

MARCH 9, 2007

## DELAWARE

### I. Automatic Restoration of Rights:

A person convicted of a felony forfeits the right to vote. Del. Const. art. V, § 2. Persons guilty of certain misdemeanor election law violations are prohibited from voting for ten years following completion of sentence. *Id.*; Del Code Ann. tit. 15 § 1701. Convicted felony offenders may not serve on juries, tit. 10 § 4509(b)(6). Persons convicted of embezzlement, bribery, perjury, and other “infamous” crimes may not hold a seat in the legislature or any office of profit or trust. Del. Const. art II, § 21.

Under a 2000 amendment to the Delaware Constitution, felony offenders may apply to their County Board of Elections to have their right to vote restored five years after expiration of sentence (including payment of fines and restitution), and restoration is automatic upon a determination of eligibility. Del. Const. art. V, § 2<sup>\*</sup>; Del. Code Ann. tit. 15 §§ 6103-05. Convicted persons shall not be registered earlier than five years from date of conviction, unless pardoned. Del. Code Ann. tit. 15 § 6103(c). Persons convicted of certain serious offenses (murder, manslaughter, bribery or public corruption, sex offense) are constitutionally barred from voting unless pardoned. Del. Const. art. V, § 2.<sup>\*\*</sup>

Firearms: Persons convicted of crime of violence or drug offense lose firearms privileges. Del. Code Ann. tit. 11 §1448.

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<sup>\*</sup> Del. Const. art. V, § 2 provides in pertinent part: “Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or five years after the expiration of the sentence, whichever may first occur. The term “sentence” as used in this Section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provision of this paragraph shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.”

<sup>\*\*</sup> Under Del.. Code Ann. tit. 11, § 4347(i), “civil rights” are automatically restored by certificate from Board of Parole upon discharge of sentence, but no earlier than one year after release from prison – but these rights have been ruled by Delaware Attorney General to include only “those commonly exercised in everyday life,” and not rights to vote, sit on jury, or hold office. *See* U.S. Dep’t of Justice, Office of the Pardon Attorney, Civil Disabilities of Convicted Felons: A State-by-State Survey 38 (1996), [http://www.usdoj.gov/pardon/forms/state\\_survey.pdf](http://www.usdoj.gov/pardon/forms/state_survey.pdf).

## II. Discretionary Restoration Mechanisms:

### A. Executive pardon:

- *Authority:* The power to pardon, except in cases of impeachment, is vested in the Governor. The Governor cannot grant a pardon or commutation in the absence of an affirmative recommendation of a majority of the Board of Pardons, but the Governor is not bound to accept the Board's recommendation, and exercises independent judgment in all cases. Del. Const. art. VII, § 1. Board of Pardons consists of Chancellor, Lieutenant Governor, Secretary of State, State Treasurer, and Auditor of Accounts. Del. Const. art. VII, § 2. Under the Board's rules, the Lieutenant Governor Chairs the Board, and the Secretary of State acts as secretary. Board of Pardons Rules, Rule 5(c) and (d), <http://www.state.de.us/sos/pardrule.shtml> (Jan. 22, 2004).
- *Effect:* Effective 2003, except as otherwise provided by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor shall have the effect of fully restoring all civil rights to the person pardoned. Such civil rights include, but are not limited to, the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly weapons and the right to seek and hold public office provided however, that this section shall not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon. Del. Code. Ann. tit. 11, § 4364. According to the Board of Pardons, a pardon also relieves employment-related and other legal disabilities.

Public Office: Del. Const. art. II, § 21 - No person who shall be convicted of any felony ("embezzlement of the public money, bribery, perjury or other infamous crime") shall be eligible to a seat in either House of the General Assembly, "or capable of holding any office of trust, honor or profit under this State." Pardon does not remove this bar (at least where pardon out-of-state). *See State ex rel. Wier v. Peterson*, 369 A.2d 1076 (Del. 1976)(PA offender pardoned by PA governor may not run for DE county council).

