

MAY 2, 2007

ILLINOIS

I. Automatic Restoration of Rights:

- **Vote:** Right to vote lost if convicted of a felony and sentenced to imprisonment, regained upon release. *See* Ill. Const. art. III, § 2 ("A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence."). (Note that disenfranchisement extends to misdemeanants sentenced to a prison term.) The election code provides that the right to vote shall be restored upon release from confinement. 10 Ill. Comp. Stat. 5/3.5. *See also* 730 Ill. Comp. Stat. 5/5-5-5(c).
- **Office:** The right to hold an office created by the state constitution (*e.g.*, any of the five statewide offices -- governor, lieutenant governor, secretary of state, treasurer, attorney general; a member of the state General Assembly; a judgeship; the chief education officer and a member of the state board of education) lost upon conviction, but automatically restored upon completion of sentence (excepting convictions for crimes involving election fraud). 5/5-5-5(b). The bar is permanent for "other elected offices," including alderman and mayor. 65 Ill. Comp. Stat. 5/3.1-10-5.
- **Jury:** Illinois law does not exclude convicted persons from jury service, nor is a prior conviction grounds for a juror challenge for cause, though jurors must to be "[f]ree from all legal exception, of fair character, of approved integrity, [and] of sound judgment." 705 Ill. Comp. Stat. 305/2. *See* John F. Decker, *Collateral Consequences of a Felony Conviction in Illinois*, 56 Chi.-Kent L. Rev 731, 741 (1980)(question whether a convicted person meets character standard must be decided on a case-by-case basis).
- **Executor:** A felony offender may not serve as executor of a will or administrator of an estate. 755 Ill. Comp. Stat. § 5/6-13(a), 5/9-1. *See In re Estate of Muldrow*, 799 N.E.2d 497 (Ill. App. 2003)(rational basis exists under the Probate Act for excluding convicted felons from serving as executors based on a felon's demonstrated inability to act within the confines of law, even if the felony conviction, "as applied" in particular case, is remote in time and the felon is able to demonstrate rehabilitation).
- **Licenses:** The Code of Corrections provides that "On completion of sentence of imprisonment or upon discharge from probation, conditional discharge or periodic imprisonment, or at any time thereafter, all license rights and privileges granted under the authority of this State which have been revoked or suspended because of conviction of an offense shall be restored unless the authority having jurisdiction of such license rights finds after investigation and hearing that restoration is not in the public interest." 730 Ill. Comp. Stat. § 5/5.5.5(d). This

provision does not apply to the suspension or revocation of a license to operate a motor vehicle. However, other more specific laws restrict licensure for certain professions. For example, the Child Care Act bars licensure and employment of individuals in child care facilities when they have been convicted of any of a long list of enumerated offenses. 225 Ill. Comp. Stat. 10/4.2. The Illinois Vehicle Code makes conviction of any of a long list of enumerated offenses a bar to licensure as a school bus driver. 625 Ill. Comp. Stat. 5/6-106.1.

II. Discretionary Restoration Mechanisms:

A. Pardon:

- *Authority*: The pardon power is vested in the Governor, although “the manner of applying therefore may be regulated by law.” Ill. Const. art. V, § 12. By statute, the Prisoner Review Board (PRB) serves as “the board of review and recommendation for the exercise of executive clemency by the Governor.” 730 Ill. Comp. Stat. 5/3-3-1(a)(3). The Board “shall hear and . . . decide all requests for pardon, reprieve or commutation, and make confidential recommendations to the Governor.” 5/3-3-2(a)(6). At the same time, “Nothing in this Section shall be construed to limit the power of the Governor under the Constitution to grant a reprieve, commutation of sentence, or pardon.” 5/3-3-13(e). The Supreme Court of Illinois has ruled that the constitution does not give the legislature authority to limit the Governor’s power to act in the absence of an application, and that in any event the legislature has not done so. *People ex rel. Madigan v. Snyder*, 804 N.E. 2d 546, 588 (2004).
- *Administration*: PRB consists of 15 members appointed by Governor, with advice and consent, no more than 8 of the same party. Chair appointed by Governor. Six-year terms, members serve full-time and may not do anything else. 730 Ill. Comp. Stat. 5/3-3-1(b). Board charged with duty to hear by at least one member and decide by at least three members all requests for pardon. 5/3-3-2(a)(6). PRB also hears and decides whether to grant certificates of relief from disabilities or certificates of good conduct (see below). 5/3-3-2(a)(9).
- *Eligibility*: No eligibility requirements for Illinois convictions; misdemeanants may also apply. Federal offenders and those convicted in another state are ineligible.
- *Effect*: A pardon removes the penalties and disabilities resulting from a conviction and restores individual to all his civil rights. *People v. Glisson*, 358 N.E.2d 35 (Ill. App. Ct. 1976), *aff’d in part, rev’d in part on other grounds*, 372 N.E.2d 669 (Ill. 1978). A pardon does not authorize judicial expungement, unless provided in the terms of the pardon. 20 Ill. Comp. Stat. 2630/5(c). See *People v. Thon*, 319 Ill.App.3d 855 (2001).
- *Process*: 730 Ill. Comp. Stat. 5/3-3-13. Notice of the proposed application shall be given by the Board to the committing court and the state’s attorney of

