

JANUARY 27, 2007

**ALABAMA****I. Automatic Restoration of Rights:**

A person convicted of “a felony involving moral turpitude, or who is mentally incompetent, shall [not] be qualified to vote until restoration of civil and political rights or removal of disability.” Ala. Const. art. VIII, § 177.\* There is no exhaustive list of disqualifying crimes; however, the Supreme Court of Alabama has from time to time identified felonies that are and are not disqualifying. *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). For example, assault, felony drug possession and felony DUI are not regarded as crimes of “moral turpitude.” The Alabama Supreme Court is currently considering a challenge to the administration of that state’s felony disenfranchisement regime.\*\*

Someone who is not a qualified elector may not stand for public office. Ala. Code § 15-22-36.1(a)(1), (3). The right to sit on a jury is lost if the conviction is for an offense involving moral turpitude. Ala. Code § 12-16-60(a)(4). These civil rights may be restored only through a pardon from Board of Pardons and Parole, a legislative entity.

A 2003 statute requires the Board to issue a “certificate of eligibility to register to vote” to all persons convicted of disqualifying offenses (except those convicted of serious violent offenses and sex offenses) if they have completed their sentence and paid all fines, restitution and court costs, and have no charges pending against them. Ala. Code § 15-22-36.1. Persons convicted of murder and sex offenses must still apply to Board for a pardon. *Id.* (See discussion in Part IIA below).

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\* Prior to its 1996 amendment, the Alabama constitution disenfranchised persons convicted of specified offenses, all felonies punishable by a term of imprisonment, and all “crimes of moral turpitude.” Ala. Const. Art. VIII, § 182 (1996). Section 182’s extension of disenfranchisement to misdemeanor crimes of “moral turpitude,” interpreted at that time to include drug possession and DUI, was held unconstitutional in *Hunter v. Underwood*, 471 U.S. 222 (1985).

\*\* The 2005 Attorney General opinion cited above came in response to a request from the Board of Pardons and Paroles for a list of disqualifying offenses, and cited a number of cases in which the Supreme Court of Alabama has held that murder, rape, burglary, robbery, income tax evasion, conspiracy to commit fraud, possession of marijuana for resale, theft, transporting stolen vehicles, unauthorized sale of a controlled substance, and bigamy are all crimes involving moral turpitude. On the other hand, assault, doing business without a license, violation of liquor laws, aiding prisoner to escape, possession of marijuana, and driving under the influence, are not. Notwithstanding this opinion, Alabama’s Secretary of State continued to take the position that conviction of *any* felony prohibited voting, and so directed county registrars. On August 23, 2006, in response to a lawsuit filed by the ACLU challenging this interpretation and application of § 177, the Circuit Court of Jefferson County declared that unless and until the state legislature identifies which crimes are disqualifying under the State Constitution, the state may not prevent anyone convicted of a felony from voting. *See Gooden v. Worley*, Civ. No. CV-2005-5778-RSV. The Circuit Court’s ruling has been appealed to the Alabama Supreme Court. See amicus brief filed on January 17, 2007, by The Brennan Center on behalf of a group of Alabama clergy and churches, at [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_47701.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_47701.pdf).

## II. Discretionary Restoration Mechanisms:

### A. Pardon:

- *Authority:* In 1939, the Alabama legislature was granted the pardon power by an amendment to the state constitution, and created the Board of Pardons and Parole to exercise the pardon power, which extends to all offenses save treason and impeachment. Ala. Const. amend. 38 (amending art. V § 124). The Governor retains reprieve and commutation authority in capital cases. The Board's administration and procedure is governed by Ala. Code §§ 15-22-20 through 15-22-40.
- *Composition of Board:* The Board is composed of three members who are appointed by the Governor to six-year terms with the advice and consent of the State Senate. Ala. Code § 15-22-20(a)-(d). Members are selected by the Governor from a slate nominated by a board consisting of the State Chief Justice as chair, the Lieutenant Governor, the presiding judge of the court of criminal appeals, the Speaker of the House and the President pro tem of the Senate. § 15-22-20(b). Four "special members" are serving one year terms for the purpose of conducting hearings. § 15-22-20(i). The chairperson is designated by the Governor. § 15-22-20(d). Members are full-time State officials, take an oath of office, and are subject to impeachment on the same grounds as other State officials. § 15-22-20(e). The Board must make a full annual report to the Governor. § 15-22-24(b).
- *Eligibility:* Completion of sentence, or completion of at least three years of permanent parole, unless the pardon is sought on grounds of innocence. Ala. Code § 15-22-36(c). Persons convicted of a felony or certain other offenses involving danger to the person must submit to the taking of a DNA sample as a mandatory condition of the pardon. Ala. Code § 36-18-25(f). Board accepts applications from federal offenders and people convicted in other state jurisdictions residing in the state. *See* Article 8 of Ala. Board Rules, Regulations and Procedures, at <http://www.pardons.state.al.us/ALABPP/ALABPP%20MAIN.htm>.
- *Effect:* A state pardon does not relieve civil and political disabilities "unless specifically expressed in the pardon." Ala. Code § 15-22-36(c). *See also* Ala. Code 17-3-10. A person who has forfeited his office as a result of felony conviction is not restored to that office by a pardon. Ala. Code § 36-9-2. *See also Hendrix v. Hunt*, 607 So. 2d 1254 (Ala. 1992). Pardon that restores civil rights also restores handgun privileges. *See State ex rel. Sokira v. Burr*, 580 So. 2d 1340 (Ala. 1991). The Board may grant a full pardon, which restores all rights, or it may grant a pardon with restrictions (e.g., firearms privileges, sex offender registration, habitual offender status). Full pardons without restrictions are rarely granted.

