

FEBRUARY 17, 2007

MISSOURI

I. Automatic Restoration of Rights:

Civil Rights: Person convicted of any felony offense may not vote while incarcerated or while on parole or probation, but right to vote is automatically restored upon final discharge from sentence. Mo. Rev. Stat. § 115.133(2). Misdemeanants are also disenfranchised while serving a prison sentence. § 115.133(1). Persons convicted of “a felony or misdemeanor connected with the right of suffrage” are permanently disenfranchised, unless pardoned. § 115.133(3). *See also* Mo. Rev. Stat. § 561.026. The right to hold office is restored upon completion of sentence (unless the crime was “connected to the exercise of the right of suffrage”). §§ 561.021(2)-(3). A felony offender is permanently disqualified from jury service, unless pardoned. § 561.026(3).

Firearms: A person convicted of any “dangerous felony,” an attempt to commit a dangerous felony, or of a crime under the laws of any state or of the United States which, if committed in Missouri, would be a dangerous felony, may not possess a concealable firearm for five years after conviction or release from confinement for such a conviction, whichever is later. Mo. Rev. Stat. § 571.070.1(1). A person who has been convicted of a felony under the laws of any state or the United States may not obtain a permit to acquire a concealable firearm. § 571.090.1(2). Without such a permit, it is illegal to purchase, lease, borrow, exchange, or receive a concealable firearm. § 571.080.1(1). Only a pardon will restore firearms privileges.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: The pardon power is vested in the governor, except in cases of treason or impeachment, under rules and regulations prescribed for the manner of applying. Mo. Const. Art. IV, § 7. Pursuant to Mo. Rev. Stat. § 217.800(2), all pardon applications must be referred to the Board of Probation and Parole for investigation and recommendation. Board’s advice is not binding on the Governor, however, and his power is not dependent upon a favorable Board recommendation.
- *Administration*: Board of Probation and Parole consists of seven members appointed by the Governor to six-year terms, no more than four from the same party. All full-time salaried employees. Chair appointed by the Governor. Mo. Rev. Stat. § 217.665 (2004 supp.).

- *Eligibility:* Published policy from Board outlines eligibility requirements and thoroughly details investigative procedures applicable to clemency applications. *See* Policy and Procedure Manual of the Board of Probation and Parole, Nos. P2-1.3 through P2-1.6 (as of May 20, 2005, not available on-line, but forthcoming on Board website at www.doc.missouri.gov). Three years from discharge from sentence, without intervening convictions or charges pending. Those denied must wait three years to reapply. Applicants whose sentences were suspended pursuant to Mo. Rev. Stat. § 610.105 are not eligible to apply for pardon, since they are not regarded as having a conviction (see below). Persons convicted under the law of another state are ineligible for a gubernatorial pardon. Board has not established substantive criteria for pardon.
- *Effect:* According to Board officials, each full pardon document signed by the Governor states that the grant “obliterates” effect of conviction, relieves of all obligations associated with the conviction, restores all rights and relieves legal disqualifications. However, a pardon does not “expunge.” *See* Policy and Procedure Manual of the Board of Probation and Parole, *supra*, at P2-1.3.
- *Process:* “All applications for pardon, commutation of sentence or reprieve shall be referred to the board for investigation.” Mo. Rev. Stat. § 217.800. The board “shall investigate each such case and submit to the governor a report of its investigation, with all other information the board may have relating to the applicant together with any recommendations the board deems proper to make.” Published policy from Board outlines eligibility requirements and thoroughly details investigative procedures applicable to clemency applications. *See* Policy and Procedure Manual of the Board of Probation and Parole, *supra*, at P2-1.4, P2-1.6. Investigating parole officer must make records check in district, conduct interviews with officials and victims if any. Investigating officer’s assessment “should cover areas such as social, employment, and financial stability. In addition, testimonials from friends, employers, and general references should be included. It is important to thoroughly assess any history of mental health or substance abuse issues, particularly related to criminality and to determine whether those issues have been successfully resolved. Significant positive achievements should be highlighted. Specific reference should be made to the impact, if any, of the collateral consequences of conviction being claimed and the officer's assessment of the seriousness of that impact.” Report should include comments and recommendation of prosecutor, judge, defense attorney, “other community leaders as appropriate.”

No provision for public hearing. Board recommendation communicated in writing to Governor. All Board meetings on clemency matters may be closed to public. Mo. Rev. Stat. § 217.670(5).

