

MARCH 9, 2007

## INDIANA

### I. Automatic Restoration of Rights:

The Indiana Constitution authorizes the legislature to pass laws disenfranchising, and “rendering ineligible,” any person convicted of an “infamous crime.” Ind. Const. art. 2, § 8. Pursuant to this authority, Indiana law provides that a person who has been imprisoned following conviction of a “crime” may not vote until release from incarceration or other lawful detention. Ind. Code § 3-7-13-4. The terms “infamous crime” and “crime” have been interpreted to refer only to felonies. *See Taylor v. State Election Bd.*, 616 N.E.2d 380 (Ind. Ct. App. 1993)(criminal recklessness is felony offense punishable by imprisonment for term of years, and thus qualifies as an “infamous crime” for which disenfranchisement is permitted). *See also Wilson v. Montgomery County Election Board*, 642 N.E. 2d 258 (Ind. Ct. App. 1994)(federal offense that could result in imprisonment for more than one year was “infamous crime” resulting in disenfranchisement).

A person “under a sentence imposed for an offense” is disqualified from jury service; right to serve as a juror automatically restored upon completion of sentence, including any period of parole. § 33-28-4-8(b).

A person convicted of a felony is disqualified from holding or being a candidate for elected office. § 3-8-1-5(b)(3). A person convicted of misdemeanor violations of laws against bribery, conflict of interest, and official misconduct is ineligible at direction of sentencing court to hold office of profit or trust for a period not to exceed 10 years. § 35-50-5-1.1(a). Disabilities affecting the right to hold office, and firearms rights, are only removed by pardon.

### II. Discretionary Restoration Mechanisms:

#### A. Executive pardon:

- *Authority:* The constitution gives pardon power to governor, “subject to such regulations as may be provided by law.” It also authorizes the legislature to create a “council composed of officers of state, without whose advice and consent the Governor may not grant pardons.” Ind. Const. art. 5, § 17. In 1980, the legislature abolished the Commission on Clemency, and gave the Parole Board authority to review applications and make advisory recommendations to the governor. *See* Ind. Code §§ 11-9-2-1 to 11-9-2-3. While there is a statutory requirement that all applications for pardon be filed with the Board, § 11-9-2-1, there is also a specific disclaimer of any intent to limit the constitutional power of the Governor. § 11-9-2-3.\* The

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\* The statutory requirement that all applications for clemency be filed with the Parole Board has evidently not been interpreted in practice as a limitation on the governor’s power to pardon without consulting the board. *See* “Frequency of Grants” section in Part IIA.

constitution requires the governor to report to the legislature his pardons at next scheduled meeting. Ind. Const. art. 5, § 17.

- *Administration:* Parole Board consists of five members appointed by governor to four-year terms. No more than three from same party. Ind. Code § 11-9-1-1(a). Full-time salaried employees.
- *Eligibility:* Recent governors have required a 5-year waiting period and evidence of rehabilitation. A person convicted under the laws of another state or by the federal government is ineligible for a pardon.
- *Effect:* The Indiana Supreme Court has held that pardon essentially wipes out guilt, and automatically becomes grounds for judicial expungement. *Kelley v. State*, 185 N.E. 453 (Ind. 1933). *See also State v. Bergman*, 558 N.E.2d 1111 (Ind. Ct. App. 1990). A pardon removes firearm disabilities, except for crimes against the person, only if 15 years have passed since the time of the offense and application. Ind. Code § 35-47-2-20(a). In addition, a pardon may be issued that is conditional upon a determination by the Superintendent of State Police that the person is “likely to handle handguns in compliance with the law.” § 11-9-2-4. If that determination is made in conjunction with such a conditional pardon, the firearms disability is removed. §§ 11-9-2-4, 35-47-2-20(b).
- *Process:* The governor in recent years has relied upon the Parole Board for all pardon investigations and generally accepts its recommendations. Applications are filed in the first instance with the Parole Board. By statute Board must 1) notify victim, sentencing court, and prosecuting attorney; 2) conduct an investigation; and 3) conduct a hearing at which the petitioner and other interested parties are given an opportunity to present their position. Ind. Code § 11-9-2-2(b). Whenever the Parole Board is conducting an inquiry, investigation, hearing, or review, it may delegate that function to one or more members of the Board. § 11-9-1-3(a). If one or more member acts on behalf of the Board, he or she may exercise all the powers of the Board except the power to render a final decision. § 11-9-1-3(b). Upon completion of the inquiry, the member acting on behalf of the Board files the complete record of the proceedings together with his or her findings, conclusions, and recommended decision. Based upon the record and the findings, conclusions, and recommendations, the Board renders a final decision. *Id.* In making its recommendation to the governor, the board *must* consider: “1) the nature and circumstances of the crime for which the offender is committed, and the offender’s participation in that crime; 2) the offender’s prior criminal record; 3) the offender’s conduct and attitude during commitment; and 4) the best interests of society.” Ind. Admin. Code tit. 220 r. 1.1-4-4(d). Additionally, in making its recommendation to the governor, the board *may* consider other issues relating to the offender and his rehabilitation. tit. 220 r. 1.1-4-4(e). Process takes six to eight months to complete.

