this individual assessment did not happen.⁵ In most cases, the state attorney unilaterally decided whether the youth should have the opportunity of rehabilitation in the juvenile delinquency system or be punished in the adult criminal system. This process, known as direct file, cuts judges, defense attorneys, and parents out of the determination of how best to treat a youth and avoids the sort of individual assessment called for by the U.S. Supreme Court.

Once this irreversible decision is made, state law requires the youth be held in adult jail pending trial and to be treated as an adult for all future criminal cases.⁶ Treating youth like this is counterproductive at best, as the evidence shows those processed in the adult system fare far worse, and are more likely to recidivate, than those given the opportunity of rehabilitation in the juvenile system.⁷ But, at a very basic level, it denies them due process and subjects them to cruel, unnecessary risks. Youth in adult facilities are more likely to be sexually assaulted, more likely to be held in solitary confinement, and more likely to die of suicide.⁸

No child should be treated as if they were an adult. No child should be in jail or prison. At the very least, any decision to send them there should be given the full protection of judicial oversight. State attorneys have consistently blocked efforts to provide due process safeguards to this process, let alone end the practice of treating kids as if they are adults.

³See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S. Ct. 2011 (2010); and *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

⁴Tiffani N. Darden, *Constitutionally Different: A Child's Right to Substantive Due Process*, 50 *Loy. U. Chi. L. J.* 211 (2020).

⁵Local data on transfers to adult court available from the Fla. Dept. of Juvenile Justice at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile>

⁶Fla. Stat. ss. 985.265 and 985.557.

⁷Deborah Brodsky & Sal Nuzzo, *No Place for A Child: Direct File of Juveniles Comes at a High Cost; Time to Fix Statutes*, The James Madison Institute Policy Brief (February 2016). See also *Destined to Fail: How Florida Jails Deprive Children of Schooling*, Southern Poverty Law Center (2018).

⁸*Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, Human Rights Watch & ACLU (2012), www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf

Combat Racial Disparities

THE PROBLEM: Racial disparities continue to plague every aspect of our criminal legal system.

Why it Matters

We pride ourselves on being a nation of equals. We say we all have the opportunity to succeed. But the evidence shows this is a lofty goal, not a lived reality. Our criminal legal system is the root of many of the disparities in opportunity. This is not new or wholly unintended. Our system was designed in an era where those in power wanted to ensure Black people did not have power. No matter how far we, as individuals, evolve from our white supremacy roots, our systems will continue to operate in the inequitable way they were designed until people in power actively redesign them to undo that white supremacy.

No amount of individual grit or individual empathy will overcome this.

It isn't a matter of a few racist individuals — nothing has been done to undo all of the decisions that caused these disparities to begin with. They will continue until systematic changes are made to address them.



⁹The New Yorker. How to Stop Mass Incarceration. May 4, 2015.

¹⁰Santa Clara County District Attorney's Office. (2017). Race and Prosecutions: 2017 Update.

Lesson From Trailblazers:

In 2015, John Chisholm, Milwaukee County District Attorney, joined forces with the Vera Institute of Justice to examine how his office was contributing to racial disparities in the justice system. They found that prosecutors in Milwaukee declined to prosecute 41% of whites arrested for possession of drug paraphernalia, compared with only 27% of Black residents. In light of these findings, Chisholm stopped prosecuting most paraphernalia cases and began referring defendants to treatment programs instead. The program cut in half the number of Black residents who have been imprisoned in Milwaukee County since 2006.⁹

Since 2016, Santa Clara County, California's prosecutor's office has released an annual "Race and Prosecution Report" to shine light on the incidence of racial disparities in the county's prosecuted population. These reports analyze the process from when a case arrives at the office, when it is charged, and how it is charged — breaking down each of these decisions through a racial and ethnic lens. By collecting, analyzing, and releasing this data annually, the office is inviting the public to see its flaws, but also its progress.¹⁰

Voters Support This

88% of voters are more likely to support a candidate for prosecutor who believes in actively working to reduce unequal treatment by race in the criminal justice system.

