

MARCH 10, 2007

MICHIGAN

I. Automatic Restoration of Rights:

Civil rights: A person who has been convicted and sentenced “for a crime for which the penalty imposed is confinement in jail or prison” is disqualified from voting “while confined.” Mich. Comp. Laws § 168.758b. *See also* Mich. Const. art. 2, § 2A. Disqualification while confined applies to misdemeanants. *See U.S. v. Wegrzyn*, 305 F. 3d 593 (6th Cir. 2002). A person on probation or parole is not considered “confined.”

A person convicted of a felony is permanently disqualified from jury service unless conviction is pardoned or expunged. Mich. Comp. Laws § 600.1307a(1)(e).^{*} Some disqualifications from office expire after a certain period, *see, e.g.*, Mich. Const. art. 4, § 7 (person convicted of breach of public trust within last 20 years ineligible for either house of legislature), and some are permanent, *see, e.g.*, Mich. Comp. Laws § 750.118 (public officer who accepts a bribe is forever disqualified from public office).

Firearms: Under Mich. Comp. Laws § 750.224f(4), firearms disability is removed three years after completion of all the terms of the sentence, including probation or parole, except that persons convicted of a “specified felony” ((involving the use of force and distribution of controlled substances) remain subject to the disability until 1) five years after the completion of the sentence and 2) their firearm privileges have been restored pursuant to the procedure set forth in Mich. Comp. Laws § 28.424 (see below).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: The pardon power, except in cases of impeachment, is vested in the Governor, “subject to procedures and regulations prescribed by law.” He is required to inform the legislature annually of each pardon granted, “stating

* In 2002 conviction was made a permanent bar to jury service; previously a person was ineligible only while “under sentence for a felony at the time of jury selection.” *See* Mich. Comp. Laws § 600.1307a(1)(e)(2002), amended by P.A. 2002, No. 739. Court rules provided that a convicted person could be challenged for cause based on his conviction. Mich. Ct. R. 2.511(D)(2), 6.412(D). *See United States v. Driscoll*, 970 F.2d 1472 (6th Cir. 1992), *cert. denied*, 506 U.S. 1083 (1993) (upholding challenge for cause under Mich. Ct. R. 2.511(D)(2)). *But see Froede v. Holland Ladder & Mfg. Co.*, 523 N.W.2d 849, 851-52 (Mich. Ct. App. 1994) (disagreeing with Sixth Circuit’s conclusion in *Driscoll* that right to serve on a jury is not automatically restored upon completion of sentence); *People v. LeGrone*, 517 N.W.2d 270, 272 n.1 (Mich. Ct. App. 1994), *appeal denied*, 527 N.W.2d 520 (Mich. 1994) (raising question whether Mich. Comp. Laws § 600.1307a(1)(e) takes precedence over Mich. Ct. R. 2.511).

reasons therefor.” Mich. Const. art. 5, § 14. Governor required to obtain recommendation of Parole Board prior to deciding case, but is not bound by it. *See* Mich. Comp. Laws §§ 791.243, 791.244. *See also Rich v. Chamberlain*, 62 N.W. 584 (Mich. 1895) (statute providing that a board of pardons will investigate petitions for pardons and report to the governor with such recommendations as they deemed fit, and that the governor, on receipt of such report, might, as he deemed fit, grant or refuse the pardon, did not violate constitution). Governor must report to legislature annually of each pardon grant and the reasons for it. Mich. Const. art. 5, § 14.

- *Administration*: Parole Board composed of ten members appointed by the Director of the Department of Corrections, and subject to removal by him. Mich. Comp. Laws § 791.231a.
- *Eligibility*: No eligibility requirements. A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon.
- *Effect*: In *People v. Van Heck*, 651 N.W.2d 174, 178-79 (Mich. App. 2002), court analogized Michigan pardon to Connecticut’s: Michigan pardon ““reaches both the punishment prescribed for the offense and the guilt of the offender. It releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.”” (quoting *People v. Stickle*, 121 N.W. 497, 499 (Mich. 1909) (quoting *People ex rel. Forsyth v. Court of Sessions of Monroe County*, 36 N.E. 386, 388 (N.Y. 1894))).
- *Process*: Mich. Comp. Laws § 791.243 provides that all applications for executive clemency must be filed with the Parole Board. § 791.244 describes the procedure for investigating pardon applications, setting time limits on each stage. The Parole Board must initiate a review within 60 days of receiving an application for clemency, and shall make a full investigation and determination on whether or not to proceed to a public hearing within 270 days of receipt. When petitions come in they are reviewed by members of board; if interest by one member goes to full board, where six votes will take you to next step: input from prosecutor and other officials. Not later than 90 days after making a decision to proceed with consideration of a recommendation for clemency, board must conduct a public hearing, which is necessary before a formal recommendation of executive clemency is made.

At least 30 days before conducting the public hearing, provide written notice of the public hearing by mail to the attorney general, the sentencing trial judge, and the prosecuting attorney, or their successors in office, and each victim who requests notice pursuant to the crime victim's rights act. One member of the parole board may conduct the hearing, and the public shall be represented by the attorney general or a member of the attorney general's staff. If the parole board recommends executive clemency, it shall make all data in its files available to the governor. Except for medical records protected by the doctor-patient privilege of confidentiality, the files of the parole board in cases

under this section shall be matters of public record. The recommendation of the Board is a matter of public record.

