

APRIL 18, 2007

NEW JERSEY

I. Automatic Restoration of Rights:

The rights to vote and serve on a jury are lost to anyone who is serving a sentence for “any indictable offense,” which includes all crimes except petty offenses. N.J. Stat. Ann. §§ 2C:51-3(a) and (b), 19:4-1(8)(voting); 2B:20-1(e)(jury).^{*} The right to vote is automatically restored upon completion of the service of sentence, probation, or parole, whichever occurs last. § 19:4-1(8). If loss of the suffrage was imposed by the court as part of the punishment for a criminal violation of election laws, only a pardon restores the vote. §§ 19:4-1(6), (7). The right to sit on a jury is restored only by pardon.

A person holding public office or employment at the time of conviction of a crime involving dishonesty or a third or higher degree crime forfeits his position. N.J. Stat. Ann. § 2C:51-2(a). If offense is one “involving or touching on” his office or employment, he is “forever disqualified” from holding any office or employment. § 2C:51-2(d). This has been interpreted to extend to all government employment, and all serious felonies. *See Cedeno v. Montclair State University*, 750 A. 2d 73 (N.J. 2000); *Pastore v. County of Essex*, 568 A. 2d 81 (N.J. App. Div. 1989), *cert. denied* 584 A. 2d 205 (1990). These disabilities can be removed only by a governor’s pardon, or by order of the Governor restoring rights under § 2A:167-5.

People convicted of bribery or misconduct in office are barred from public contracts for 10 years if second-degree crime, for five years if third-degree crime. § 2C:51-2(f). (The Attorney General may waive “as the public need may require.” *Id.*)

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: The power to pardon is vested in the Governor, except in cases of treason and impeachment. N.J. Const. art 5, § 2, cl.1.^{**} The

^{*} Article 2, par 7 of the New Jersey Constitution provides that “The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.” In 1979, New Jersey abandoned the classification of crimes as felonies, high misdemeanors, misdemeanors, and disorderly persons, and re-defined all non-capital offenses as either “crimes” or disorderly persons offenses. All “crimes” carry with them the right to be indicted by a grand jury and to trial by jury, and thus result in loss of civil rights.

^{**} Under the 1844 Constitution, a court of pardons consisting of the Governor, the Chancellor, and six judges of the court of appeals, had authority to issue pardons. *See In re Court of Pardons*, 129 A. 624 (N.J. Pardons 1925). The power was placed with the Governor alone in the 1947 Constitution.

Constitution allows for the creation of a commission to assist and advise the governor on pardons, but no such single-purpose panel exists. Governor may also act to restore civil and all other rights, except the right to hold office. N.J. Stat. Ann. § 2A:167-5. (Latter statute does not seem to provide a separate process from pardon.) “On or before March 1 of each year, the Governor shall report to the Legislature each reprieve, pardon and commutation granted, stating the name of the convicted person, the crime for which the person was convicted, the sentence imposed, its date, the date of the pardon, reprieve or commutation and the reasons for granting same.” § 2A:167-3.1.

- *Process:* The Governor may refer applications for pardon to the New Jersey State Parole Board for investigation and recommendation, N.J. Stat. Ann. § 2A:167-7, but the Board’s recommendation is not binding on the Governor. *Zink v. Lear*, 101 A.2d 72 (N.J. Super. Ct. App. Div. 1954). Parole Board composed of 15 members (and three alternatives) appointed by the Governor with the advice and consent of the Senate for six-year terms. All but the alternates serve on a full-time basis. N. J. Stat. Ann. §§ 30:4-123.47(a) – (c). All policies and decisions are by majority vote. § 30:4-23.48(a). No regulations have been promulgated governing clemency applications.
- *Eligibility:* No formal eligibility requirements, except that federal offenders are not eligible for a gubernatorial pardon.
- *Effect:* Restoration of civil rights, presumably relief from all legal disabilities. Query whether it can restore right to hold office in light of reservation in N.J. Stat. Ann. § 2A:167-5. *In re L.B.*, 848 A.2d 899 (N.J. Super. Ct. Law Div. 2004) (pardon creates eligibility for expungement for ineligible offense).
- *Frequency of Grants:* Several hundred applications each year, but recent governors have granted pardons only at end of term – Gov. Whitman granted “about a dozen.” Source: New Jersey Department of Criminal Justice.
- *Contact:* Susan Meier, NJ Dept of Criminal Justice, 609-984-2806. meiers@njdcj.org.