91% of voters also feel it is important for a prosecutor to prioritize reducing instances where people are treated unequally in the criminal justice system because of their race.

55% of voters believe that people of color are incarcerated at higher rates than white Americans because of racism in policing, prosecution, and sentencing.

What State Attorneys Can Do

- Publicly acknowledge that racial disparities in the criminal legal system are systemic and not due to innate racial differences. |
- Track, analyze and publish data on prosecuting decisions, recommendations, and plea negotiations to identify racial disparities.
- Commit to a specific increase in the diversity of prosecutors, including those in management positions.
- Commit to revising policies and staff training to address identified racial disparities.
- Establish a community advisory board that includes community members impacted by the local justice system and representatives from organizations representing historically targeted groups, to meet monthly to review the State Attorney Office's performance and review and recommend policies and procedures to reduce incarceration, racial disparities and the collateral consequences of the justice system.



End Wealth-Based Discrimination

THE PROBLEM: The majority of people held in Florida's jails are awaiting trial. Many are only there because they cannot afford to leave. In many cases, counties are spending more to hold them than they would have to pay to go home to their families and jobs.

Why it Matters

Cash bail does nothing to protect the community. Rich defendants pay and are released, poor defendants cannot pay so are held in jail based on their net worth, not established risk. The consequences of this are more lost jobs, more disrupted families, more crime. The only winner in this system is the \$14 billion for-profit bail industry.

Aside from unnecessarily tearing people from their jobs, families and communities, keeping someone in jail before their trial also increases the chances that that person – even one who is innocent – will end up pleading guilty, being convicted and receiving a longer sentence than if they had been released while their case worked its way through the courts.

This is especially true for people of color. People of color are already over-policed, and arrested and detained more often than their white counterparts. Money bail only intensifies this existing race and class discrimination in the justice system. Because people of color are often over-charged with crimes that carry heavier sentences, they also face higher bail amounts.

Our most fundamental of rights, our freedom, is not something to be cavalierly taken away simply because someone is unable to pay for it. State Attorneys can stop this injustice.

Lesson From Trailblazers:

Philadelphia District Attorney Larry Krasner stopped seeking cash bail for most offenses. In one year, 1,750 people who otherwise would have been behind bars because they couldn't afford bail were released, marking a 24% drop in Philadelphia's jail population. There was no negative impact on court attendance and no increased recidivism while those released were awaiting trial at home.

Voters Support This

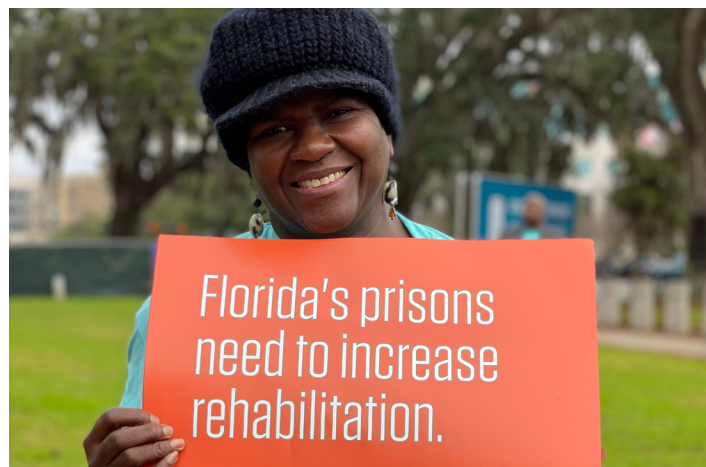
65% of Florida voters support reforming bail laws so one's release from jail before being convicted of any crime does not depend on access to money.

What State Attorneys Can Do

- Adopt a policy to recommend accused be released on recognizance in all property and drug misdemeanor offenses and technical violations of probation.
- Adopt a policy to not seek monetary bail.

