

MARCH 9, 2007

GEORGIA

I. Automatic Restoration of Rights:

Civil rights lost upon conviction of a "felony involving moral turpitude." Ga. Const. art. II, § 1, para. III(a). Right to vote restored automatically "upon completion of the sentence." *Id.* Convicted person may not hold public office "unless that person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude." Ga. Const. art. II, § II, § 2, para. III. To regain the right to sit on a jury, either a pardon or restoration of civil rights is necessary. 1983 Ga. Op. Att'y Gen. 69 (No. 83-33) (1983). State constitutional prohibition against felony offenders holding an appointment of honor or trust, such as position of deputy sheriff, unless pardoned, did not prevent General Assembly from making conviction absolute bar to qualification as peace officer, since General Assembly was authorized by law to provide for higher qualifications for the officers, citing Ga. Code Ann. § 92A-2108(d). *Georgia Peace Officer Standards and Training Council v. Mullis*, 281 S.E.2d 569 (Ga. 1981).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* The power to pardon and to remove disabilities is vested in the state Board of Pardons and Paroles, although it may be prohibited from issuing a pardon or superseded by the legislature in cases involving recidivists and persons serving life sentences. Ga. Const. art. IV, § 2, para. II. The Governor is expressly precluded from exercising power or authority over pardons. Ga. Code Ann. § 42-9-56. In addition to pardons and sentence commutations, the Board may issue "Restoration of Civil and Political Rights" to felony offenders (including out-of-state and federal convictions). See Board instructions, *at* http://www.pap.state.ga.us/other_forms_clemency.htm. Board of Pardons and Paroles is a full-time, five-member board whose members are appointed by the Governor and confirmed by the senate. The Board chooses its own chairman, and also makes parole determinations. Must report annually to legislature and Governor. § 42-9-19.
- *Eligibility:* For restoration of rights, the applicant must have completed sentence (including fine), have no pending charges, and completed two years without any criminal involvement. For a full pardon, applicant must have completed a five-year waiting period after completion of sentence with no criminal involvement. Waiver available "if the waiting period is shown to be detrimental to the applicant's livelihood by delaying his qualifying for

employment in his chosen profession.” Board instructions, *supra*. . Restoration of rights available to federal and out-of-state offenders living in Georgia (for non-Georgia convictions, applicant must be living in the state). Misdemeanants may apply if they are subject to deportation because of their conviction.

- *Effect*: Restoration of rights affects only basic civil rights (jury, public office). A full pardon which does not imply innocence relieves “civil and political disabilities imposed because of conviction,” Ga. Code Ann. § 42-9-54, and also relieves licensing and employment restrictions. Ga Comp. R. & Regs. r. 475-3-10(3)(2004). A pardon, however, does not restore a convicted felony offender to a public office he was forced to relinquish as a result of the conviction. *Morris v. Hartsfield*, 197 S.E. 251 (Ga. 1938).
- *Process*: The Board generally considers cases on a paper record without an in-person hearing, though it has the power to conduct public hearings. If the applicant requests restoration of firearms rights which must be explicitly stated in the pardon (see Firearms below), an investigator for the Board conducts an in person interview . Ga. Code Ann. § 42-9-43. It also acts by majority vote by written decision, and gives no reasons. *Id*. To request a full pardon, information and an application form can be obtained from http://www.pap.state.ga.us/Pardon_Application.PDF. Clemency requests are screened by Board staff. Requests deemed meritorious are forwarded to Board members for individual review and decision. Application form short (one page) and it advises that no attorney is necessary and no fee is charged.
- *Firearms*: Firearm privileges are restored only if a pardon expressly authorizes the receipt, possession, or transportation of a firearm. Ga. Code Ann. § 16-11-131(c). A pardon applicant may request that the pardon be specially worded to restore this firearm right, but he must provide in detail his reason for the request, and provide three character witnesses. *Id*. Board policy is to deny restoration of the firearm right to a pardon applicant who possessed a firearm during the commission of any offense. Special rules apply for certain white-collar crimes. *See* IIC below, § 16-11-131(d).*
- *Frequency of Grants*: In 2006, 310 pardons w/o firearms rights, 165 w/ firearms rights, 15 “immigration pardons,” and 204 “Restoration of Rights.” In 2005, 244 pardons w/o firearms rights, 143 w/ firearms rights, 21 immigration pardons, and 269 restorations of rights. Between 35% and 50% of those that apply are granted. Source: Georgia Board of Pardons and Paroles.
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* Ga. Code Ann. § 16-11-131(d) provides an administrative procedure for restoration of firearms rights by the Board of Public Safety, for persons who have had their federal firearms rights restored by ATF, or who have been convicted of certain white-collar crimes (“antitrust violations, unfair trade practices, or restraint of trade”). All applications for firearms restoration This section is not used as a practical matter and all applications for firearms relief are handled through the Board of Pardons and Paroles..

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B. Judicial sealing or expungement of adult felony convictions:

“First Offender Act”: First offenders prosecuted under Georgia law may be placed on probation *or sentenced to confinement* without an adjudication of guilt. Ga. Code Ann. § 42-8-60. Upon successful completion of probation or sentence, the offender is discharged without adjudication, which “completely exonerate[s] the defendant of any criminal purpose and shall not affect any of his civil rights or liberties.” § 42-8-62(a). While those sentenced to confinement are considered “convicted” during the period of incarceration, § 42-8-65(c), after discharge the offender is “not considered to have a criminal conviction,” § 42-8-62(a), and “is to suffer no adverse effect upon his civil rights or liberties.” 1990 Ga. Op. Att’y Gen. 105 (1990). In addition, an offender sentenced to probation under this scheme is not disqualified from jury service during the probation period, *id.*, or from voting, 1974 Op. Att’y Gen. 48 (1974). A discharge restores firearms privileges, § 16-11-131(f), and the conviction not be used to disqualify the offender from employment. § 42-8-63. No provision for sealing or expungement, however. Also, a finding of guilt for a discharged offense “may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted” to discharge the offender pursuant to this procedure. § 42-8-65(a).

Expungement of noncriminal records only if no charges filed. Ga. Code Ann., § 35-3-37.

C. Administrative certificate

N/A

III. Nondiscrimination in Licensing and Employment:

Georgia’s general law governing professional licensure provides that conviction of a felony or any crime involving moral turpitude may be grounds for revocation or refusal of a license, without regard to whether it is related to the practice of the licensed business or profession. *See* Ga. Code Ann. § 43- 1-19(a)(3), (6).