

MARCH 11, 2007

OKLAHOMA

I. Automatic Restoration of Rights:

Persons “convicted of a felony” may not register to vote “for a period of time equal to the time prescribed in the judgment and sentence.” Okla. Stat. tit. 26, § 4-101(1). Felony offenders and persons convicted of a misdemeanor involving embezzlement are disqualified from office for 15 years after completion of sentence or until pardoned. §§ 5-105a(A), (B). (Permanent disqualification for a member of the legislature who is convicted of specified offenses. Okla. Const. art. V, § 18; Okla. Stat. tit. 21, § 312.) Persons who have been convicted of any felony or who have served a term of imprisonment in any penitentiary, state or federal, for the commission of a felony may not sit on a jury, unless that person has been “fully restored to his or her civil rights” (which in Oklahoma means a pardon). Okla. Stat. tit. 38, § 28(C)(6).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: Governor’s pardon power cannot be exercised except pursuant to a favorable recommendation from a majority of the Board of Pardon and Parole. Okla. Const. art. VI, § 10. Governor must report to the legislature on each clemency grant at each regular session, though no requirement that he state his reasons. Okla. Const. art. VI, § 10 (Governor must also approve all parole decisions, and commutation recommendations are interspersed with parole recommendation on monthly report to the Governor. See <http://www.ppb.state.ok.us> (Docket Results, Hearing Schedule).)
- *Administration*: Board has five members, three of which are appointed by Governor, other two, respectively, by Chief Justice of Supreme Court and presiding judge of the Oklahoma Criminal Court of Appeals. *Id.* Their terms expire with the Governor’s. The board chooses their own chairman. Okla. Stat. tit. 57, § 332.4(A). Okla. Const. art. VI, § 10 provides: “It shall be the duty of the Board to make an impartial investigation and study of applicants for commutations, pardons or paroles, and by a majority vote make its recommendations to the Governor of all deemed worthy of clemency. Provided, the Pardon and Parole Board shall have no authority to make recommendations regarding parole for convicts sentenced to death or sentenced to life imprisonment without parole.”
- *Eligibility*: Eligibility after service of sentence – or after five years of supervised parole whichever is shorter. Supervision may be terminated after three years – but then you have to wait until your parole runs out.

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

Persons convicted in other states and federal offenders ineligible. Misdemeanants may apply if they are not eligible for expungement, and if the applicant can demonstrate that the misdemeanor is prohibiting them from something like holding a state license. *See* Pardon and Parole Board, Policies and Procedures Manual (2000), Policy 004 (Eligibility Criteria) (available from Pardon and Parole Board).

- *Effect:* Pardon generally restores all legal rights lost as a result of conviction, except that firearms privileges are separately and specifically restored. A person convicted of a violent felony may not possess guns even with a pardon. *See* Okla. Stat. tit. § 1283(A), *amended by* 2005 Okla. Sess. Laws ch. 190. *See also* § 1283(B)(person convicted of a nonviolent felony who has received a “full and complete pardon” regains gun rights, including right to serve as peace officer, and to carry a concealed weapon). Ordinarily pardon does not serve as grounds for expungement, though non-violent first offenders who have been pardoned may seek expungement ten years after conviction. § 18(8) (see below). (See also juvenile expungement at § 18(5).) According to pardon instructions, it may or may not help with licensing decision depending on profession: “A pardon has little direct effect under Oklahoma law. However, it can be useful in helping you to present yourself as a responsible citizen. A pardon serves as recognition that you have adjusted well to society since completing your sentence.” Pardon Application Instructions, Oklahoma Pardon and Parole Board Website, <http://www.ppb.state.ok.us/> (accessed May 27, 2005).
- *Process:* Public hearing, majority vote, public record. Applicant must submit completed application form, and documents relating to conviction, including proof that fines and restitution paid; credit report, proof of employment and residence, etc.) Investigation conducted by parole officer of DOC – applicant advised to be candid, and to present himself as a “responsible and productive citizen.” (“Information you might consider negative will not necessarily hurt your application. It may serve to show how you were able to overcome a problem and actually improve your chances of receiving a Pardon.”) When an applicant lives in a different state, information is requested from authorities there about employment and living arrangements. Application with report from DOC then submitted to Board for consideration. Pardon and Parole Board, Policies and Procedures Manual, *supra*, Policy 004-10 (Pardon Consideration). .