the county where the conviction was had. The Board is required to meet to consider clemency petitions at least four times each year. The Board shall, if requested and upon due notice, give a hearing to each application, allowing representation by counsel, if desired, after which it shall confidentially advise the Governor by a written report of its recommendations which shall be determined by majority vote. All cases are sent to the governor with a recommendation. Guidelines *available at* <http://www.state.il.us/prb/docs/exclemexg.pdf>. The statute expressly provides that:

"Nothing in this Section shall be construed to limit the power of the Governor under the constitution to grant a reprieve, commutation of sentence, or pardon." 730 Ill. Comp. Stat. 5/3-3-13(e). The Illinois Supreme Court has held that the Governor's constitutional power does not depend upon an application being filed. *People ex rel. Madigan v. Snyder*, 804 N.E. 2d 546, 588 (2004).

- *Frequency of Grants:* The Board receives about 500-600 petitions for pardon per year – about 30% are from misdemeanants. Every applicant is given the opportunity for a hearing. As of December 2006, after four years in office, Governor Blagojevich had granted 63 pardons, including four for innocence, and denied 833. At that time, close to 1000 cases were awaiting decision by the Governor. Source: Illinois Prisoner Review Board. *See also* PRB website, <http://www.state.il.us/prb/prbexclemex.htm>:

Executive clemency petitions filed with the Board for hearing and recommendation to the Governor have increased in recent years. The average size of the Board's quarterly clemency public docket hearing was 35 cases in 1990. In 1993, the average number of cases considered quarterly was 90. The average number in 2003 was approximately 400 cases per quarter, including commutation applications. In 1994, the Board initiated more restrictive petitioning requirements mandating unsuccessful petitioners to wait for one year before filing a repeat petition, absent compelling new information. Clemency requests may stay at a relatively high level, because inmates serving determinate sentences now have no opportunity for parole and must serve the sentence imposed by the courts, unless the Governor grants them release through his constitutional executive clemency powers.

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B. **Judicial sealing and expungement:** In Illinois, the only records that can be *expunged* are those in which a pardon specifically authorizes expungement (ordinarily pardons for innocence); arrests that resulted in acquittal or dismissal; and convictions “set aside on direct review or on collateral attack and the court determines by clear and convincing evidence that the defendant was factually innocent.” 20 Ill. Comp. Stat. 2630/5(c), (c-6). Under 2004 legislation, certain misdemeanor and minor non-violent felony convictions are eligible for “sealing” upon petition after an eligibility waiting period (three years after completion of sentence in the case of misdemeanor supervision, and four in the case of conviction), no further crimes have been committed. 2630/5(h)(2) and (3). Court must notify of eligibility for sealing. 2630/5(h)(6). Procedure for sealing includes notice to DA, and a hearing upon objection. 2630/5(h)(7). Sealed records are still accessible by law enforcement and can be considered in the context of a statutorily required background check. Sealing authority under this statute was extended to three Class 4 non-violent felonies (low-level drug possession and prostitution) by PA 93-1084, signed into law in February 2005. Department of Corrections directed to conduct a study of the impact of sealing, especially on employment and recidivism rates. 2630/5(i).

Effect of expungement and sealing: With certain exceptions, an expunged or sealed record “may not be considered by any private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration.” 2630/12(a). Exceptions are law enforcement, prosecutors, Department of Corrections. *Id.* Employers may not ask if an applicant has had records expunged or sealed, and applications for employment “must contain specific language which states that the applicant is not obligated to disclose sealed or expunged records of conviction or arrest.” *Id.* Sealed and expunged records must be retained by the state police, and may be disseminated only to law enforcement, or “as otherwise specifically required or authorized by a federal or State law, rule, or regulation that requires inquiry into and release of criminal records.” 2630/13(a).