- *Eligibility:* Waiting period informally imposed by Board: three to five years after sentence completed, depending on seriousness of offense, unless a legitimate hardship can be demonstrated (i.e., a need for employment, pending deportation, etc.). Applications from misdemeanants accepted. Out-of-state and federal convictions ineligible for a pardon.
- *Process:* Applications for a pardon or commutation are made in writing through the office of the Secretary of State, who acts as the secretary of the Board. See <http://www.state.de.us/sos/pardons/>. The Board meets monthly in Dover in open session, and hears every application it receives. Before the Board may consider application from certain violent and sex offenders, applicant must have been recently examined by a psychiatrist and psychologist, who must submit opinion to Board as to applicant's mental

and emotional health, likelihood of re-offending. Del. Code. Ann. tit.11, § 4362(d). The Board must also request a full report on each case, including an opinion concerning the state of rehabilitation, from the Board of Parole. Board of Pardons Rules, *supra*, at Rule 3(f). As part of the requirements for filing a petition for pardon and commutation, the Board of Pardons requires that the applicant notify the judge who imposed the sentence on the applicant, the Attorney General, the chief of Police having jurisdiction of the place where the crime occurred, and the Superintendent of the Delaware State Police. *Id.* at Rule 2(d). The Attorney General's office is responsible for notifying the victim and or surviving family members when the offender applies for a pardon or commutation. Del. Code. Ann. tit. 11, § 4361(d). The Attorney General will present the opinion of the victims. The Board requests that a legal representative from the Attorney General's office attend all sessions of the Board. Board of Pardons Rules, *supra*, at Rule 8.

- *Public Record:* The hearings of the Board are public hearings at which any person with an interest in the matter will normally be accorded an opportunity to speak. Individuals may and are encouraged to represent themselves before the Board when their cases are scheduled for presentation. The Board has full subpoena power and may require the attendance of witnesses and production of evidence. It may also administer oaths, and those who testify falsely are subject to criminal penalties. Decisions of the Board with respect to an application are often made in executive session of the Board at which the Board may discuss and debate the record. A decision reached by majority is recorded and filed in the office of the Secretary of State, who in turn notifies the Governor. Del. Const. art. VII, § 1.
- *Standards:* Rules include list of reasons for recommending pardon include factors relating to nature and age of crime, rehabilitation of applicant and contributions to the community, applicant's remorse, employment-related need for a pardon, official support, and lack of opposition by the victim.
- *Frequency of Grants:* In 2003, the Board heard 131 applications for pardon, and recommended 115 favorably. Thirty-two pardons were granted, some deferred. In 2004, 173 applications were heard, 141 were recommended favorably, and 115 were granted, some deferred. In the first eight months of 2005 the Board heard 82 pardon cases, and recommended 67 positively; the governor granted 81 pardons, denied 4, and returned one with no action. commutations. (In 2003 and 2004, 45 petitions for commutation were heard, of which 9 were recommended; two were granted by the Governor, one was denied, and one was returned with no action taken. In the first eight months of 2005 the Board heard 19 commutation cases and recommended three favorably; the governor granted three and denied two.) Increase in applications relates to more stringent employer background checks since 9/11. Sixty percent of applications come from misdemeanants. Source: Delaware Board of Pardons

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- B. Judicial sealing or expungement of adult felony convictions: No provision for expungement of convictions, except or until a person reaches age 80 or reaches age 75 with no criminal activity listed on the person's record in the past 40 years. Tit. 11, § 8506(c).

*Nonconviction records:* Expungement of criminal records only where matter results in acquittal or other termination of action in favor of the accused. *See* Del. Code Ann. tit. 11, §§ 4371-4375. Effect: Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged. § 4374(a).

- C. Administrative certificate: N/A

### III. **Nondiscrimination in Licensing and Employment:**

74 Del. Laws, c. 262 (2004) creates a uniform approach throughout Title 24 of the Delaware Code relating to Professions and Occupations, regarding disqualifications for licensure; requiring that the refusal, revocation or suspension of licenses for professions and occupations regulated under Title 24 be based upon conviction of crimes that are "substantially related" to the profession or occupation at issue, and not for crimes that are unrelated to the profession or occupation. *See, e.g.,* 24 Del. Code Ann. tit. 24, § 104 (accountancy); § 301 (architecture); § 701 (chiropractic); § 1126 (dentistry); § 1207 (security systems and protective services); § 1922 (nursing). The bill requires the boards of affected professions and occupations to promulgate regulations that specifically identify the crimes that are "substantially related" to the profession or occupation.

<http://www.legis.state.de.us/LIS/LIS142.NSF/vwLegislation/SB+229?Opendocument>