

APRIL 25, 2007

## MARYLAND

### I. Automatic Restoration of Rights:

Civil rights: The Maryland Constitution authorizes the General Assembly to disqualify persons from voting who are convicted of “infamous or other serious crime.” Md. Const. art. I, § 4. As of July 1, 2007, disenfranchisement limited to persons convicted of a “felony and . . . awaiting or actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, imposed for the conviction.” Md. Code Ann., Election Law, § 3-102(b)(1).<sup>\*</sup> Once restored to the franchise, convicted persons also regain the right to hold office.

Jury: Persons not qualified if convicted of a crime punishable by imprisonment exceeding 6 months, and sentenced to more than 6 months imprisonment. Md. Const. art. I, § 12; Md. Code Ann., Courts and Judicial Proceedings, § 8-103(b)(4). Restored through pardon. § 8-103(c).

Firearms: Maryland prohibits persons convicted of a “disqualifying crime,” which includes any felony and “a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years,” from possessing a “regulated firearm.” Md. Code Ann. §§ 5-101(g), 5-133(b)(1), (b)(2). Relief only through pardon.

Employment: An examination of the Maryland code and regulations by the Homeless Persons Representation Project (“Ex-Offenders and Employment: A Review of Maryland’s Public Policy and a Look at Other States,” December 2001, rev. June 2002)(<http://www.altrue.net/altrue/site/files/hprp/publications/abell%20final.pdf>), documents a number of situations in which people with convictions are barred by law from certain employments and occupations. For example, persons convicted of certain crimes are barred from employment in schools (crimes of violence); respite care or personal care (moral turpitude or theft); and dependent care

---

<sup>\*</sup> Prior to enactment of the 2007 Voting Registration Protection Act, only first offenders could regain the vote after completion of sentence. Recidivists were required to wait three years after completion of sentence, and people convicted of two or more crimes of violence were permanently disenfranchised unless pardoned. Persons convicted of bribery, attempted bribery, or buying or selling votes, whether felony or misdemeanor, were permanently disenfranchised and disqualified from holding office, unless pardoned. Passage of the 2007 Act also obviated the confusion historically surrounding the constitutional term “infamous or other serious crime,” which has been held to include some misdemeanors that were regarded as crimes of moral turpitude under the common law, such as perjury. The most recent list of disqualifying offenses issued by the Office of the Attorney General, dated July 2004, was 21 pages long and included as “infamous crimes” a large number of offenses that appear at least potentially to be misdemeanors. *See also Theiss v. State Admin. Bd. Of Elec.*, 387 F. Supp. 1038, 1040 n. 3 (D. Md. 1974)(1973 “laundry list” includes shoplifting, “child abuse,” and “various offenses relative to prostitution).

(conviction record indicating behavior “potentially harmful”). Persons with felony and misdemeanor convictions are barred from positions as uniformed correctional officer if crime involved violence. Conviction of any crime involving incarceration is disqualifying for a ten-year period following release. A comprehensive catalogue of collateral consequences for Maryland offenders is contained in the study produced by the University of Maryland School of Law Reentry of Ex-Offenders Clinic, “A Report on Collateral Consequences of Criminal Convictions in Maryland” (October, 2004).

