

MARCH 5, 2007

MINNESOTA

I. Automatic Restoration of Rights:

Civil rights: Person convicted of “treason or felony” may not vote “unless restored to civil rights.” Minn. Const. art. VII, § 1. By statute, civil rights (including right to sit on jury) restored upon discharge from sentence. Minn. Stat. § 609.165, subd. 1 (“When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.”). Two exceptions: firearms privileges following a crime of violence, § 609.165, subd. 1a, and forfeiture of and disqualification from public office under § 609.42, subd. 2 (permanent disqualification from public office following a conviction of bribery).

Firearms: Person deprived of firearms rights under § 609.165, subd. 1a by virtue of conviction of a crime of violence may petition a court for restoration, and “the court may grant the relief sought if the person shows good cause to do so and the person has been released from physical confinement.” Minn. Stat. § 609.165, subd. 1d.*

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* “The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.” Minn. Const. art. V, § 7; Minn. Stat. § 638.01-.08. “The Board has the power to grant an absolute or conditional pardon,” to people currently in prison. § 638.02, subd. 1. The

* Until 2003, the right to possess firearms was automatically restored to persons convicted of a crime of violence (with the exception of persons convicted of domestic assault involving the use of a firearm) 10 years after restoration of rights or expiration of sentence, whichever occurs first, provided the person had not been convicted of another crime of violence in that 10 year period. § 624.713, subd. 1(b) (2002). The Minnesota Citizen’s Personal Protection Act, Senate File 842, modified the ban against possession of firearms to a lifetime ban for all persons who were discharged from sentence of court supervision on or after August 1, 1993, unless and until privileges are restored by a court. This law was voided as unconstitutional under Article 4, Section 17 of the Minnesota Constitution because it embraces more than one subject matter. *Unity Church of St. Paul v. Minnesota*, No. A04-1302, 2005 WL 832118 (Minn.App. Apr. 12, 2005).

Board also has the power to grant a “pardon extraordinary,” to people who have completed their sentences. § 638.02, subd. 2. The Director of Corrections, or her designee, is the Secretary of the Board and conducts investigations and makes recommendations to the Board. § 638.07. Board required to report to legislature by February 15 each year. § 638.075.

- *Eligibility:* For pardon extraordinary, ten crime-free years from final discharge for crimes of violence, as defined under Minn. Stat. §624.712, subd.5, five crime-free years for non-violent offenses. Minn. Stat § 638.02, subd. 2. The Board may set aside this waiting period by “expressly provid[ing] otherwise in writing by unanimous vote.” *Id.* (*But see* Minn. R. 6600.0600, providing that application for pardon extraordinary is premature if filed less than 18 months after discharge from sentence.) Federal felony offenders and persons convicted under the law of another state are not eligible for a state pardon. *See* Minn. Const. art. V, § 7; Minn. Stat. § 638.01.
- *Standard:* For pardon extraordinary, must be found to be of “good character and reputation.” Minn. Stat. § 638.02, subd. 2(2).
- *Effect:* Ordinary “absolute” pardon relieves all legal disabilities. Minn. Stat. § 638.02, subd. 1; *State v. Meyer*, 37 N.W.2d 3 (Minn. 1949). A “pardon extraordinary” is an additional statutory remedy that “has the effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers.” § 638.02, subd. 2(2). However, a pardon extraordinary does not seal or expunge the record.** After a pardon extraordinary is granted, a copy of the pardon is filed with the district court in the county of conviction; and the court is directed to issue an order “setting aside” the conviction, and to include a copy of the pardon in the court file. § 638.02, subd. 3.
- *Process:* For general pardons and commutations, Secretary of Board screens applications, makes recommendations to the Board. Application forms must be obtained as directed from the Secretary’s Office by mail after eligibility requirements have been reviewed. Applications deemed by the Secretary to be “undeserving” may be excluded from consideration, with a report to the Board summarizing the application and grounds asserted and the basis for the exclusion. Minn. R. 6600.0500. Once a pardon has been denied, reconsideration is possible only with the consent of two members of the Board. Minn. Stat. § 638.06. Individuals re-imprisoned for violation of parole or other supervision are barred from application for 12 months following their return.

** In 1992, language in § 638.02 that provided for “sealing” of records after pardon was repealed, so that even though the conviction is “nullified” the record is not expunged or sealed. Rather, the fact of the pardon is added to the record. Where there is a request from a member of the public for public criminal records, only the fact of the pardon is disseminated. When there is a background check for private data (authorized by the subject), both the conviction and the pardon are disseminated.

Minn. R. 6600.1000. For pardons extraordinary, except for less serious offenders discharged more than five years before, applicant must attend hearing at which application is considered. Minn. R.6600.0900. Judge and DA are asked their views, and victims notified. Decision of Board usually announced at the conclusion of the hearing. *See* Minn. R. 6600.0200-.1100 *available at* <http://www.revisor.leg.state.mn.us/arule/6600.html>

“Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless granted by a unanimous vote of the board duly convened.” Minn. Stat. § 638.02, subd. 1. “The board of pardons shall hold meetings at least twice each year and shall hold a meeting whenever it takes formal action on an application for a pardon or commutation of sentence. All board meetings shall be open to the public.”