Judicial Certificate of Discharge: Upon discharge from incarceration or parole or probation, “or at any time thereafter,” the committing court may enter an order “certifying” that the sentence has been satisfactorily completed, “when the court believes it would assist in the rehabilitation of the person and be consistent with the public welfare.” 730 Ill. Comp. Stat. 5/5-5-5(e). Such order may be entered upon the motion of the defendant or the State or upon the court's own motion. *Id.* Upon entry of the order, the court “shall issue to the person in whose favor the order has been entered a certificate stating that his behavior after conviction has warranted the issuance of the order.” 5/5-5-5(f). Summary Note following after section 5/5-5-5, P.A. 77-2093, explains that “The order entered on motion of the court will serve as a good conduct discharge which can be used by the former offender as a sign to prospective employers and others that he has paid his debt to society.”

Deferred Adjudication for First Offenders: Under 720 Ill. Comp. Stat. 570/410 (formerly “section 1410”), the court may defer adjudication for first-time drug offenders, and place them on 24-months probation with various conditions of reporting and treatment. Upon successful completion of probation, the person is discharged and

the proceedings dismissed. “[D]ischarge and dismissal under this Section is not a conviction for purposes of this Act or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime,” though it may be used in subsequent criminal proceedings. Shall be treated as a class 4 felony for purposes of sealing under 20 Ill. Comp. Stat. 2630/5(h). Other deferred adjudication provisions for marijuana in 720 Ill. Comp. Stat. 550/10 (formerly “section 710”).

C. Administrative Restoration:

- *Certificate of Relief from Disabilities* and *Certificate of Good Conduct*, 730 Ill. Comp. Stat. 5/5-5.5-5 *et seq.* Eligibility for either form of certificate limited to persons with no more than two non-violent felony convictions (but not prostitution or any other sex-related offenses). Persons convicted outside the state and federal offenders are also eligible. The purpose of the CRD is to facilitate licensing in 27 specified areas. Like the New York CRD, on which it was modeled, it creates an enforceable “presumption of rehabilitation” that must be given effect by a licensing board. The purpose of the CGC is simply to evidence an offender’s rehabilitation, and it appears to have no independent legal effect.
 - *Certificate of Relief from Disabilities*: Effective January 1, 2004, sentencing court (for someone who did not receive a prison sentence) or the Prisoner Review Board (for someone who did) may issue a Certificate of Relief from Disabilities (CRD) to eligible offenders with no more than two felony convictions, either at the time of sentencing or upon satisfactory completion of sentence, when it is “consistent with the rehabilitation of the eligible offender” and with “the public interest.” 5/5-5.5-15, -20. A CRD does not prevent any court or administrative body from considering the conviction, nor does it preclude its use for impeachment. 5/5-5.5-10. Court may issue order at time of sentence, or at any time thereafter. Court may request investigation by probation or court services, and may hold hearing. PRB may issue certificate at time of release or at any time thereafter, and may subsequently enlarge any relief granted. Action of PRB must be unanimous by 3-member board. 5/5-5.5-20(e).
 - *CRD Effect on licensing*: The CRD authorized by 5/5-5.5-15 is given legal effect in 730 Ill. Comp. Stat. 5/5-5-5(Loss and Restoration of Civil Rights). Under 5/5-5-5(h) a person who has been awarded a CRD may not be denied a license in 27 specified fields solely on account of having been convicted, or by reason of finding a lack of “good moral character” when that finding is based on a previous conviction. 5/5-5-5(i). The licensing board must find that there is a “direct relationship” between the previous conviction and the license being sought or that issuing the license would involve “an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” 5/5-5-5(h). This section provides that in making the “direct relationship” determination, a licensing board must consider the extent of an offender’s rehabilitation, and the CRD creates a “presumption of rehabilitation.” More specifically, the licensing board “shall consider” the following factors:

- (1) the public policy of this State, as expressed in Article 5.5 of this Chapter, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;
- (2) the specific duties and responsibilities necessarily related to the license being sought;
- (3) the bearing, if any, the criminal offenses or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties and responsibilities;
- (4) the time which has elapsed since the occurrence of the criminal offense or offenses;
- (5) the age of the person at the time of occurrence of the criminal offense or offenses;
- (6) the seriousness of the offense or offenses;
- (7) any information produced by the person or produced on his or her behalf in regard to his or her rehabilitation and good conduct, including a certificate of relief from disabilities issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified in the certificate; and
- (8) the legitimate interest of the licensing agency in protecting property, and the safety and welfare of specific individuals or the general public.