The Board holds a public hearing in every case and may take official action only in open public meeting, pursuant to the Oklahoma Open Meeting Act. Okla. Stat. tit. 57, § 332.2(G). Unlike hearings in commutation cases, however, where the applicant, official witnesses, and victim are all entitled to appear and give testimony, hearings on Pardon Applications are held by "Jacket Review", meaning that the applicant is not ordinarily present. Okla. Admin. Code § 515:1-7-1(d)(1). The Board

may grant the applicant the opportunity to appear, but this is very rare and has happened only once in the last eight years. Pardon Application Instructions, *supra*. According to Board staff, the process generally takes about six months to complete.

Board meets once a month or at the call of the chairman. Board must provide prosecutors list of those to be considered 20 days before hearing and notify victims as well. Okla. Stat. tit. 57, § 332.2(C); Okla. Admin. Code § 515:1-5-2(d). In the rare case that a pardon applicant is permitted to appear, victims, members of public, officials, and applicants themselves may all speak at hearing, subject to strict time limitations. Okla. Admin. Code § 515:1-7-1(d).

Recommendations must be posted on Board's website. Okla. Admin. Code § 515:1-5-2(b). Board forwards favorable recommendations to Governor within 30 days, and Governor has 90 days to act. Okla. Stat. tit. 57, § 332.19. If he doesn't approve, it is deemed denied. *Id.*

- *Frequency of Grants:* For at least the past ten years the Oklahoma Governor has approved about 100 pardons every year (about 80% of those that apply) and many hundreds of commutations. Recently the Board has received eight to 15 applications for pardon per month. Source: Oklahoma Pardon and Parole Board.
- *Contact:* Cary Pirrong, General Counsel, Oklahoma Pardon and Parole Board, cary.pirrong@ppb.state.ok.us. 405-602-5863, ext. 228.

B. Judicial sealing or expungement of adult felony convictions:

- *Authority:* District court in jurisdiction where records are located. Okla. Stat tit. 22, § 19(A).
- *Eligibility:* First offender misdemeanors may be “expunged” 10 years after judgment. Okla. Stat. tit. 22, § 18(7). Non-violent first offender felony offenders who have received “a full pardon” may also petition to have the record “expunged” after 10 years. §§ 18(8), 19(A). Expungement means “sealing” of records. § 18.*
- *Effect:* If records sealed, it is as if conviction never took place, and person may not be required to disclose it by employers, state, and local government agencies, educational institutions, and an applicant for job or benefit may deny existence of conviction. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed. Okla. Stat. tit. 22, §

* Section 8 provides that “Records expunged pursuant to paragraph 9 of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes.” Paragraph (9) of § 18(9) affords relief for victims of identity fraud. It is not clear what implications this provision has for records expunged pursuant to other paragraphs of § 18.

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

19(D). Any conviction that has been sealed may be ordered “obliterated or destroyed” after another 10 years. § 19(K).

- *Process*: The purpose of the expungement provisions is to aid those who are acquitted, exonerated, or who otherwise deserve a second chance at a clean record. Once an applicant seeking to expunge criminal records meets the presumption of harm, the State must show that the public interest in keeping the records does not harm privacy interests and serves the ends of justice. Okla. Stat. tit. 22, § 19 . See *Hoover v. State*, 29 P.3d 591 (Okla. Crim. App. 2001) (as amended).
- *Articles*: Stacy Morey & Dave Stockwell, *Expunging criminal records under Title 22, §§ 18, 19 and 991c*, 74 OKLA. B.J. 829 (2003); Edward D. Hasbrook, *Expungement: Second-chance statutes*, 66 OKLA. B.J. 2503 (1995).
- *Deferral of sentencing, probation leading to expungement*: Section 991c authorizes court to defer judgment for a period not to exceed five years in the case of first offenders (with consent of the DA), and to require defendant to meet a variety of community-based conditions. Okla. Stat. tit. 22, § 991c(A). Successful completion of conditions may lead to expungement. § 991c(C). See also Oklahoma Community Sentencing Act, Okla. Stat. tit. 22, § 988.1 (enacted in 1999). Section 988.1 gives sentencing court a wide menu of sentencing options for eligible offenders (eligibility determined pursuant to a risk-based index). Section 988.19 requires court to give first consideration to deferring prison sentence pursuant to § 991(c).
- *Nonconviction records*: Okla. Stat. tit. 22, § 18 provides for expungement of records of acquittals, or cases in which charges dismissed within one year.
- *Effect of expungement*: "Expungement" means “the sealing of criminal records . . . to the public but not to law enforcement agencies for law enforcement purposes.” Okla. Stat. tit. 22, § 18

C. Administrative certificate: N/A

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

No public or private employer may ask about or consider a sealed conviction. An applicant for employment need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, “and may state that no such action has ever occurred.” Such an application “may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.” Okla. Stat. tit. 22, § 19(F).