B. Judicial sealing or expungement of adult felony convictions:

First offender expungement: A person convicted of certain offenses under New Jersey law may seek expungement of his criminal record, provided he has no prior or subsequent felony conviction, N.J. Stat. Ann. § 2C:52-2(a), and has not previously had a criminal conviction expunged, or has ever been granted dismissal of criminal charges following completion of a supervisory treatment or diversion program. §§ 2C:52-14(e), 2C:52-14(f). Most serious and violent offenses, and drug offenses (ex. marijuana) are ineligible, as well as offenses by

public officials. §§ 2C:52-2(b), 2C:52-2(c). *See also In re L.B.*, 848 A.2d 899 (N.J. Super. Ct. Law Div. 2004) (pardon creates eligibility for expungement for otherwise ineligible offense). A special expungement procedure is provided for drug offenders whose conviction occurred prior to age 21. § 2C:52-5.

Non-conviction records: Arrest and other non-conviction data may also be expunged. § 2C:52-6.

- *Eligibility:* For “indictable” (felony) offenses, 10 years after conviction, payment of fine, or satisfactory completion of probation or parole, whichever is later. For misdemeanors, eligibility period is five years.
- *Process:* court may consider subsequent misdemeanor offenses if they are a continuation of type of unlawful conduct involved in conviction for which expungement sought.
- *Effect:* If expungement is granted, “the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the [person] may answer any questions related to their occurrence accordingly,” with certain exceptions, such as when applying for a job in the judicial branch or in law enforcement. N.J. Stat. Ann. § 2C:52-27. Expunged events are deemed not to have occurred, and all noticed officers, departments and agencies are required to reply, when asked about records for the individual, that there is no record information. *Id.*

C. Administrative certificate

Certificate of Rehabilitation: N.J. Stat. Ann. § 2A:168A-3 (Rehabilitation of Convicted Offenders Act) provides that an individual who has previously been denied a license because of his conviction may go back to the licensing board with a certificate from the federal or state parole board, or from the responsible chief probation officer. This certificate, certifying that he “has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society, shall preclude a licensing authority from disqualifying or discriminating against the applicant.” Rules require that two years must elapse before reapplication. N.J. Admin Code tit. 10A, § 70-8.2. This certificate does not restore civil rights or firearms privileges. *See United States v. Breckenridge*, 899 F. 2d 540 (6th Cir.), *cert. denied*, 498 U.S. 891 (1990).

As a practical matter, this statute has not proved useful, and no certificate has been sought or granted in the past 15 years. *See Storcella v. State, Dep’t of Treasury*, 686 A.2d 789 (N.J. Super. Ct. App. Div. 1997), *cert. denied* 693 A.2d 110 (refusal to license, as agent for state lottery, party who had previously been convicted of gambling, bookmaking and other related criminal misconduct on very premises for which license was sought was not arbitrary, capricious, or unreasonable, though party had previously received gubernatorial pardon for his

criminal convictions; executive director of lottery could reasonably conclude that this prior misconduct adversely reflected upon party's moral character and would directly affect public perception of integrity of lottery). *But see Maietta v. New Jersey Racing Comm'n*, 459 A.2d 295 (N.J. Sup. Ct. 1983) (applicant for groom's license who had previously worked as a groom, who had been convicted five years before of drug offenses in which he was found to be a minor participant, who had not otherwise been engaged in criminal conduct, and who presented overwhelming evidence of rehabilitation, was improperly denied license).

