Florida’s Savings Clause
A Primer for Florida Voters

History and substance
• The “Savings Clause” - Article X, section 9 - was added to the Florida Constitution in 1885. It reads, “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed,” which has been interpreted to mean that ameliorative changes to criminal laws may not be applied retroactively.
• The Savings Clause was a response to a high-profile case in which a man who was charged with assault could not be prosecuted because the legislature repealed the assault statute and failed to “save” prosecutions of offenses committed before the repeal.

Effect of the Savings Clause
The Savings Clause prevents the legislature from applying sentencing reforms to anyone serving a sentence for a crime committed before the change took effect. The Savings Clause leaves the legislature powerless to correct unwarranted sentencing disparities.

Florida is an Outlier
⇒ Florida is the only state whose constitution explicitly forbids retroactivity of amendments to criminal statutes.
⇒ Only three states – Florida, Oklahoma and New Mexico – have a constitutional savings clause. All others, if applicable, are statutory.
⇒ Some states have provisions in their savings statutes that allow the legislature to make changes retroactive.

Demographic Changes since 1885
State population:
1885: 330,000
Today: 21 million (~6,000% increase)

Culture
Along with the Savings Clause, the 1885 constitution imposed a poll tax for voting, forbid interracial marriages, mandated racially segregated schools, and denied women the right to vote or serve in the legislature.

“63% of Floridians believe that if a mandatory minimum sentence is reduced by law, that reduction should retroactively apply.”

Criminal Justice System:
Admissions to state custody:
1885: 142
Today: 30,000+ (21,000% increase)

Incarceration rate:
(per 100,000 residents)
1885: 65
Today: 492 (~650% higher)

• In 1885, Florida had so few prisoners there was no state prison system at all. Instead, the (relatively) few inmates in state custody were “leased” to private industries, which paid for their care in exchange for their labor.
• The 1885 constitution provided for the establishment of “a State Prison.” The authors of the Savings Clause did not even anticipate the need for a second prison. However, in FY 2015-16, the Florida Department of Corrections was the third largest state prison system in the country with a budget of $2.3 billion.

Amendment 11
⇒ Amends the Savings Clause to give the legislature authority to apply sentence reductions retroactively.

Public Support
In July 2016, the Charles Koch Institute and The James Madison Institute polled Floridians on several criminal justice-related issues. According to the poll results, “63% of Floridians believe that if a mandatory minimum sentence is reduced by law, that reduction should retroactively apply to prisoners currently in jail.” That belief was held by more than 60% of nearly every measured demographic.

Contact: Greg Newburn - gnewburn@famm.org