According to the Board,

“When an application for pardon is received it is reviewed by each of the 10 Parole Board members and a vote of "interest" or "no interest" to proceed is made. If there is no interest the process takes a week or two. If there is an interest to proceed by a majority of the board, a public hearing is scheduled. Field Operations Administration staff do a limited investigation, including running a [criminal records] check. Appropriate parties (sentencing judge, prosecutor and Attorney General) are notified and the public hearing is conducted by a member of the Parole Board and a representative of the Michigan Attorney General. After the public hearing is held, the Parole Board re-convenes to vote the case. After all 10 members have voted, the recommendation of the majority is sent to the governor's office. In the instance where a public hearing is held the process would typically take two or three months from receipt of the application to a recommendation to the governor.”

- Frequency of Grants: In modern times, pardon grants in Michigan have been rare: since 1969, only 33 pardon applications have been approved by the various governors. The current governor has granted none since she took office in January 2003.* The Board has held no pardon hearings in the past two years, and no case has been recommended favorably. Notwithstanding this record, people continue to apply: in 2003, 44 pardon applications were received; in 2004, 82 applications; and through July, 2005, 71 applications. Source: Michigan Parole Board.
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B. Judicial sealing or expungement of adult felony convictions:

First offender set-aside – A first offender convicted under Michigan law may seek a court order setting aside his conviction five years after either imposition of sentence or completion of any term of imprisonment imposed, whichever is later. Mich. Comp. Laws § 780.621. This relief is available only to persons convicted of a single offense, the maximum punishment for which was less than life imprisonment, except for traffic offenses and certain sex offenses. Mich. Comp. Laws § 780.621(1)-(2). *See People v. Blachura*, 440 N.W.2d 1 (Mich. Ct. App. 1989)(person convicted of five counts of perjury ineligible since each count deemed a separate conviction). Set-aside discretionary with court, which must consider the “circumstances and behavior of the applicant” and whether “setting aside the conviction is consistent with the public welfare.” § 780.621(9). Upon entry of an order, individual “shall be considered not to have been previously

* Governor Granholm commuted five sentences in her first three years in office, all in medical cases.

convicted.” § 780.622(1). *See* Op. Mich. Att’y Gen., No. 7133 (2003) (person convicted of a felony whose conviction has been set aside by order of a Michigan court may not be denied a concealed pistol license).

Effect: Record becomes “non-public,” but remains accessible to law enforcement and judicial branch for a variety of purposes, including professional licensure by the judicial branch, and enhancement of a sentence in subsequent prosecution. § 780.623(2). Sex offenders must continue to register even if conviction set aside. *Id.* This statute is commonly referred to as the “general expungement statute,” though the effect of a set-aside under Michigan law is not considered to be not as broad as in some other states. *See, e.g., People v. Van Heck*, 651 N.W.2d 174, 178-79 (Mich. Ct. App. 2002) (contrasting Michigan set-aside and Connecticut pardon: latter wipes out all legal disabilities, “erases” conviction, while Michigan conviction that has been set-aside remains available for a variety of purposes). Procedure applicable to set-aside set forth in full, including notification to prosecuting attorney and, if assaultive crime, to victim, in §§ 780.621-624.

Probation before Judgment: § 333.7411 –Discharge and dismissal under this section shall be without adjudication of guilt and, except as provided in subsection (2)(b), is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. Nonpublic records kept by law enforcement.

C. Administrative certificate

Firearms: Under § 28.424 firearm privileges may be restored by the concealed weapons licensing board for the county of the convicted person’s residence five years after the completion of the sentence if the board finds by clear and convincing evidence that “the person’s record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons.” Mich. Comp. Laws § 28.424(3)(c).

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

Regulation of Licensing: Under Mich. Comp. Laws § 338.42, a judgment of guilt in a criminal prosecution “shall not be used, in and of itself, by a licensing board or agency as proof of a person’s lack of good moral character,” but it may be used as evidence in the determination. If so used, “the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.” This 1974 statute was intended “to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the

responsibilities of citizenship; to proscribe the use of the term ‘good moral character’ or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon.” Mich. Comp. Laws Ch. 338, prec. § 338.41 (Occupational License for Former Offenders, P.A.1974, No. 381).

Certain records “shall not be used, examined, or requested by a licensing board or agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to occupational or professional licensure: (a) Records of an arrest not followed by a conviction; (b) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction; (c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest, and open manner; (d) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.” § 338.43(1). See Miriam J. Aukerman, *Barriers to Reentry: Legal Strategies to Reduce Recidivism and Promote the Success of Ex-offenders*, 2 Mich. Crim. L. Ann. J. 4 (2003). A criminal record “shall not be furnished to a licensing board or agency except by the principal department, and shall be furnished only after the director of the principal department or a person designated by the director has determined that the information to be provided to the board or agency meets the criteria set forth in this section.” § 338.43(2).

Each licensing board or agency is required to promulgate rules prescribing “the offenses or categories of offenses which the department considers indicate a person is not likely to serve the public as a licensee in a fair, honest, and open manner.” § 338.44. The statute provides for a statement of reasons in the event of denial on grounds of good moral character, including a complete record of the evidence upon which the determination was based, and has a right to administrative “rehearing if he or she has relevant evidence not previously considered, regarding his or her qualifications.” § 338.45. Judicial review is also provided: “If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in this act, the court shall so state and shall order the board to issue the license . . . “ § 338.46.

Employers prohibited from “making record of” misdemeanor arrests not leading to conviction, Mich. Comp. Laws § 37.2205a(1), but they are not prohibited from considering arrest in connection with termination of employment. See *Aho v. Mich. Dep’t of Corrs.*, 688 N.W.2d 104 (2004).