

JULY 27, 2005

NEW HAMPSHIRE

I. Automatic Restoration of Rights:

Follows Uniform Act on Status of Convicted Persons: The rights to vote and hold office are lost upon conviction of a felony, except that a person may vote if the sentence is suspended (with or without probation) or during any period of parole.. N.H. Rev. Stat. Ann. § 607-A:2(I)(a). The right to seek and hold public office is automatically restored upon final discharge. § 607-A:2(I)(b); *see Commentary: The Disenfranchisement of New Hampshire's Incarcerated Felons*, 42 N.H.B.J. 38 (2001). No disqualification from jury service. Certificates of discharge issued upon completion of the sentence or period of probation or parole that restore "the right to vote and to hold public office." Restoration of rights also available from Governor in the case of federal or out-of-state convictions. § 607-A:5.

Person convicted of "felony against the person or property of another" or a felony drug offense may not own or possess any firearm. N.H. Rev. Stat. Ann. § 159:3.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: The pardon power (except in cases of impeachment) is vested in the Governor, "by and with the advice of the [Executive] Council," a core elected body of five that advises the Governor generally in carrying out his duties. N.H. Const. pt. 2, art. 52. The Executive Council is composed of five members, biennially elected from each of five counties of state, "for advising the governor in the executive part of government." N.H. Const. pt. 2, art. 60. According to the Office of the Attorney General, the constitutional requirement of "advice" has traditionally been interpreted to require the governor to obtain a supporting majority vote of the Council before issuing a pardon. Governor may not remit fines or forfeitures in criminal cases, and may not pardon before conviction. *Id.* pt.2, art. 52.
- *Eligibility*: Persons convicted under federal law or the law of another state are ineligible for gubernatorial pardons.
- *Effect*: A pardon "is an act of executive grace completely eliminating all consequences of the conviction, but it does not remove the record of the conviction." *Doe v. State*, 328 A.2d 784 (N.H. 1974).
- *Process*: *See* N.H. Rev. Stat. Ann. §§ 4:21 to 4:28. "On all petitions to the governor, written notice must be given to the state's counsel, and others as the governor may direct; and the prosecuting officer may be

required to furnish a concise statement of the case as proved at the trial and any other facts bearing on the propriety of granting the petition.” § 4:21. In all cases where the petition is for the pardon of a person serving a sentence in the state prison, the commissioner of corrections shall make a report upon the petition before it is referred to the council.” § 4:22. No hearing is required.

- *Frequency of Grants:* Generally between 12 and 20 petitions are filed each year. Standards of review unstated. Two pardons have been granted since 1996: One in 1996 to a woman who murdered her husband (she remains on parole) and one in 2003 to a National Guardsman headed for Iraq who wanted firearms restoration. Source: Office of the Attorney General of New Hampshire.
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B. Judicial sealing or expungement of adult felony convictions:

Annulment: N.H. Rev. Stat. Ann. § 651:5(I): “the record of arrest, conviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if in the opinion of the court, after hearing, the annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare.” Waiting periods ranging from one to 10 years. §§ 651:5(III), 651:5(IV). Certain crimes excluded (obstruction of justice, violent crimes, and crimes for which an extended sentence was imposed). § 651:5(V). Recidivists must satisfy waiting period for all crimes, and not have any excludable crime. § 651:5(VI). Waiting periods lengthened in 1994. For rules governing application to annul record of conviction and sentence, see N.H. R. Super. Ct. 108 and N.H. R. Dist. & Mun. Ct. 2.18. Nonconviction data may also be expunged subject to same “public welfare” standard. § 651:5(II).

Upon entry of an order of annulment, the person “shall be treated in all respects as if he had never been arrested, convicted, or sentenced,” except that, upon conviction of any later crime, the annulled conviction may be taken into account for sentencing purposes and may be counted toward habitual offender status. N.H. Rev. Stat. Ann. § 651:5(X)(a). “In any application for employment, license or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as ‘Have you ever been arrested for or convicted of a crime that has not been annulled by a court?’” § 651:5(X)(c). Records remain available to law enforcement. § 651:5(XI)(b).

Otherwise, misdemeanor offense to disclose record of arrest or conviction annulled pursuant to this section. § 651:5(XII).

New Hampshire originally followed the scheme put forward by the National Council on Crime and Delinquency in 1962.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment: N/A

See above, N.H. Rev. Stat. Ann. § 651:5(X)(c), which limits questions from employers and licensing boards about annulled convictions.