- Process:* Hearing required, vote by majority, decision and reasons public. Board has no power to grant a pardon or other act of clemency unless the action is taken in an open public meeting, of which 30 days' notice has been given to the Attorney General, the DA who prosecuted the case and the judge who sentenced the offender, and the victim. Ala. Code § 15-22-23. See also Article 4 of the Ala. Board Rules, *supra*. Application to Board of Pardons and Parole is very simple form filed with local probation office that is "intended to facilitate application by individuals who lack formal education" Ala. Admin. Code r. §640-X-6-.01. Investigation by a local probation officer includes current information on the applicant's home situation, job status, and an updated criminal arrest record, written references and other information as warranted. *See* Article 8 of Ala. Board Rules, *supra*. Once the investigation is complete, a hearing will be set before the Board. Required notification will be sent to the victim and concerned officials. At hearing, a decision is made by majority vote to grant or deny the pardon request, and announced. Process takes about a year from beginning to end. *See* Article 6 of the Ala. Board Rules. These same procedures will apply to a request for a Certificate of Eligibility to Register to Vote, except where superseded by Ala. Code § 15-22-36.1 (see below, providing for paper review).

Board Orders granting pardons, with or without restoration of civil and political rights, are public records. The statements of reasons filed by each member voting in favor of such grant are public records.

- Expedited Process to Restore Voting Rights:* In October 2003, the Alabama legislature enacted an expedited process for restoring right to vote to be administered by the Board, applicable to all but specified serious violent offenses and sex offenses. Ala. Code § 15-22-36.1. Eligibility depends upon applicant having completed sentence, including payment of fines, court costs, fees, and victim restitution ordered by the sentencing court; may have no pending felony charges. The Attorney General of Alabama has recently opined that if a person has been convicted of both a disqualifying and a non-disqualifying offense, the person must have satisfied all terms and conditions of the non-disqualifying offense in order to be considered for restitution. Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005). If a person is determined to be eligible, the right to vote must be restored. § 15-22-36.1(b).

Restoration is also available to federal and out-of-state offenders. § 15-22-36.1(a)(1). While restoration is apparently nondiscretionary upon a determination of eligibility, the application process may include a hearing. Investigation by parole officer and report to Board w/in 45 days, paper review with five days for Board to respond. § 15-22-36.1(e). If one member of Board objects on grounds of eligibility, hearing scheduled. § 15-22-36.1(f). In the event the board determines, by a majority vote, that the criteria have been met, the executive director shall forthwith issue a Certificate of Eligibility to Register to Vote to the applicant. *Id.*

- *Frequency of Grants:* In FY 2004, Board granted 158 pardons (71.1% of applications ) and denied 64 (28.8%). In first 5 months of FY 2005, Board has granted 111 (71.6%) and denied 44 (28.3 %). Some of these include people who had earlier been granted streamlined voting rights restoration. Board restored voting rights to 2,608 people in the first 17 months after streamlined process was enacted in September 2003. Source: Alabama Parole Board.
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See <http://paroles.state.al.us/pardons/faq.html>.

B. Judicial sealing or expungement of adult felony convictions:

No statutory provision for expungement of records. However, municipal courts in recent past appear to have regularly exercised a common law expungement authority, a practice that was challenged in July 2005. *See* "All Expunged Cases Should be Made Public," Model Register, July 13, 2005, <http://www.al.com/search/index.ssf?/base/opinion/1121246139244220.xml?mobileregister?oedit&coll=3>.

- C. Administrative certificate: See above for "certificate of eligibility to register to vote" that must be issued any person convicted of a non-violent offense who has completed his sentence and paid all fines, restitution and court costs, and has no charges pending against him. Ala. Code § 15-22-36.1.

**III. Nondiscrimination in occupational licensing and employment:**

Alabama has no general law regulating consideration of conviction. It does apply a direct relationship test in connection with some licenses. *See, e.g.*, ALA. CODE § 34-1A-5 (d)(2)a. ("An applicant [for an alarm system installer license] shall not be refused a license solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license is sought.").