At the same time, the fact that an individual has received a CRD does not preclude a licensing board from relying on the conviction “as the basis for the exercise of its discretionary power” to suspend or deny the license. 5/5-5.5-10.

The Department of Professional Regulation is required to report to the Governor and General Assembly each year the number of people with criminal records who applied for licenses, both with certificate of relief from disabilities and without, and the numbers of licenses granted and rejected. 5/5-5.5-50. In lifting occupational bars, the law gives first felony offenders access to licenses in fields which current legislation presumes denial of licensure, including those related to animal welfare, athletic training, cosmetology, boxing, interior design, land surveying, marriage and family therapy, professional counseling, real estate, and roofing. Certificate is not to be deemed a pardon. 5/5-5.5-45.

- ***Certificate of Good Conduct:*** Prisoner Review Board may issue Certificate of Good Conduct (CGC) to eligible offenders after a waiting period of one year to three years, determined by the most serious offense, when offender “has demonstrated that he or she has been a law-abiding citizen and is fully rehabilitated.” 5/5-5.5-25(a), -30(c). The waiting period is one year for misdemeanors and three years for felonies, and begins to run upon release from custody or payment of fine, whichever is later. A CGC does not prevent any court or administrative body from considering the conviction, nor does it preclude its use for impeachment. 5/5-5.5-25(b) and -30(c). The purpose of the CGC is to evidence rehabilitation for employment and other purposes, and it appears to have

no independent legal effect. (Unlike the New York CGC, it does not create an enforceable “presumption of rehabilitation” in the same way that the CRD does.)

Comment: In December 2005 the Prisoner Review Board submitted regulations for implementing the certificate program to the legislature’s Judicial Committee on Administrative Rules. As of January 2007, final regulations had not been issued. According to a report from the Safer Foundation, which has been instrumental in the development of the certificate program, as of June 2006 the PRB had issued 38 CRDs, and the courts three. Safer Foundation, “Certificates of Relief from Disabilities Implementation and Tracking” (November 2006).

- **Firearms:** Firearm privileges lost upon a felony conviction may be restored by the Department of State Police. 720 Ill. Comp. Stat. 5/24-1.1(a). The State Police will grant relief if: (1) the applicant has not been convicted of a “forcible felony” within the preceding 20 years or 20 years have passed since release from imprisonment for that offense; (2) he is not likely to act in a manner dangerous to public safety; and (3) restoration of firearm privileges would not be “contrary to the public interest.” 430 Ill. Comp. Stat. 65/10(c).

III. Nondiscrimination in occupational licensing and employment:

In general, Illinois limits consideration of conviction in connection with occupational licensing only for certain employments, and only where a person has received a certificate of rehabilitation. *See* Part IC, *supra*, for Certificates of Rehabilitation, 730 Ill. Comp. Stat. 5/5.5.5. In addition, the Illinois Human Rights Act prohibits “discrimination” in employment based on criminal history only where records have been ordered expunged, sealed or impounded. 775 Ill. Comp. Stat. 5/2-103. A claim of racial discrimination has also been sustained under this law where a criminal conviction was the articulated basis for a refusal to hire. *See Bd. of Trs. v. Knight*, 516 N.E.2d 991 (Ill. App. Ct. 1987)(no business necessity justified denial of employment as university police position to person convicted of single misdemeanor weapons charge; mitigating circumstances existed including time passed since conviction and record of responsible employment). Moreover, this provision allows the consideration of such records where “authorized by law,” and thus background check laws and laws barring those convicted of offenses from employment trump the protections of this act. Finally, this act specifically allows employers to obtain and use “other information which indicates that a person actually engaged in the conduct for which he or she was arrested.” 775 Ill. Comp. Stat. 5/2-103.

