

APRIL 1, 2007

COLORADO

I. Automatic Restoration of Rights:

- Vote: A person convicted of a felony loses the right to vote if sentenced to a prison term, and does not regain it until completion of parole. *See* Colo. Const. art. 7, § 10 (A person shall not be eligible to vote “while confined in any public prison,” but shall be restored to the rights of citizenship “after serving out his full term of imprisonment.”).^{*} By statute, disenfranchisement continues through a period of parole. *See* Col. Rev. Stat. § 1-2-103(4) (“No person while serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction or while serving a sentence of parole shall be eligible to register to vote or to vote in any election.”).^{**} A person in pre-trial detention may vote. § 1-2-103(4). Persons sentenced to probation only do not lose the right to vote.
- Office, Jury: Persons convicted of a felony are disqualified from public office only while incarcerated, or while on parole from a prison sentence, Col. Rev. Stat. § 18-1.3-401(3), with certain exceptions specified in the state constitution. *See* Colo. Const. art XII, § 4 (embezzlement of public money, bribery, perjury, all result in permanent disqualification). Right to sit on jury is not lost at all (disqualification statute repealed in 1989).
- Firearms: Persons convicted of a felony may not possess firearms. Col. Rev. Stat. § 18-12-108(1), (2). Penalty enhanced if possession within ten years of conviction, or release from supervision for, burglary, arson, or any felony involving violence. § 18-12-108(2)(c).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- Authority: The pardon power is vested in the Governor, except in cases of treason or impeachment. Colo. Const. art. IV, § 7. Constitution gives legislature power to regulate manner of applying, and Governor must report to legislature on all grants. The clemency power is regulated by Colo. Rev. Stat.

^{*} Section 1-2-103(4) was amended in May 2005 to add “for a felony conviction” to the text of the statute. Prior to that time, the prohibition on voting applicable to incarcerated persons had been interpreted to extend to misdemeanants as well as felony offenders.

^{**} Under the determinate sentencing law adopted by Colorado in 1993, a period of “mandatory parole” following a sentence to confinement “is no longer related to the unserved remainder of the sentence to confinement,” *People v. Norton*, 63 P. 3d 339, 343 (Colo. 2003). In light of the constitutional direction that a person “shall be restored to the rights of citizenship “after serving out his full term of imprisonment,” it is not clear whether the statutory extension of disenfranchisement to the period of parole in § 1-2-103(4) survives this change in Colorado’s sentencing law.

§§ 16-17-101 and 102, and grants not issued in compliance with those provisions are invalid. *See People ex rel Garrison v. Lamm*, 622 P. 2d 87 (Colo. Ct. App. 1980). According to the Governor's office, Governor advised by non-statutory Colorado Executive Clemency Advisory Board, which consists of seven unpaid volunteers appointed by Governor.

- *Eligibility*: Pardon applications are not generally accepted until at least 10 years after completion of sentence. Persons convicted under federal law or in another state are not eligible for gubernatorial pardon.
- *Effect*: Restores firearm privileges. Also lifts legal disabilities, including employment disqualifications, and is likely to enhance individual's employability. E-mail from Mark Noel of Governor's staff, 303-866-2880.
- *Process*: Application must be sent for comment to DA and court, who have 10 days to comment. Colo. Rev. Stat. § 16-17-102.
- *Frequency of Grants*: Only a handful of pardons granted in recent years. Source: Colorado Governor's Office.
- *Contact*: Mark Noel, Executive Chambers, 136 State Capitol, Denver, CO 80203-1792
Tel: (303) 866-2471

B. Judicial sealing or expungement of adult felony convictions:

Sealing: Colorado does not provide for sealing or expunging adult convictions.*

Non-conviction records: Courts are authorized to seal a criminal record ("except basic identification information") where the charges were completely dismissed (including deferred adjudication) or the person is acquitted, balancing the public's right to know against the individual's interest in privacy. *See* Colo. Rev. Stat. § 24-72-308(1); *R.J.Z. v. People*, 104 P.3d 278 (App. 2004). Paula Ison & Tom Blumenthal, *Sealing Criminal Records in Colorado*, 21 Colo. Law. 247 (1992). Court is required to give eligible defendants "written advisement" of their right to have the record sealed. § 24-72-308(2). Serious traffic infractions excepted (*e.g.*, DUI) § 24-72-308(3).

Deferred Adjudication: Colo. Rev. Stat. § 18-1.3-102. (defendant enters a pleas, put on probation; prosecutor decides whether to move to revoke, judge decides whether to revoke). § 18-1.3-101 (Deferred prosecution). Used

* The broad sealing authority given Colorado courts in the 1977 Criminal Justice Records Act, which permitted sealing of any criminal record, subject only to the court's application of the balancing test described above, was limited in 1988 to non-conviction records. The Colorado Supreme Court ruled in 1993 that the retrospective application of the more limited sealing authority did not violate the state constitution. *People v. D.K.B.*, 843 P.2d 1326, 1328 (Colo. 1993).

mostly for first-time drug offenses, referred to drug court. Sealing available (see above).

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

Colo. Rev. Stat. § 24-5-101(1)(a): “[T]he fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent the person from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession.” § 24-5-101(b) excepts certain professions, including law enforcement, education, and employment that involves direct contact with vulnerable persons. *See also* § 27-1-110. Conviction “shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application.” § 24-5-101(2). The intent of the section is “to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.” *Id.*; *see also Givan v. City of Colorado Springs*, 897 P.2d 753 (Colo. 1995)(City manager did not abuse discretion in discharging city employee because of his incest conviction, though employee's work record was excellent, and employee could be expected to perform technical aspects of his position in future; city manager found likely impact on morale in workplace, public perception of city.)