If the State Attorney declines to end their support of monetary bail, they can reduce the unjust impact on poor defendants when they seek monetary bail:

- Adopt a policy requiring attorneys assess defendants' financial condition and ability to pay before recommending affordable monetary bail.
- Adopt a policy requiring attorneys to recommend monetary bail on no more than one charge to avoid stacking costs.



Reduce Overcriminalization

THE PROBLEM: Cash bail is the tip of the iceberg of the injustices in our pretrial system. Too many people are arrested for offenses that are either born of poverty, health or simply lifestyle choices. There's no personal injury or threat to public safety in these cases, and they are often prone to racial disparities.

One example is the trap of using drivers' licenses to punish those who fail to pay court fees or commit low-level offenses, unrelated to driving. Many of these people must continue to drive when their license is suspended in order to provide for their families, leading to unnecessary arrests. The third such arrest amounts to a felony.

Another is the continued criminalization of marijuana, despite the growing regulated marijuana industry. As policy around medical and recreational marijuana evolves, injustices mount when poor people and people of color are continuously policed and arrested while the wealthy and white people can partake in, and even profit from, the same activities. Many Florida jurisdictions have adopted minimum thresholds for enforcement, which range from 3 grams (the minimum required for accurate testing) to 20 grams.

Why it Matters

An arrest substantially disrupts a person's, and their family's, life. The mark of an arrest record follows them, tainting their reputation and making everything from getting a job to renting a home more difficult. These collateral consequences increase the risk they will be arrested again, with each arrest serving to justify harsher consequences for the next. Racial disparities in criminalization that during childhood are cemented through each subsequent interaction.



Lesson From Trailblazers:

Between 2013 and 2016, Tallahassee and Leon County issued more than 1,000 adult civil citations with an average successful completion rate of 83%. Of those who successfully completed the adult civil citation program, only 7% were re-arrested. The program effectively reduced crime and kept the community safe.

Since taking office in 2016, Cook County District Attorney Kim Foxx has declined to prosecute more than 5,000 cases that would have otherwise been pursued by her predecessor. Foxx did this by diverting people into treatment programs and declining to prosecute low-level shoplifting and drug cases.¹²

San Antonio District Attorney Joe Gonzales expanded the county's "cite and release" program, where defendants avoid jail in favor of a diversion program, to include lower level offenses like misdemeanor theft and driving with an invalid license. Gonzales also directed his office to allow the release of defendants on personal recognizance absent a finding of flight or public safety risk.¹³

The Harris County, Texas District Attorney's Office has vastly changed how its office reacts to juvenile behavior, working early on with police to determine if a youth should be arrested at all. In making that decision, the office policy requires prosecutors not to simply focus on whether they could prove the case, but to also consider whether this is typical behavior for that age, whether they have any disabilities, and their child welfare status. Rather than opting to arrest youths, prosecutors usually divert them into community-based programs. One of these diversion programs, for example, is available for all minors who would otherwise be arrested for their first misdemeanor or nonviolent felony - and has an 87% success rate of no arrests by age 18.¹⁴



Diversion: Injustice in the details

Diversion programs allow law enforcement, including State Attorneys, to quickly and efficiently deal with relatively minor crimes so they can use their time and resources to focus on more serious crimes that actually impact public safety. Diversion programs can also help mitigate the immigration consequences of overzealous policing of quality of life offenses, such as driving without a license.

While State Attorneys have full control over pre-trial diversion, they must negotiate with other stakeholders, including the Public Defender and law enforcement agencies, to ensure pre-arrest diversion is effective in the circuit. Still, their role is a powerful one. Florida law requires State Attorneys to operate a circuit-wide pre-arrest diversion program for juveniles¹⁵ and empowers State Attorneys to operate such programs for adults.¹⁶ Pre-arrest diversion programs, often called civil citations, bypass the criminal legal system to allow the imposition of interventions, including education, community service, and behavioral health services without requiring the State prove charges or create criminal records that limit people's ability to be successful.