Several licensing schemes incorporate a “direct relationship” test. *See* 225 Ill. Comp. Stat. 450/20.01(Public Accounting Act)(“The Department may refuse to issue or renew, or may revoke, suspend, or reprimand any license or licensee . . . [for] (4) being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of public accounting”); 225 Ill. Comp. Stat. 335/9.1 (roofer’s license)(The Department may refuse to issue or revoke license for “conviction of any crime under the laws of any U.S. jurisdiction which is a felony or which is a misdemeanor, an essential element of which is dishonesty, or of any crime which directly

relates to the practice of the profession”). The latter formulation is also used for acupuncturists, 225 Ill. Comp. Stat. 2/110(a)(2), collection agencies, 225 Ill. Comp. Stat. 425/9, and radon detection, 420 Ill. Comp. Stat. 44/45.

Waivers under the Illinois Health Care Background Check Act, 225 Ill. Comp. Stat. 46/40. The law governing the hiring of health care workers who are not subject to other licensing requirements requires criminal background checks, and while it disqualifies individuals from employment upon conviction of a long list of crimes, it permits a waiver by the agency that oversees the type of facility applicant is interested in working, and requires action on the waiver application within 30 days. The statute sets forth nine mitigating circumstances (*e.g.*, the age of the person when the crime was committed, the circumstances surrounding the crime, the length of time that has passed since the crime, the person’s work history and references) for the agencies to consider in granting a waiver, and each agency sets its own procedures for granting waivers. At least two of the agencies have adopted a two-tiered procedure for reviewing waiver applications. *See* Linda Mills, Illinois Prisoner Reentry: Building a Second Chance Agenda, Annie E. Casey Foundation 141-145 (July 2004). Agency staff are authorized to grant waivers that apply to the less serious offenses listed in the act, and the agency director reviews applications involving the most serious violent offenses (including murder). Neither the state law nor agency rules set forth any offense that bars a waiver. However, a waiver does not guarantee employment; it only *allows* the employment of an individual with a waiver by any of the facilities regulated by the agency that issued the waiver. *Id.* Two agencies released their records of actions taken on waiver applications in connection with a request made by Linda Mills for her study of prisoner reentry issues for the Annie E. Casey Foundation, *supra*. The Department of Human Services granted 77% of waiver requests received over an eight year period between 1995 and 2003, including at least one waiver to an individual convicted of murder. Of the 289 waivers granted by DHS over that period, only one person was later charged with abuse of a patient – and that person had only a conviction for retail theft. The Department of Public Health received 6,581 waiver requests from 1996 through 2003. Of those, 875 had no disqualifying convictions (this is due, according to the DPH to name matches that are not actual person matches). Of the 5,706 with actual convictions, 4,130 (72.4%) were granted waivers. Of those, 97 (2.3%) waivers were later revoked, with 38 of the revocations due to a subsequent finding of patient abuse, neglect or theft, and 59 due to a subsequent disqualifying conviction. DPH also has been generous with its waivers of the most serious, recent or violent offenses that need director approval. Over the 21-month period from December 2002 and August 2004, 134 director waivers were sought (approximately 16% of all waiver request during this period), and of those requests, 86 (64.2%) were granted.

Chicago Reentry Initiative: In May 2004, Mayor Richard Daley created the Mayoral Policy Caucus on Prisoner Reentry, bringing together government and community leaders to address the challenges facing 20,000 people each year who return to Chicago after being released from prison. In January 2006, the Caucus issued a major report calling for broad ranging reforms of City policy. With regard to city hiring, the report recommended that the Mayor "Adopt internal guidelines for the City of

Chicago's personnel policies regarding criminal background checks, and advocate for fair employment standards." At the same time that the report was released, Mayor Daley announced several major "reentry" initiatives, including reform of the City's hiring policies as recommended by the Caucus. The Mayor's press release described a new hiring policy requiring the City to "balance the nature and severity of the crime with other factors, such as the passage of time and evidence of rehabilitation Put more simply, this change means that City hiring will be fairer and more common sense." The Mayor added, "Implementing this new policy won't be easy, but it's the right thing to do . . . We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches." Implementing the Mayor's new hiring policy, the City Department of Human Resources has issued guidelines imposing standards on all city agencies regulating hiring decisions related to people with criminal records. For the first time, the City of Chicago now requires all agencies to take into account the age of an individual's criminal record, the seriousness of the offense, evidence of rehabilitation, and other mitigating factors before making their hiring decisions.

The Report of the Reentry Policy Caucus and the Mayor's press release can be found at: http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?contentOID=536936517&contentType=COC_EDITORIAL&topChannelName=Dept&blockName=Mayors+Office%2FI+Want+To&context=dept&channelId=0&programId=0&entityName=Mayors+Office&deptMainCategoryOID=

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