

MARCH 9, 2007

HAWAII

I. Automatic Restoration of Rights:

- Uniform Act on Status of Convicted Persons – Felony offender’s right to vote suspended, except that “if execution of sentence is suspended with or without the defendant being placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the suspension or parole.” Haw. Rev. Stat. § 831-2(a)(1). Right to seek and hold public office is (except for treason) restored upon final discharge of sentence. § 831-2(a)(2). Only a pardon restores the right to serve on a jury. Haw. Rev. Stat. § 612-4(4). Firearm privileges lost for convictions of crimes of violence, felonies, and drug offenses (sale or distribution). Haw. Rev. Stat. § 134-7. Only a pardon expressly authorizing possession of firearms will relieve this disability.

II. Discretionary Restoration Mechanisms:

A. Executive Pardon:

- *Authority*: The power to grant pardons of state convictions is vested in the Governor. Haw. Const. art. V, § 5. Governor may seek the recommendation of HI State Paroling Authority, but power is independent. See Haw. Const. art. V, § 5; Haw. Rev. Stat. § 353-72 (Paroling Authority “shall consider every application for pardon which may be referred to them by the governor”). While the Hawaii Constitution specifically permits the legislature to “authorize the governor ... to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State,” Haw. Const. art. V, § 5, no such statute has been enacted.
- *Eligibility*: No restrictions for state offenders.
- *Process*: No statutory process required for considering pardon applications, but Governor as a matter of policy always asks Paroling Authority and Attorney General for advice and recommendation. See Haw. Rev. Stat. § 353-72: “The director of public safety and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor, as soon as may be after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon.” According to the Pardons Administrator of the Hawaii Paroling Authority, pardon applicants undergo formal investigation process conducted under direction of Authority, including face-to-face interview by parole officer w/ petitioner; affidavits attesting to character

are filed in support by persons in the community. Administrative staff develops recommendation to Parole Board, which is considered in monthly administrative session. Director of Public Safety reviews, and endorses or recommends disapproval, then sends to Attorney General's office where a second investigation and confidential summary is completed. Entire investigative process takes about 8 months from filing to get to Governor's desk.

- *Effect:* A pardon will state that the person has been rehabilitated, relieves legal disabilities and prohibitions. Recipient may deny conviction. Haw. Rev. Stat. §§ 353-62, 353-72
- *Frequency of Grants:* Ordinarily the Authority receives between 100 and 200 applications each year, which it reviews on a regular basis, sending its recommendations through Attorney General to Governor. Number of grants each year depends to some extent on political climate and comfort level of governor. In FY 2005 (ending June 30, 2005) the Paroling Authority processed 180 applications for pardon, and the Governor issued 32 pardons (some held over from the previous year.) Source: Hawaii Paroling Authority.
- *Contact:* Tommy Johnson, Pardons Administrator, Hawaii Paroling Authority (808-587-1293). Tommy.johnson@hawaii.gov.

- B. Expungement: Available for nonviolent first offender probationers under Haw. Rev. Stat. § 853-1(e). If the defendant successfully completes probation, the court discharges him and dismisses the charges without an adjudication of guilt. Haw. Rev. Stat. § 853-1. One year after the discharge and dismissal, the defendant may apply for expungement. Haw. Rev. Stat. § 853-1(e). *See also* Haw. Rev. Stat. § 831-3.2(a)(5). The procedure is limited to persons with no prior felony convictions, and not available for some offenses. Haw. Rev. Stat. § 853-4. Also provision for conditional discharge and expungement for first time drug offenders. Haw. Rev. Stat. §§ 712-1255, 1256. Office of the Attorney General: 808-586-1500.

Nonconviction records: Haw. Rev. Stat. § 831-3.2 (persons entitles to expungement by virtue of not having been convicted shall be treated as having not been arrested)

- C. Administrative certificate: Uniform Act on Status of Convicted Persons – arrests not leading to conviction may be expunged by the Attorney General pursuant to Haw. Rev. Stat. § 831-3.2. Info: 808-587-3106 (AG's office, criminal records section).

III. Nondiscrimination in Licensing and Employment:

Hawaii has adopted the Uniform Status of Convicted Persons Act, which prohibits the government from firing or refusing to hire any person “solely by reason of a prior conviction,” except that a crime committed within the past 10 years (excluding any

period of incarceration) may be considered if it bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business.” Haw. Rev. Stat. § 831-1(a). Exception for liquor licenses, and for other public employments like healthcare, corrections, and law enforcement. Arrest records not leading to a conviction may not be considered at all. Haw. Rev. Stat. 831-3.2(e).

In addition, Hawaii makes discrimination based on conviction record part of its more general fair employment practices law. Haw. Rev. Stat. §§ 378-2 to 378-6. Under § 378-2.5(b), it is an unlawful employment practice to inquire into arrest and conviction records, unless the conviction “bears a rational relationship to the duties and responsibilities of the position.” Moreover, this inquiry may take place “only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position,” Haw. Rev. Stat. § 378-2.5(b), and only if the conviction took place within the last ten years. § 378-2.5(c). The Hawaii Supreme Court held in August 2006 that this law also prohibits termination of existing employment because of a previous conviction, absent a showing that the conviction bears a rational relationship to the employment. *Wright v. Home Depot*, 142 P. 3d 265 (HI, 2006).

The law includes a long list of exceptions for various public and private employments where an employer is expressly permitted to ask about a conviction record, such as health, education, law enforcement and security services, public employment, transportation, public libraries, insurance and banks, coop or condominium housing, etc. Haw. Rev. Stat. § 378-2.5

The law is enforced by the Hawaii Civil Rights Commission. The 1998 amendments were evidently precipitated when the HCRC promulgated regulations that addressed what constitutes a "bona fide occupational qualification" and what is an "inquiry." “Significantly, an application form cannot ask the prospective employee whether he or she has an arrest record, court record, or conviction record unless ‘the inquiry is pursuant to a statutory exemption and seeks information about a conviction for a specific offense within the exemption.’ The HCRC makes it clear that the employer has the burden of proving a BFOQ based on the employer's business requirements and the totality of the circumstances.” See Sheri-Ann S.L. Lau, *Recent Development: Employment Discrimination Because of Ones Arrest and Court Record in Hawaii*, 22 U. HAW. L. REV. 709, 713-14 (2000) (“it appears that the legislature's main emphasis is to provide employment opportunities for individuals with conviction records and reduce the likelihood that they will return to public assistance or a life of crime. . . The Legislature's secondary concern is protecting employers from litigation when trying to provide a safe environment for customers and employees). Arrest records not leading to a conviction may not be considered at all. Haw. Rev. Stat. §§ 378-2(1)(A) and 831-3.2(e).