- *Commentary:* James G. Lindsay, Comment, *Pardons in Missouri: Procedure and Policy*, 48 UMKC L. Rev. 33 (1979).
- *Frequency of Grants:* From 2001 to 2004, Governor Holden approved 45 clemency applications (including commutations) and denied 840. As of October 2005, Governor Blunt had not approved any clemency requests, and had denied 52. Excluding requests from confined offenders, the Board received 151 pardon applications in 2002, 186 in 2003, 242 in 2004, and 141 during the first eight months of 2005. Source: Board of Probation and Parole.
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B. Judicial sealing or expungement of adult felony convictions:

Expungement: Only first time alcohol-related misdemeanor offenses may be expunged, after ten-year waiting period. § 577.054.

Sealing for nonconviction records and probationary sentences: Mo. Rev. Stat. § 610.105 authorizes automatic sealing of records in all cases disposed of favorably to the defendant (nolle prossed, acquitted, dismissed), or where sentence suspended, upon conclusion of case. Upon successful completion of probation, record becomes a “non-conviction record,” and need not be reported as a conviction. § 610.110. *See Yale v. City of Independence* (Sup.1993) 846 S.W.2d 193 (1993)(legislative purpose of sentencing alternative of "suspended imposition of sentence" is to allow defendant to avoid stigma of lifetime conviction and punitive collateral consequences, which is evidenced by statutes that close records of case if imposition of sentence is suspended; offenders worthy of lenient treatment have chance to clear their records by demonstrating value to society through probation.) Law enforcement retains access, as well as health and senior services facilities, home care providers, for licensing decisions. § 610.120.

C. Administrative Restoration: N/A

III. Nondiscrimination in Licensing and Employment:

General Limitations on Collateral Consequences in licensure and public employment: Mo. Rev. Stat. § 561.016 generally adopts approach of the Model Penal Code in limiting the collateral consequences of a conviction to those imposed by the constitution or statute, or embodied in the judgment of the court: “No person shall suffer any legal disqualification or disability because of a finding of guilt or conviction of a crime or the sentence on his conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is: (1) Necessarily incident to execution of the sentence of the court; or (2) Provided by the constitution or the code; or (3) Provided by the statute other than the code, when the conviction is of a crime defined by such statute; or (4) Provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived. . . .”^{*} This provision applies to public employment. *See, e.g., Hardy v. Fire Standards Comm’n of St. Louis County*, 992 S.W. 2d 330 (App. E.D. 1999)(county rules denying employment as a firefighter to any person convicted of a felony or misdemeanor involving moral turpitude conflicted with statute limiting the disqualifications of convicted felons to those where the crimes convicted of reasonably relate to the felon's competency to do the job at issue, and thus, rules were void unless they could be enforced in such a way as to be in compliance with the statute); *Mager v. City of St. Louis*, 699 S.W. 2d 68 (App. E.D. 1985) (Prohibition in municipal ordinance against employment of convicted felons by liquor licensees was contrary to limitations in § 561.016 insofar as it sought to disqualify convicted felons from employment by liquor licensees when their crimes, convictions, or sentences were not reasonably related to their competency to be employed by those licensees). Statute is intended to remove much of stigma of conviction, and increase the legitimate discretion of licensing boards by eliminating arbitrary or inflexible barriers imposed by criminal conviction. *See Chandler v. Allen*, 108 S.W.3d 756 (App. W.D. 2003)(sex offender properly dismissed from job in deli on public safety grounds). See also limitations in licensing code, discussed below.

Licensing boards and other state agencies shall not deny a professional or occupational license “primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral

^{*} Comments to 1973 Code, included in 1999 Code, explains that “reasonable relationship” test is the “most important provision” in the section: “The present law sometimes contains blanket restrictions against employment in certain regulated areas of persons convicted of crimes. Sometimes conviction is relevant to the public safety interests underlying the regulation, but often it is not. By eliminating irrational barriers to employment, we assist offenders in reintegrating themselves into the community. Thus, instead of providing that no liquor license shall be issued to any [convicted] person . . . the Code provides a reasonable rule which would authorize a licensing agency to refuse to grant a license to an applicant whose criminal record and other circumstances indicate that he would endanger the particular group or industry protected by the agency's licensing power.” Commentary goes on to opine that “there should be very few of these statutes containing special penalties if the Code is enacted and the present disqualification and disability statutes are repealed and replaced by the Code provisions.”

character, where the conviction resulted in the applicant's incarceration and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation.” Mo. Rev. Stat. § 314.200. Board may consider a conviction as “some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character.” Enacted in 1981 – no annotations.