

February 15, 2006

IDAHO

I. Automatic Restoration of Rights:

- A sentence of custody to the Idaho state board of correction following a felony conviction suspends all the civil rights of the person so sentenced, including the right to refuse treatment authorized by the sentencing court, and the person “forfeits all public offices and all private trusts, authority or power during such imprisonment.” Idaho Code § 18-310(1). Suspended sentence also results in loss of right to vote. *Id.* (any such person “may lawfully exercise all civil rights *that are not political* during any period of parole or probation”). Civil rights restored upon final discharge of sentence. § 18-310(2) (“final discharge” means satisfactory completion of imprisonment, probation and parole as the case may be).
- Except for treason and other specified serious offenses, felony convictions generally result in the loss of firearm privileges only during the period of incarceration. § 18-310(2). For enumerated violent felonies committed after 1991, firearms privileges are lost until restored by “expungement, pardon, setting aside the conviction, or other comparable procedure.” §§ 18-310(2), 18-3316(4).

II. Discretionary Restoration Mechanisms:

A. Pardon:

- *Authority*: Constitution empowers legislature to create a board to grant pardons. Idaho Const. art. IV, § 7. This board (Idaho Commission of Pardons and Parole) has authority to grant pardons, except in cases of treason and impeachment, subject to legislative limitations on its power and manner of proceeding. Idaho Const. art. IV, § 7; Idaho Code §§ 20-210, 20-240.* Governor has constitutional power to grant reprieves or respites. In addition, the Governor must approve the Commission’s recommendation in cases of murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, or manufacture or delivery of a controlled substance, before the pardon becomes effective. In such cases, the Commission’s decision constitutes a recommendation to the Governor. Idaho Code § 20-240.
- *Administration*: Idaho Commission of Pardons and Parole composed of five members appointed by the Governor, with advice and consent of Senate, for three-year terms; no more than three from the same party.

* The state constitution originally provided for a Board of Pardons composed of the Governor, the Attorney General, and the Secretary of State. In 1945 the Constitution was amended to give the legislature power to create a pardoning board. *See* Idaho Const. art. IV, § 7.

Governor appoints chair. Commission members may be removed by Governor for any reason.

- *Eligibility:* For non-violent offenses (both felony and misdemeanor), three years after completion of sentence, five years for violent and sex offenders. *See* Idaho Code § 18-310(3). *See also* Commission Rules of Procedure at <http://www2.state.id.us/adm/adminrules/rules/idapa50/0101.pdf>. Firearms restoration always five years. Only persons convicted under Idaho law are eligible for a state pardon. *See* Idaho Const. art. IV, § 7.
- *Effect:* Pardon relieves state and federal firearms disabilities; welfare and employment disabilities imposed by state law or administrative regulation, e.g., health care provider, school bus driver.
- *Process:* Section 7 of the Idaho Constitution provides that no pardon shall be granted “except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.” *See* IDAPA § 50.01.01; *See also* Commission Rules of Procedure, *supra*. Pardon application assigned for investigation to a parole officer in area where applicant resides, who inquires into criminal history, reputation in the neighborhood, employment, and makes a recommendation to Board. *Id.* Board decides in executive session whether to have hearing. *Id.* If a hearing is granted, notice must be published pursuant to constitutional requirement, *supra*, and prosecutor and victims also notified so they may participate. *See* <http://www2.state.id.us/parole/>. All written material (ex. pre-sentence report and victim info) relating to the application becomes a matter of public record, including dissents, and are available from Secretary of State.
In cases where Governor retains final authority to pardon, Board conducts same full hearing and makes written recommendation to Governor; if no action within 30 days, application deemed denied.
- *Frequency of Grants:* Twenty to 30 applications received annually, of which about 2/3 are granted. Twelve pardons granted in 2004. Source: Idaho Commission of Pardons and Parole.
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B. Judicial sealing or expungement of adult felony convictions:

- Probationers: Idaho Code § 19-2601(4) provides for set-aside of conviction and dismissal of charges for persons sentenced to probation upon successful completion of sentence. The dismissal “shall have the effect of restoring the defendant to his civil rights,” Idaho Code § 19-2604(1), but does not seal or expunge the record.
- Sex Offenders: Idaho Code § 18-8310: Sex offenders may petition court after ten years of law-abiding conduct for “expungement” from sex offender registry.

C. Administrative Restoration:

- Firearms Restoration: For restoration may apply to Idaho Commission of Pardons and Parole no sooner than five years after final discharge, unless sentence enhanced for use of firearm, in which case no remedy is available. Idaho Code § 18-310(3).

III. Nondiscrimination in Licensing and Employment: N/A

Idaho has no general law regulating consideration of conviction in employment or licensure. It does apply a direct relationship test in connection with licensure as a veterinarian. *See* Idaho Code § 54-2103(23) (“In good standing” means that an applicant: (e) Has not been convicted of a felony . . .; and (f) Has no criminal conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine”).