III. Nondiscrimination in Licensing and Employment:

- A. Licensing: N.J. Stat. Ann. § 2A:168A-1 (1968 Rehabilitated Convicted Offenders Act): “a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime, unless [the crime involves dishonesty in public service] or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.” Statute premised on idea that it is “in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.” *Id.* In determining whether conviction relates adversely, licensing authority required to examine nature and seriousness of conviction, defendant’s age at time of conviction, date of crime, evidence of rehabilitation; license denial or termination must set forth factor evaluation in writing. § 2A:168A-2. *See also* N.J. Stat. Ann. § 45:1-21 (licensing boards may suspend or terminate upon proof of conviction involving moral turpitude or “relating adversely” to activity regulated by board).

“In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought: a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying; b. Nature and seriousness of the crime; c. Circumstances under which the crime occurred; d. Date of the crime; e. Age of the person when the crime was committed; f. Whether the crime was an isolated or repeated incident; g. Social conditions which may have contributed to the crime; h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.” N.J. Stat. Ann. § 2A:168A-2. Presentation of evidence of pardon or expungement, or certificate of rehabilitation from state or federal parole board,

“shall preclude a licensing authority from disqualifying or discriminating against the applicant.” § 2A:168A-3.

Law enforcement agencies exempt. N.J. Stat. Ann. § 2A:168A-6. *See Matter of C. Schmidt & Sons, Inc.*, 399 A.2d 637 (N.J. 1979)(Rehabilitated Convicted Offender's Act does not apply to elaborate licensing provisions and controls spelled out in the Alcoholic Beverage Control Act, and thus director of alcoholic beverage control did not have to determine if licensees' corporate president's criminal convictions related adversely to business for which license was sought nor to explain in writing how eight factors specified in the RCOA related to license sought before denying licensure). *See also Maietta v. New Jersey Racing Com'n*, 459 A.2d 295 (N.J. 1983) (improper denial of groom's license).

- B. **Public Employment:** New Jersey has a general statute, derived from section 306.1 of the Model Penal Code, that limits the collateral consequences of conviction to those that are necessarily incident to the execution of the court-imposed sentence, that are provided by the constitution or a statute, or that are provided by the judgment, order or regulation of a court or public official exercising a jurisdiction conferred by law “when the commission of the offense 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.” N.J. Stat. Ann. § 2C:51-1(a)(1) through (4).

One specific statutory authorization is contained in the so-called “forfeiture statute,” which provides that conviction of any crime involving dishonesty or “of a crime of the third degree or above” while employed by the government results in forfeiture of office and employment. N.J. Stat. Ann. §§ 2C:51-2(a)(1), (d). While the scope of the forfeiture statute is not entirely clear, it the courts have generally required that there be at least some nexus between the conduct and the employment.

Compare Moore v. Youth Cor. Inst. at Annandale, 574 A.2d 983 (N.J. 1990)(correctional officer's off-duty harassment of co-worker results in forfeiture) *with State v. Pavlik*, 832 A.2d 940, 943 (A.D.2003)(conviction for assault, criminal mischief, and harassment arising from a domestic dispute did not authorize forfeiture of employment as a laborer in the road maintenance division).

If employment forfeited, disqualification is permanent. § 2C:51-2.1, and applies to all public employment. *See Cedeno v. Montclair State Univ.*, 750 A.2d 73 (N.J. Sup. Ct. 2000) (university purchasing officer previously convicted of bribery); *Pastore v. County of Essex*, 568 A.2d 81 (N.J. Sup. Ct. App. Div. 1989), *cert. denied*, 584 A.2d 205 (1990) (golf course superintendent previously convicted of forgery and misappropriation of public funds). As noted, persons convicted of bribery or misconduct in office are barred from public contracts for 10 years. N.J. Stat. Ann. § 2C:51-2(f).

Conviction for health care claims fraud or insurance fraud: first offense requires suspension for one year, and second offense requires permanent disqualification from licensure “unless the court finds that such license forfeiture would be a serious injustice which overrides the need to deter such conduct by others and in such case

the court shall determine an appropriate period of license suspension which shall be for a period of not less than one year.” N.J. Stat. Ann. § 2C:51-5(a).