

JULY 27, 2005

NORTH DAKOTA

I. Automatic Restoration of Rights:

The rights to vote and to hold public office are lost upon conviction of a felony and sentence to imprisonment, “during the term of actual incarceration,” N.D. Cent. Code § 12.1-33-01, and restored upon release from prison. § 12.1-33-03. Release from incarceration also restores the right to sit on a jury, except for certain offenses. *See* § 27-09.1-08(2)(e).

Firearm privileges are automatically restored 10 years following a conviction or release from incarceration or probation, whichever is later, and five years after a misdemeanor conviction or release from incarceration or probation. N.D. Cent. Code §§ 62.1-02-01(1), 62.1-02-01(2).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* The constitution vests the pardon power (except in cases of treason or impeachment) in the Governor. N.D. Const. art 5, § 7. Governor may (but is not required to) appoint a Pardon Advisory Board, consisting of state Attorney General, two members of the Parole Board, and two citizens. N.D. Cent. Code § 12-55.1-02.*
- *Eligibility:* Under Board rules, applicant “must have encountered a significant problem with the consequences of his or her conviction or sentence (e.g. difficulty entering a professional school or securing employment)” or demonstrate some other “compelling need for relief as a result of unusual circumstances.”
http://www.state.nd.us/docr/parole/pardon_policy.htm. Persons convicted under federal law or the laws of another state are ineligible for a state pardon.
- *Effect:* Ordinarily pardon relieves collateral legal penalties, but does not expunge conviction. N.D. Cent. Code § 12-55.1-01.
- *Process:* The Pardon Advisory Board is not an administrative agency as defined under N.D. Cent. Code § 28-32-01(2)(a) and is not subject to the Administrative Agencies Practice Act. § 28-32-01(2)(n). Any rules the

* Until a 1996 constitutional amendment, the pardon power in North Dakota was exercised by the Board of Pardons, composed of the Governor, the Attorney General, the Chief Justice, and two appointees of the Governor. *See* N.D. Const. art 5, § 6 (1995). The Board’s procedures and administrative process were detailed in N.D. Cent. Code § 12-55-01 et seq. (1995). *See* Nat’l Governors’ Ass’n, *Guide to Executive Clemency Among the American States* 122-124 (1988).

Board may adopt need not be published in the N.D. Admin. Code. See above for internet cite to rules. Board meets twice a year to consider cases. Director of Field Services Division of Parole Board serves as Pardon Clerk. § 12-55.1-05. Application form at: <http://www.cjpf.org/clemency/NorthDakotaApp.pdf>. After application filed, Pardon Clerk must notify sentencing judge and state's attorney, who file with court their recommendations. §§ 12-55.1-07, 12-55.1-09. Pardon Clerk also directs field investigation, and prepares packet of cases for Board's semi-annual meeting. Applicants are immediately notified of the Board's recommendation to the Governor. The Governor's office follows up by sending a letter notifying the applicant of the Governor's decision. Law provides for reconsideration and revocation within 30 days. § 12-55.1-08.

- *Frequency of Grants:* 21 applications received in 2004, only two granted, 17 denied, two remain pending. Source: Pardon Advisory Board.
- *Contact:* Warren R. Emmer, Pardon Clerk, Pardon Advisory Board PO Box 5521, Bismarck, ND 58506-5521, 701-328-6192, wemmer@state.nd.us. Also Legal Counsel Ken Sorenson, ksorenso@state.nd.us.

B. Judicial sealing or expungement of adult felony convictions:

Set-aside for minor offenses: North Dakota law provides procedures for reducing a state felony conviction to a misdemeanor, N.D. Cent. Code § 12.1-32-02(9), and for “vacating” a state felony conviction after service of a probationary sentence. § 12.1-32-07.1. Under § 12.1-32-02(9), a person convicted of a felony (other than certain drug offenses) and sentenced to imprisonment for not more than one year “is deemed to have been convicted of a misdemeanor” upon successful completion of the term of probation imposed as part of the sentence. Under § 12.1-32-07.1, a person placed on probation when imposition of sentence is deferred may, in the court’s discretion, be permitted to withdraw his guilty plea after completion of probation or discharge from probation, and the court may set aside the verdict of guilty and dismiss the information or indictment. Before dismissing the charge, the court may also reduce a felony conviction to a misdemeanor, which has the effect of releasing the defendant from all penalties and disabilities resulting from the offense, except for firearms disabilities. However, the court has no authority to expunge or seal records.

Expungement for first offender marijuana possession (misdemeanor): N.D. Cent. Code § 19-03.1-23: “Whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently

convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.”

C. Administrative certificate: N/A

III. **Nondiscrimination in Licensing and Employment:**

N.D. Cent. Code § 12.1-33-02.1: A person may not be “disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required ... solely because of prior conviction of an offense.” A person may be denied licensure because of a prior conviction only “if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation: a) the nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession; b) Information pertaining to the degree of rehabilitation of the convicted person; and c) the time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.”

The “direct bearing” standard and “rehabilitation” tests of this statute are incorporated into dozens of licensing statutes in the N.D. Cent. Code, including: liquor licenses (§ 5-03-01.1); teachers (§ 15.1-13-25); residential treatment centers for children (§ 25-03.2-04); architects and landscape architects (§ 43-03-13); lawyers (§ 27-14-02); barbers (§ 43-04-31.1); electricians (§ 43-09-09.1); funeral service director (§ 43-10-11.1); and pharmacists (§ 43-15-18.1).