## II. Discretionary Restoration Mechanisms:

### A. Pardon:

- *Authority*: The pardon power is vested in the Governor, except in cases of impeachment. Md. Const. art. II, § 20. Constitution requires Governor to publish notice in one or more newspapers of earliest date he will grant pardon, and to report to the legislature each grant and reasons therefore. *Id.*
- *Administration*: The Maryland Parole Commission is responsible for investigating and advising about pardon applications if requested by the Governor, but its advice is not binding. Md. Code Ann., [Correctional Services] § 7-206(3)(ii). Parole Commission consists of 10 members appointed to six-year terms by the Secretary of Public Safety and Correctional Services. § 7-202. Full-time salaried employees, subject to removal only for cause by the Secretary (with concurrence of Governor). *Id.*
- *Eligibility*: Md. Regs. Code tit. 12, § 08.01.16(C) provides that “Proof of successful completion of any parole or probation, or both, which may have been imposed, plus a reasonable length of satisfactory adjustment in the community beyond the maximum expiration date of sentence, is preferred for a favorable pardon recommendation.” Under informal Parole Commission rules, applicants with felony convictions must have 10 crime-free years to be eligible (or seven in Parole Commission discretion); misdemeanants must have five crime-free years. Twenty-year wait for crime of violence and for controlled substances violations (or 15 if waiver granted). *See* Parole Commission “Frequently Asked Questions” about pardon, Question #6 at <http://www.dpscs.state.md.us/aboutdpscs/FAQmpc.shtml>. The factors that the Board considers in connection with a petitioner's request for a pardon are the nature and circumstances of the crime, the effect of a pardon on the victim and community, the sentence given, other anti-social behavior of the petitioner, subsequent rehabilitation of the petitioner, the age and health of the petitioner, and the reason the pardon is needed. *Id.*, Question #7. According to the Parole Commission, a person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon.
- *Eligibility II*: A pardon may be available where an individual as been charged with a crime but not convicted: “The decision to pardon certain individuals has arisen when an individual is charged and a nolle prosequi is entered or the

charge is steted. This has proven especially helpful for individuals who wish to obtain security clearance (and, thus, maintain their jobs) under the new Homeland Security/TSA rules that govern airport employees (apparently, a nolle prosequi under those guidelines is tantamount to a ‘conviction’).” In such cases there is no eligibility period. E-mail from Chrysovalantis “Chrys” P. Kefalas, Deputy Counsel, Governor’s Office, June 10, 2005.

- *Effect:* Pardon lifts all disabilities and penalties imposed because of the conviction. Firearms privileges must be separately restored in pardon document.
- *Process:* Applications for pardon are submitted to the Maryland Parole Commission. The Commission determines if the applicant is eligible according to Maryland guidelines. If eligible, the Commission directs the Division of Parole and Probation to conduct an Executive Clemency investigation on the petitioner. Md. Regs. Code tit. 12, § 08.01.16(B). Once that investigation is completed, the case returns to the Commission for its review and recommendation. The application, the Division of Parole and Probation investigation report, and the Commission’s recommendation are then submitted to the Governor’s Legal Counsel for review. The Governor may choose to accept, modify, or reject the Commission’s recommendation. For purposes of effectuating a pardon, the Governor must issue a written executive order under the great seal. In addition, the Maryland constitution requires the Governor to “give notice, in one or more newspapers, of the application made for pardon, and of the day on, or after which, his decision will be given.” Md. Const. art. II, § 20.
- *Standards:* The Commission considers the following factors in connection with a petitioner’s request for a pardon: (1) the nature and circumstances of the crime; (2) effect of a pardon on the victim and community; (3) the sentence given; (4) the other anti-social behavior of the petitioner; (5) the subsequent rehabilitation of the petitioner; (6) the age and health of the petitioner; and (6) the reason the pardon is needed. According to a press release issued in 2003, Governor’s Legal Counsel considers: (1) nature and circumstances of offense; (2) effect that a pardon would have on community, victim, and public safety; (3) petitioner’s criminal history; and (4) the reason clemency is requested. See [http://www.gov.state.md.us/pressreleases/2003/082903\\_clemency.html](http://www.gov.state.md.us/pressreleases/2003/082903_clemency.html).
- *Frequency of Grants:* Current governor Robert L. Ehrlich, Jr. inherited 350 pending pardon applications when he took office in January 2003. Between August 2003 and March 2006 Governor Ehrlich granted 150 pardons and denied 135 applications, and continued a number of others. (Also, he granted fifteen commutations and two medical paroles during that period.) Governor Ehrlich considers pardon applications on a regular basis, reviewing about 20 cases each month, and issues pardons every two or three months. Source: Office of the Governor.
- *Contacts:*

David R. Blumberg, Chair, Maryland Parole Commission  
 dblumberg@dpscs.state.md.us;  
 Chrysovalantis “Chrys” P. Kefalas, Deputy Counsel, Governor’s Office  
 ckefalas@GOV.STATE.MD.US