- *Frequency of Grants:* In 2003, 10 pardons granted out of a total of 17 applicants – six denied, one did not appear for hearing. Three found ineligible. (101 applications sent out, only 20 sent back.) (Thirteen applications for commutation considered, but since applicants didn’t raise any new issues not considered by courts, all were denied a hearing.) Source: Minnesota Board of Pardons, *Annual Report to the Legislature: 2003Activity*, (2004), *available at* <http://www.doc.state.mn.us/publications/legislativereports/pdf/2004/BOP%202003%20report.pdf?>
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B. Judicial sealing or expungement of adult felony convictions:

Expungement: There are two legal bases for the expungement of a petitioner's criminal records: (1) a party may petition for expungement pursuant to statute in three specified situations (minor drug possession cases, juveniles prosecuted as adults, criminal proceedings resolved in favor of the petitioner), *see* Minn. Stat. § 609A.02, subd. 3; and (2) a party may move for expungement pursuant to the court's inherent expungement power. *See State v. C.A.*, 304 N.W.2d 353 (Minn. Ct. App. 1981). *See also State v. Schultz*, 676 N.W. 2d 337 (Minn. Ct. App. 2004); *State v. T.M.B.*, 590 N.W.2d 809 (Minn. Ct. App. 1999). Trial court's inherent expungement power authority requires a balancing by the court of the interests of the public and public safety versus the disadvantage to the petitioner of the record remaining open. § 609A.03, subd. 5. Expungement appropriate where the petitioner's constitutional rights may be seriously infringed by retention of his records, or, where constitutional rights are not involved, when the court finds expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order. In *State v. Schultz*, *supra*, court found that benefit to defendant in obtaining better employment or

housing by expunging his felony assault conviction records outweighed the burden to the public of eliminating the access of a prospective employer or landlord to defendant's criminal history. However, unless the aggrieved party's constitutional rights are infringed, expungement orders do not extend to non-judicial records maintained by the executive branch. According to press accounts, more than 100 applications for expungement are filed in Hennepin County alone. *See* Nick Coleman, "This Diva Changed her Tune and her Life," *Minneapolis Star Tribune*, September 17, 2005, <http://www.startribune.com/stories/462/5619789.html>

A pardon extraordinary "nullifies" and "sets aside" the conviction, but it does not expunge or seal the record.

Effect: Expungement seals the record, which remains available for law enforcement purposes, for purposes of evaluating a candidate for a law enforcement position, for purposes of authorized background checks. *See* 609A.03(b). In addition, "upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "criminal justice agency" means courts or a government agency that performs the administration of criminal justice under statutory authority." *Id.*

Sealing after 15 years: Conviction information will not be publicly disseminated 15 years after discharge of sentence. Minn. Stat. § 13.87, subd. 1.

Deferred sentencing: A felony conviction will be "deemed to be" a gross misdemeanor or misdemeanor if 1) the sentence imposed was no greater than that authorized for a misdemeanor; or 2) the imposition of the prison sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without a prison sentence. Minn. Stat. § 609.13, subd. 1. The purpose and effect of this statute is to avoid imposition of most legal disabilities that accompany a felony conviction, including those in administrative licensing proceedings. *See id.*, advisory committee cmt., quoted in *Matter of Woollett*, 540 N.W. 2d 829, 831 (Minn. 1995) ("It is believed desirable not to impose the consequences of a felony if the judge decides that the punishment to be imposed will be no more than that provided for misdemeanors or gross misdemeanors.") However, the conviction will still be counted as a felony for purposes of prosecution as a felon in possession, and for subsequent sentencing. In *Woollett, supra*, the Supreme Court of Minnesota held that a stay of sentencing did not convert a felony conviction for third-degree assault into a misdemeanor for purposes of peace officer licensing, because the Board of police licensing had specific statutory authority to disqualify an individual based on a felony conviction. The court compared the Minnesota statute with the California statute on which it was modeled, and found its coverage less comprehensive. *See* 540 N.W. 2d at 832, n. 3.

See also Minn. Stat. 152.18 (deferred prosecution and expungement for minor drug offenses).

Firearms Restoration: A person convicted of a crime and violence and thus deprived of firearms rights under Minn. Stat. § 609.165, subd. 1a, may petition a court for restoration, and “the court may grant the relief sought if the person shows good cause to do so and the person has been released from physical confinement.” § 609.165, subd. 1d.

III. Nondiscrimination in Licensing and Employment:

Minnesota Criminal Rehabilitation Act (1974) provides:

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

Minn. Stat § 364.01. Public employers and licensing agencies may not disqualify a person “solely or in part” based on conviction unless 1) there is a “direct relationship” between occupation or license and conviction history, measured by the purposes of the occupation’s regulation and the relationship of the crime to the individual’s fitness to perform the duties of the position; and 2) individual has not shown “sufficient rehabilitation and present fitness to perform” the duties of the public employment or licensed occupation. § 364.03, subd. 1.