There is no state limit on the number of times individuals can go through pre-arrest diversion programs, and some programs, such as those in Pinellas County, allow participants to have past records, especially older or unrelated charges that do not show a pattern of behavior. There are no state limits on the sorts of charges that are eligible for diversion, and some programs, such as those in Polk County, allow diversion for felony offenses in addition to all misdemeanor offenses.

While adults must not contest the offense, there is no state requirement for diversion participants to admit guilt. Despite this and our constitutional right against self-incrimination, many programs require law enforcement officers to get admissions from participants in order to write the citation or referral. This puts the officer and the accused in an unjust situation - the accused, usually without access to legal counsel, must rely on the officer for information about their options during a high-stress conflict. For immigrants, such an admission could lead to their deportation or limit their ability to become citizens. There is no rationale supporting this injustice.

¹²The Marshall Project, *The Kim Foxx Effect: How Prosecutions Have Changed in Cook County*, Oct. 24, 2019.

¹³Bexar County, *Update on New DA Policies and Initiatives*, May 16, 2019.

¹⁴Annie E. Casey Foundation, *Webinar Highlights Prosecutor-Led Juvenile Justice Reforms* (Feb. 25, 2020), <https://www.aecf.org/blog/webinar-highlights-prosecutor-led-juvenile-justice-reforms>

¹⁵Fla. Stat. s. 985.12.

¹⁶Fla. Stat. s. 901.41.

Voters Support This

57% of Florida voters believe too many things are criminalized today.

79% of Florida voters support ending the practice of suspending drivers' licenses for failure to pay court fees or fines when a person is able to prove an inability to pay the fine and agrees to do community service.

78% of Florida voters support encouraging all counties in Florida to create civil citation programs that would allow law enforcement officers to give a citation that includes a fine and/or community service instead of making an arrest for various misdemeanors.

72% of Florida voters support decriminalizing marijuana by making the possession of small amounts a non-arrestable offense punishable by a small fine or community service and also reducing criminal punishments for more severe marijuana offenses.

68% of Florida voters think America's War on Drugs has been a failure.

< 1/5 of Florida voters support maintaining criminalization of marijuana possession for personal use.

What State Attorneys Can Do

- Decline to prosecute offenses associated with poverty, health and lifestyle, such as failure to pay fines, loitering, trespassing, sex work, and low-level shoplifting and drug cases.
- Adopt a minimum threshold of 20 grams to prosecute marijuana offenses.
- Expand pre-arrest diversion programs to reduce the unnecessary creation of criminal records, including eligibility for those with older or entirely unrelated records.
- Remove local requirements for law enforcement officers to obtain admissions of guilt in the field in order to issue civil citations or other pre-arrest diversion referrals in lieu of arrests.
- Adopt a policy to not seek the suspension or revocation of drivers' licenses for actions unrelated to driving.
- Support state legislation or rules to substantially reduce or eliminate the suspension of drivers' licenses for failure to pay court costs.



Build Trust with Immigrant Communities to Protect Public Safety

THE PROBLEM: In recent years, undocumented communities have come under attack because of increasingly vicious state and federal immigration laws or policies. In many cases, charges for low-level offenses, even when expunged or sealed, and even prosecutor statements in court are serving as evidence for deportation or denial of lawful immigration of even documented immigrants.

Florida's SB 168, which restricted local control of decisions on how and when law enforcement officers can be co-opted for federal immigration purposes, is an example of how the state government is targeting immigrants at the behest of federal authorities but to the cost of local governments and their limited resources.

Why it Matters

Immigrants are important to Florida's economy. Many vital industries rely on immigrants, and immigrant-owned businesses employ thousands of Floridians. Immigrants contribute billions of dollars in taxes and economic activity to Florida.