- *Frequency of Grants:* In the five-year period between 1997 and 2002, 241 people applied for pardon, and 87 were granted. In 2003, 25 pardons were granted; in 2004, 17 pardons. A high percentage of those who apply are granted. In 2004, two death sentences were commuted to life without parole, one on the recommendation of the Parole Board and one by the Governor without consulting the Board. Few commutations granted since 1989, since courts have sentence modification authority and prison administrators have generous good time authority. Source: Indiana Parole Board.
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B. Judicial expungement of adult felony convictions: Available only after pardon (*see* discussion above). *See also* administrative sealing discussion below.

Ind. Code §§ 12-23-6-1, 12-23-7-1, and 12-23-8-1 authorizes treatment instead of prosecution or imprisonment for drug abusers and alcoholics charged with or convicted of felonies under certain circumstances. (Conviction evidently remains on the record.) § 33-39-11-7 authorizes a prosecutor to defer prosecution of misdemeanants, with conditions.

*Nonconviction records* may be expunged only where (1) an individual is arrested but no criminal charges are filed against the individual; or (2) all criminal charges filed against an individual are dropped because of mistaken identity or non probable cause. Ind. Code § 35-38-5-1.

C. Administrative

- *Limited sealing:* Fifteen years after discharge from probation, imprisonment, or parole (whichever is later), a felony offender may petition the state police department to limit access to his criminal history to criminal justice agencies. Ind. Code § 35-38-5-5. Records remain available in a variety of situations, including if a person has applied for law enforcement employment, is running for office, or has volunteered services to social services agency involving contact with children. § 10-13-3-27(a). In addition, records remain available to federally chartered or insured banking institutions, and to officials of state and local government for purposes of employment or licensing.

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

Except for serious drug offenses, “a license or certificate of registration that an individual is required by law to hold to engage in a business, profession, or occupation may not be denied, revoked, or suspended because the applicant or holder has been convicted of a crime.” Ind. Code §25-1-1.1-1. The acts resulting in

conviction “may, however, be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity.” *Id.* The purpose of this provision, which forbids agencies to use felony or misdemeanor convictions as the sole basis for denial of a license application, is to require that the nature of the acts underlying a prior conviction be explored and that these acts be related to both a specific statutory requirement and to the occupation or profession for which a license is sought. *Ind. Bd. Registration and Ed. for Health Facility Adm’rs v. Cummings*, 387 N.E.2d 491 (Ind. Ct. App. 1979). Drug offenses are excepted from this requirement, *see* § 25-1-1.1-2, and certain serious drug offenses are grounds for mandatory revocation or denial. *See* § 25-1-1.1-3. Under Rule 13 of the Indiana Rules for Admission to the Bar and Discipline of Attorneys, persons convicted of a felony are ineligible to sit for the bar. No provisions on public or private employment.