Direct Relationship Test: In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider: (a) The nature and seriousness of the crime or crimes for which the individual was convicted; (b) The relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought; (c) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation. § 364.03, subd. 2.

In addition, even where a crime is found to be directly related to the public employment or license sought, person shall not be disqualified if the person can show “competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought.” § 364.03, subd. 3. Rehabilitation may be established by a record of law-abiding conduct for one year after release from confinement, or successful completion of probation or parole. Licensing or hiring authority shall also consider evidence regarding nature and seriousness of crime, mitigating circumstances, age at time of conviction, time elapsed since conviction, other evidence of rehabilitation such as letters of reference.

Records of arrest not leading to conviction, convictions that have been expunged, or misdemeanors for which prison sentence could not be imposed, may not be considered in connection with public employment or licensing decision. § 364.04.

Notification of reasons for denial: “If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following: (1) The grounds and reasons for the denial or disqualification; (2) The applicable complaint and grievance procedure; (3) The earliest date the person may reapply for a position of public employment or a license; and (4) That all competent evidence of rehabilitation presented will be considered upon reapplication. § 364.05.

Enforcement through administrative procedure act. § 364.06. *See Commers v. Spartz*, 294 N.W. 2d 321 (Minn. 1980)(county school board required to invoke mechanisms of the Administrative Procedure Act upon an aggrieved party's assertion of alleged violation of Minnesota Criminal Rehabilitation Act). Conviction may be considered as an element in good character inquiry. § 364.07.

Law enforcement and fire protection agencies are specifically excluded from a requirement of compliance with this statute. Minn. Stat. § 364.09. *See Matter of Woollett*, 540 N.W. 2d 829, 834 (Minn. 1995).

Judicial Interpretation of Direct Relationship Test: The Minnesota courts have interpreted the direct relationship test strictly. *See, e.g., In re Shelton*, 408 N.W.2d 594 (Minn. Ct. App. 1987)(embezzlement directly related to fitness to teach; teacher with 20 years of service terminated in spite of efforts to make restitution); *Peterson v. Minneapolis City Council*, 274 N.W.2d 918 (Minn. 1979) (conviction for attempted theft by trick directly related to the operation of a massage parlor).

Exceptions: Since 1974, list of excepted professions and employments has been enlarged gradually. Chapter does not apply to the practice of law, § 364.08; or to “peace officers” and law enforcement agencies, fire protection agencies, private detectives, certain transportation licenses (including school bus drivers, EMT personnel and taxi drivers if convicted of certain serious offenses and discharged from sentence within the past ten years). § 364.09(a). Section does not apply to juvenile corrections employment if crime involved sexual misconduct. *Id.* Chapter does not apply to school districts or teaching licenses. § 364.09(b). *See also* § 364(c)(“Nothing in this section precludes the Minnesota police and peace officers training board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.”) Chapter also does not apply to a license to practice medicine that has been denied or revoked.

Municipal Directives Implementing Section 364. In November 2006 the City of St. Paul passed an ordinance prohibiting municipal employers from making inquiry about

an applicant's criminal record on an application for employment for positions covered by Section 364. A criminal records check may be made only for certain positions deemed of "sufficient sensitivity and responsibility" to require one, and then only after a conditional offer of employment has been made. The following month, the City of Minneapolis followed suit.^{***}

^{***} The resolution of the Minneapolis City Council, approved on December 22, 2006, requires the City's Department of Human Resources to "periodically review all positions of employment with the City and make a good faith determination as to which specific positions are of such sensitivity and responsibility that a background check is warranted." Even as to those jobs, the City "will not conduct that check until *after* the job applicant is determined to be otherwise qualified for the position sought and has been offered the position conditioned on a background check (a 'conditional employee')." Moreover, the City will not conduct, request or accept any background checks which contain information relating to (i) records of arrests not followed by a valid conviction; (ii) convictions which have been, pursuant to law, annulled or expunged; and (iii) misdemeanor convictions where no jail sentence can be imposed." If the background check uncovers a prior conviction, the conditional employee "shall not be disqualified unless the crime or crimes for which s/he was convicted directly relate to the position of employment sought."

Following and elaborating the provisions of Section 364, the order sets out standards for determining whether a conviction "directly relates" to the position sought, and permits an applicant to make an "in person" showing of "competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought." Rehabilitation may be shown by a copy of a discharge order and evidence that one year has passed since release from confinement. If the City denies an individual a position of employment, solely or in part because of the individual's prior conviction of a crime, the City shall notify the individual in writing of the reasons for the denial or disqualification, of the applicable complaint and grievance procedure set forth in § 364.06, and of the earliest date the person may reapply for a position with the City.