B. Judicial sealing or expungement of adult felony convictions:

- *Probation before Judgment (“PBJ”)*: Subject to the provisions of the Maryland sentencing guidelines, court may defer judgment and place a defendant on probation subject to reasonable conditions, if (i) the court finds that the best interests of the defendant and the public welfare would be served; and (ii) if the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea. Md. Code Ann., Crim. Proc. § 6-220(b)(1). Terms of probation may include payment of fine or restitution, or participation in treatment program. If probation successfully completed, court shall discharge the defendant from probation without judgment of conviction, and such discharge “is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime,” § 6-220(g). Person discharged from probation may petition court for expungement of police and court records relating to the charges after a three-year waiting period, as long as the petitioner has no subsequent offense that involved possible sense of imprisonment. §§ 10-105(a), (c)(2)(ii). A PBJ sentence, if expunged, may not be used to enhance subsequent sentence. *See U.S. v. Bagheri*, 999 F. 2d 80 (4<sup>th</sup> Cir. 1993). *See* “Effect” below.
- *Motion for Modification*: Under Md. Rule 4-345, court has revisory power over a sentence for five years from the date the sentence originally was imposed, and may upon motion reduce a sentence to probation before judgment, so as to make a defendant eligible for expungement under Md. Code Ann., Crim. Proc. § 10-105(a)(3).
- *Expungement*: In addition to expungement of the record of a case in which probation before judgment has been entered (see above), non-violent first offenders who have been pardoned may also petition for expungement, ten years after the pardon was issued. Md. Code Ann., Crim. Proc. § 10-105(a)(8). Non-conviction records (acquittals, nolle prosequis, dismissed charges, PBJ) may be expunged by the court upon petition after a three-year waiting period. § 10-105(a) and (c). Expungement shall be granted upon determination of eligibility. § 10-105(e)(2). The State’s attorney is a party to the proceeding, and an expungement order may be appealed. § 10-105(g). Police records of arrests not leading to charges may be expunged under § 10-103(b)(2).
- *Effect*: A record that has been expunged may be opened only upon court order, with notice to person concerned and a hearing, or upon ex parte application by the states attorney and a showing of good cause (including that the record is needed by law enforcement). Md. Code Ann., Crim. Proc § 10-108(a) through (c). Violation a misdemeanor violation. § 10-108(d). A person may not be required

to disclose a non-conviction record that has been expunged, or a record expunged because of a pardon. § 10-109. An employer may not seek information about an expunged conviction, and it may not be used to deny employment or licensure. *Id.*

- *Nuisance offenses:* Legislation passed by the Maryland legislature in the spring of 2005 would have added certain minor nuisance crimes to the list of offenses that could be expunged, three years after completion of sentence. *See* proposed § 10-105(a)(9), H.B. 33204, 2005 Leg. 42th Sess. (Md. 2005). This legislation was vetoed by Governor Ehrlich on May 20, 2005. *See* veto message at [http://www.governor.maryland.gov/billvetoes/2005/message\\_HB607.html](http://www.governor.maryland.gov/billvetoes/2005/message_HB607.html):

The law does [already] provide the exception for a gubernatorial pardon that would apply to a single conviction of those crimes listed in House Bill 607. Accordingly, I have implemented a procedure to review all requests for pardons. The materials presented include a review of the circumstances of the crime, the person's behavior following the conviction, the reasons for seeking a pardon, the opinion of any victim, and recommendations by those involved with the case within the criminal justice system. Under appropriate circumstances I believe that individuals are entitled to a second chance, and I have not been reluctant to act accordingly. I believe the best approach is to consider such requests on a case-by-case basis and not through a blanket process of expungement.

C. Administrative certificate: N/A

### III. **Nondiscrimination in occupational licensing and employment:**

No general nondiscrimination statute. However, under state law, conviction information that is older than seven years cannot be reported to a third party, if the job is expected to pay less than \$20,000. Md. Code Ann., Com. Law § 1203(a)(5).