The federal immigration system is broken. Some immigrants spend thousands of dollars in application fees and wait decades and still aren't approved. To have that process derailed, or to be deported, based on a mistake — or flippant comment by a prosecutor — is unconscionable.

Efforts to accelerate the deportation of immigrants with strong local ties also makes communities less safe, as undocumented victims fear going to court or speaking to law enforcement.



Voters Support This

76% of Americans believe immigration is a good thing for our country.

71% of Florida voters support a path to citizenship for undocumented immigrants.

61% of Americans oppose deporting all undocumented immigrants.

What State Attorneys Can Do

State Attorneys can reduce the likelihood charging decisions and prosecutor statements contribute to deportation or block lawful immigration.

- Train attorneys on the immigration consequences of prosecutorial decisions and statements in court and adopt a policy to mitigate such consequences.
- Adopt a policy to consider collateral consequences when charging noncitizens or negotiating pleas to ensure the sentence matches the offense and not tearing families apart or leveling disproportionate sentences.
- Adopt a policy governing when your office will seek vacatur of low-level convictions that subject immigrants to deportation or prevent immigrants from obtaining asylum or other immigration relief.
- Commit to not spend local resources on federal immigration purposes, except where required to do so by law.

Florida's SB 168, which restricted local control of decisions on how and when law enforcement officers can be co-opted for federal immigration purposes, is an example of how the state government is targeting immigrants at the behest of federal authorities but to the cost of local governments and their limited resources. As a strong voice in state and local politics and law enforcement, the State Attorney can:

- Commit to not spending resources on federal immigration purposes, except where required to do so by law.
- Support or advocate for legislation to repeal SB168's unfunded mandates on local government and usurping of local control.



Protect the Right to Vote

THE PROBLEM: Many Floridians are unclear whether they are eligible to register to vote and whether they will be prosecuted for registering to vote or voting if they have a felony conviction.

On November 6, 2018, Florida voters passed Amendment 4 (2018), amending the Florida Constitution to automatically restore the right to vote for people with prior felony convictions, except those convicted of murder or a felony sexual offense, upon completion of their sentences including prison, probation, and parole. Despite the fact that the Amendment required no implementing legislation, the Florida Legislature passed SB 7066, which prevents individuals from getting their voting rights restored due to unpaid legal financial obligations (LFO).

Many returning citizens do not have the ability to pay these LFOs. Those convicted of felonies tend to be poorer, even before the conviction,¹⁷ and they are not welcomed with open arms back to society and the workforce when they return. They have a harder time finding employment and when they do, they earn between 10 and 30% less than others. More than 27% of the formerly incarcerated between 25 and 44 years old are unemployed and the formerly incarcerated are nearly ten times as likely to experience homelessness.

Even when returning citizens have the ability to pay LFOs, the State has no uniform recordkeeping standard for LFOs. Additionally, State officials have no uniform procedure or guidance regarding verification of out-of-state or federal debts, making it difficult or impossible for returning citizens to determine how much they owe and to make payment.

Why it Matters

Current litigation illustrates the legal and ethical issues with making payment of legal financial obligations a prerequisite to voter registration. Florida's voters overwhelmingly voted to return voting rights to family and neighbors who completed their sentences. Yet, many returning citizens whose rights have been restored under Amendment 4 are remaining on the sidelines. They fear exercising their voting rights will return them to the criminal justice system, because the Division of Elections has failed to provide any clarity regarding its interpretation of SB7066. So, these returning citizens remain unsure what steps — if any — they must take to exercise their voting rights.

Voters Support This

65% of Florida's voters voted to pass Amendment 4.

50% of Florida's voters thought the legislature was undermining the will of voters when they advanced bills, like SB 7066, to limit which people with felony convictions could register to vote.

What State Attorneys Can Do

Adopt a policy of not prosecuting individuals with felony convictions who, in good faith, register to vote or vote believing that they are entitled to do so under Amendment 4.

¹⁷Bernadette Rabuy and Daniel Kopf, Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned (July 9, 2015).