

MAY 28, 2008

NEVADA

I. Automatic Restoration of Rights:

Persons convicted of “treason or felony in any state” lose the right to vote, hold office, and sit on jury. Nev. Const. art. 2, § 1; *id.* art. 15, § 3; Nev. Rev. Stat. § 6.010.

All persons who completed their sentence prior to July 1, 2003, were restored to their civil rights by 2003 Nevada Laws Ch. 447 (A.B. 55)(vote, civil jury, office after four years, criminal jury after six years). Nevada state offenders convicted after July 1, 2003, or who had not completed their sentence as of that date, may regain civil rights pursuant to the provisions of NRS §§ 213.090 (pardon), 213.155 (completion of parole), or 213.157 (completion of sentence). See NRS § 293.540(2)(a). For persons convicted of a felony in another state, civil rights must be restored pursuant to the laws of the state in which the person was convicted. NRS § 293.543(2).

First offenders convicted of less serious non-violent offenses are automatically restored to the right to vote and sit on civil jury upon completion of sentence. § 213.157(1) (completion of sentence); § 213.155(1) (parole); § 176A.850(3) (probation). Fine or restitution may be forgiven if indigent. Completion of sentence must be documented. Offenders in this category must wait four years to hold office and six years to sit on criminal jury. It appears that the automatic restoration procedures in Nevada law apply only to Nevada offenders, though the website of the Secretary of State suggests to the contrary. See <http://www.nvsos.gov/elections/voter/restoration.asp> (“The restoration of voting rights pursuant to NRS 213.155 applies to convictions which took place in Nevada or in any other state, and to convictions arising under the federal system.”).

Persons with more than one Nevada conviction, and persons convicted under Nevada law of Class A and violent Class B felonies are not restored to the vote even if pardoned, but must seek restoration of civil rights in the court in which they were convicted. NRS § 213.090(2). Federal felons may have their civil rights restored only by presidential pardon. Whether Nevada must afford full faith and credit to the restoration of civil rights by a foreign jurisdiction depends on the individual circumstances. Op.Atty.Gen. No. 96-27, Sept. 25, 1996.

Firearms rights may be restored only by pardon. § 202.360(1)(a).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* Nevada Constitution gives certain short-term clemency powers to the Governor (reprieves, suspensions). Nev. Const. art. 5, § 13. However the full clemency power is entrusted to a panel consisting of “the governor, justices of the supreme court, and attorney general, or a major part of them.” *Id.* art. 5, § 14. Legislature has constituted this group as the Board of Pardons Commissioners. Nev. Rev. Stat. § 213.010(1). A majority of the Board can grant a pardon, but the Governor must be among the majority. Nev. Const. art 5, § 14. The legislature has specified Board operating procedures (see below) but it may not modify or restrict Board’s powers. *King v. Board of Regents*, 200 P.2d 221 (Nev.1948). The Board is required to meet at least twice a year. Nev. Rev. Stat. § 213.010(2). Governor must report to the legislature at the beginning of each session every clemency action (no reasons necessary). Nev. Const. art 5,§ 13.
- *Administration:* The Chairman of the State Board of Parole Commissioners appoints a person to serve as secretary of the Board of Pardons Commissioners. Nev. Rev. Stat. § 213.017.
- *Eligibility:* According to Board staff, no formal eligibility criteria, though generally not considered favorably for “a significant period of time” after final discharge, during which time the applicant is expected to demonstrate “complete and total rehabilitation.” Board accepts applications only from state offenders, and does not accept applications from misdemeanants except domestic battery convictions, which represent about 5% of its caseload.
- *Effect:* See Op. Nev. Att’y Gen. (Nov 18, 2003), <http://pardons.state.nv.us/PardonInformalOpinion.pdf>: full and unconditional pardon removes all disabilities, including licensing barriers, but does not “erase conviction” or remove stigma of conviction. See also 1983 Op. Nev. Att’y Gen. 46. For sex offender, does not obviate need to register. <http://pardons.state.nv.us/effect.htm>. Pardon relieves firearms restrictions in state law (unless otherwise provided in the pardon document itself), and a pardoned conviction cannot serve as a predicate felony for federal firearms prosecution. See Op. Nev. Att’y Gen. (Nov. 18, 2003), *supra*.

With regard to occupational licensing, see <http://pardons.state.nv.us/effect.htm>: “where a statute limits rights based on the underlying conduct and not the pardoned offense itself, a pardon would not remove or erase the disability of past conduct. If there is a requirement that the license applicant has not been convicted of a felony, the pardon would permit licensing. However, if the licensing standard is good moral character, the pardon does not erase the moral guilt associated with the commission of a criminal offense and the fact giving rise to that conviction may be considered in determining whether that person is of ‘good moral character.’”

