

MARCH 10, 2007

NEW MEXICO:

I. Automatic Restoration of Rights:

Civil Rights: Persons convicted of “a felonious or infamous crime” are ineligible to vote and hold office unless restored to political rights. N.M. Const. art. VII, §§ 1, 2. Right to vote restored automatically upon completion of sentence. N.M. Stat. Ann. § 31-13-1(A). Right to hold office or employment restored only with pardon or restoration of rights by Governor. §31-13-1(C); *see also* Op. N.M. Att’y Gen. No. 70-85 (1970).

Firearms: Firearm restoration is automatic ten years following the conviction, or upon an express restoration of firearm rights in a pardon. N. M. Stat. Ann. § 30-7-16; *see* Op. N.M. Att’y Gen. No. 92-09 (1992). The governor may, in appropriate cases, release a person from the provisions of § 30-7-16 if the conviction is a New Mexico conviction, but not a conviction under the laws of the United States or another state. Firearms rights also restored when sentence deferred and charged dismissed pursuant to § 31-20-9.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: Exclusively in Governor. N.M. Const. art. V, § 6 (“Subject to such regulations as may be prescribed by law, the governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment.”); *see also* N.M. Stat. Ann. § 31-13-1(C). Governor’s power extends to all state offenses but does not include convictions for violations of municipal ordinances.
- *Administration*: New Mexico Parole Board authorized to investigate requests for pardon, at the request of the Governor. N.M. Stat. Ann. § 31-21-17.
- *Eligibility*: Waiting period from five to ten years following satisfactory discharge of sentence, depending upon the seriousness of the offense. State of New Mexico, Executive Clemency Guidelines (available upon request from the Office of the Governor). The governor will not consider a case where there was successful completion of a deferred sentence, since a dismissal order under N. M. Stat. Ann. § 31-20-9 is intended to restore citizenship rights and the right to bear arms. Governor may issue a certificate of restoration but not pardon to federal offenders, but a person convicted in another state is ordinarily ineligible for relief.

- *Effect:* Restores rights of citizenship; gun rights must be specifically requested and requires an additional year wait.
- *Process:*
 - The Parole Board will examine the request to determine if it meets the criteria for consideration. If it does not, the board will notify the applicant and the governor, and no further action will be taken. If the applicant meets the criteria, the Parole Board, in turn, will call for a field investigation by the Corrections Department.
 - The Parole Board may also request the sentencing judge and/or prosecuting attorney involved in the particular case to provide pertinent input, including a recommendation for or against executive clemency.
 - The Parole Board will review the reports from the Corrections Department and all other material available to them, then submit a summary report with their recommendation to the governor.
- *Criteria and Standards:* (from Executive Clemency Guidelines) “Inasmuch, as a pardon restores citizenship rights, proof of ability to act as a responsible person is a condition for favorable consideration. To assist the recommending authorities in the evaluation process, applicants should include any significant achievements, such as employment and educational accomplishments; provide evidence of good citizenship and details about charitable and civic activities or other contributions made to the community. These guidelines apply to all applicants requesting a pardon. Ordinarily, pardon requests for misdemeanors, DWI, multiple felony convictions, sexual offenses and violent offenses or physical abuse involving minor children will not be granted.” In addition to a clear record, “The applicant must be self-supporting and show evidence of support. Due regard will be given to consistent employment history, lack of criminal record since discharge; including municipal, state and federal offenses.”
- *Frequency of Grants:* 110 pardons out of 2000 eligible applicants over last 7 years (as of 2002). Source: Governor’s Office.
- *Contact:* 505-476-2200 – Justin Miller, Counsel’s Office, Governor’s Office.

B. Judicial sealing or expungement of adult felony convictions:

- Adult convictions may not be expunged or sealed. Deferred sentencing is available in all cases except those involving a first degree felony, N.M. Stat. Ann. § 31-20-3. Upon expiration of deferment period, charges dismissed and rights restored (including right to bear arms). Court has held that this statute does not erase conviction or expunge record. *See*

Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction, March 2007

State v. Brothers, 59 P.3d 1268 (N.M. Ct. App. 2002), *cert. granted*, 59 P.3d 1262, *cert. quashed*, 73 P.3d 826 (sex offender required to register; even though charges had been dismissed, conviction still existed).

- Limited expungement only for first offender drug possession. N.M. Stat. Ann. § 30-31-28. Otherwise only for juvenile offenses under § 32A-2-26.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

Criminal Offender Employment Act (1974): N.M. Stat. Ann. §§ 28-2-1 et seq. Goal of Act: “The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.” § 28-2-2. In determining eligibility for public employment or a license, “agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession.” § 28-2-3(A). Records of arrest not resulting in conviction, and misdemeanor convictions not involving “moral turpitude,” may not be considered. § 28-2-3(B). Convicted person may be disqualified based on conviction if: 1) if conviction relates directly to the position sought; 2) or if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or 3) if an applicant for a teaching certificate or employment at child-care facility has been convicted of drug trafficking or sex offenses, regardless of rehabilitation. § 28-2-4(A); *see Weiss v. N.M. Bd. of Dentistry*, 798 P.2d 175 (N.M. 1990). Completion of parole or probation or a three-year period following release from incarceration creates a presumption of rehabilitation. § 28-2-4(B). Must state reasons in writing if decision is based on relationship between crime and employment, or on nature of offense in case of teaching or child-care licensure.

Wide variety of offenses (including drugs, fraud) disqualify from caregiver employment except that department of health may waive if employment presents no risk of harm to a care recipient or that the conviction does not directly bear upon the applicant's or caregiver's fitness for the employment. N.M. Stat. Ann. § 29-17-5. Other professions are similarly specific.