- *Process:* Public hearing in all cases where pardon is to be granted required by statute. Required procedures set forth in Nev. Rev. Stat. § 213.020 et seq. and in Nev. Admin. Code ch. 213, § 020 et seq. Application form at -- http://pardons.state.nv.us/communitycaseap3_04.pdf. Internet link to statutes at <http://www.leg.state.nv.us/law1.cfm>. Board meets twice a year, and all applications must be submitted at least 60 days before the meeting. Tough screening, only about 25% get to stage of extensive investigation by P&P, and in turn only about half of these are eventually recommended to Board. Applicant must give notice to county attorney and court of conviction, department of corrections, 30 days before filing. Nev. Rev. Stat. § 213.020. County attorney gives notice to victims. Applications generally presented to the Board only after recommendation of department of corrections and/or Secretary of the Board. *See* Nev. Admin. Code ch. 213, § 090. Hearing is informal, though Board may require applicant's presence. Ch. 213, § 190. Board also must give victim 15 days notice of hearing. Nev. Rev. Stat. §213.010(3). Decision by majority, which must include Governor. Proceedings subject to Nevada Administrative Procedure Act, so that minutes of meetings are public, including how each member voted.
- *Frequency of Grants:* Approximately 300 applications each year from "community cases," 12 granted in 2004. Source: Nevada Board of Pardons Commissioners.
- *Comment:* In 2003 Nevada legislature sought to limit authority of Pardons Commissioners by imposing on pardon application process the same waiting periods and eligibility requirements that apply to automatic restoration of rights under Nev. Rev. Stat. § 213.157. *See* § 213.090; http://www.leg.state.nv.us/72nd/bills/AB/AB55_EN.html. This statute limits Pardons Board's restoration authority to non-serious first offenders, and requires others to return to sentencing court for restoration. November 18, 2003 AG opinion, *supra*, questions legislative authority to limit pardon power, but attempts to strike compromise by stating that pardon document will specify which rights are being restored. Not clear what result if no such specifications – *i.e.*, what effect will be given effort in § 213.090 to limit effect of a pardon.
- *Certificates of Good Conduct:* Pardons Board by regulation may also issue "Certificates of Good Conduct" pursuant to Nev. Admin. Code § 213.130. According to 2003 AG opinion, such a certificate may issue: 1) to remove a legal disability incurred through conviction; 2) to furnish evidence of good moral character where it is required by law; or 3) upon proof of the person's performance of outstanding public services or if there is unusual and compelling evidence of his rehabilitation." This authority derives from regulation not Constitution, and thus may be regulated by legislature. *See* Op. Nev. Att'y Gen. (Nov. 18, 2003), *supra*. A five-year eligibility waiting period following release from custody or suspension of

sentence or payment of fine. Out-of-state convictions are also eligible after a five-year residence in the state. Nev. Admin. Code § 213.140. The certificate avoids federal firearms bar, but only a pardon can remove state firearms disability. Certificate may relieve other disabilities such as those in licensing and employment laws, but each one must be listed. But license may still be denied based on conduct, and requirement of sex offender registration is not avoided.

The Board has not issued a certificate of good conduct in many years, based upon its conclusion that certificates are in effect indistinguishable from pardons. Recently Board staff has been looking into the possibility of reviving the program.

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B. Judicial sealing or expungement of adult felony convictions:

- *Restoration of Rights:* Pursuant to Nev. Rev. Stat. § 213.090(2), recidivists and serious or violent offenders may also go to court to regain civil rights (Nevada Attorney General rejects this statute as a limitation on constitutional pardon power. *See* Op. Nev. Att’y Gen. (Nov. 18, 2003), *supra*).
- *Sealing:* Nev. Rev. Stat. § 179.245. After an eligibility waiting period that varies depending on the seriousness of the offense (seven to 15 years after the date of conviction or release from actual custody, whichever is later, three years for misdemeanors), a person may petition the court in which he was convicted to seal all records related to the conviction. *Id.* This relief is unavailable to sex offenders, § 179.245(5), and also to anyone who has been arrested during the eligibility waiting period. § 179.245(4).
- *Non-conviction records* may also be sealed at any time after completion of case. § 179.255.
- *Effect of sealing:* If the court seals the records, “all proceedings recounted in the record are deemed never to have occurred” (with exceptions related to law enforcement and subsequent offenses), and the person “may properly answer accordingly to any inquiry concerning the arrest, conviction, or acquittal and the events and proceedings related to the arrest, conviction, or acquittal.” § 179.285. Having the conviction sealed sets aside conviction and may restore state firearm rights. *Cf. U.S. v. Laskie*, 258 F.3d 1047 (9th Cir. 2001) (probationary sentence “honorably discharged” and “set aside” under former § 179.225, cannot serve as a predicate felony for federal firearms prosecution); *see Dep’t of Motor Vehicles and Pub. Safety v. Frangul*, 867 P.2d 397 (Nev. 1994) (sealing statute was enacted to remove ex-convicts’ criminal records from public

scrutiny and to allow convicted persons to lawfully advise prospective employers that they have had no criminal arrests and convictions with respect to the sealed events).

- *Sealing for Successful Probationers*: Nev. Rev. Stat § 176A.850 provides for automatic restoration of civil rights of persons who are “honorably discharged” from probation and have no serious prior record, and authorizes them to petition the court immediately for sealing under § 179.245 (above) if they are otherwise eligible. More limited remedy of sealing substituted in 2001 for broader “set-aside” relief in former § 176.225, construed in *U.S. v. Laskie*, 258 F.3d 1047 (9th Cir. 2001). Civil rights restored immediately are right to vote and to sit on civil jury; right to hold office and sit on criminal jury restored after additional waiting period (see section I, above).
- *Automatic sealing for certain minor offenders*: Probationers with mental illness or retardation three years after honorable discharge, Neb. Rev. Stat. § 176A.265, successful reentry program participants, § 179.259, and persons convicted of drug possession, § 453.3365.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

Nevada has no general law regulating consideration of conviction in employment or licensure. It does apply a direct relationship test in connection with some licenses. *See, e.g.*, Nev. Rev. Stat. § 625.410(4) (discipline permissible based on “Conviction of . . . any crime an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying”).

