

APRIL 28, 2007

OREGON

I. Automatic Restoration of Rights:

Person convicted of a felony and sentenced to a term of imprisonment “in the custody of the Department of Corrections,” and execution of the sentence is not suspended, loses rights to vote, to hold office, to serve on a jury, and to hold “a position of private trust.” Or. Rev. Stat. §§ 137.281(1), (3). Rights restored upon discharge or parole from imprisonment. § 137.281(1). Persons sentenced to jail do not lose civil rights. Eligibility for legislative office is lost upon conviction until sentence completed, including any period of post-prison supervision and payment of fine. Or. Const. art. IV, § 8(4). Firearms privileges automatically restored 15 years after discharge from sentence to first offenders, unless their offense involved criminal homicide or use of gun or knife. Or. Rev. Stat. § 166.270(4)(a).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* Pardon power exclusively in Governor, except for cases of treason for which the legislature has the pardon power. Or. Const. art. V, § 14; Or. Rev. Stat. § 144.649. Must report to the legislature each grant of clemency, including the reasons. Or. Const. art. V, § 14.
- *Eligibility:* “Generally, the Governor will not exercise his clemency power to pardon applicants for crimes which the law allows a court to set aside; therefore, you should not file an application if you qualify for judicial expungement under [Or. Rev Stat.] § 137.225 and have not sought such expungement.” Oregon Executive Clemency and Pardon Application, posted at <http://www.cjpf.org/clemency/Oregon.html> (accessed May 26, 2005) (emphasis in original).
- *Effect:* Restores legal rights lost as a result of conviction.
- *Standards:* “Clemency will be granted only in exceptional cases when rehabilitation has been demonstrated by conduct as well as words.” Oregon Executive Clemency and Pardon Application, *supra*.
- *Process:* Applications must be filed with Governor’s Office, with a copy served upon prosecuting DA, State Board of Parole and Post-Prison Supervision, Department of Corrections. Or. Rev. Stat. § 144.650(1). No fee. Governor may not act for 30 days after receipt. § 144.650(4). Governor’s legal staff obtains information about the case from law enforcement agencies. The current Governor interviews each pardon

applicant personally before acting. If Governor has not acted within 180 days, application will be deemed denied. *Id.*

- *Frequency of Grants:* In past ten years pardons very rare. Present governor Kulongoski issued five grants in first two years in office, three for immigration purposes, two for employment purposes. Source: Office of the Governor.
- *Contact:* Lorna Hobbs, Office of the Governor, 503-378-6246 (Lorna.Hobbs@state.or.us); David Reese, Deputy General Counsel

B. Judicial sealing or expungement of adult felony convictions:

- *Set-aside of Conviction and Non-Conviction Records:* Or. Rev. Stat. § 137.225(1) through (12) authorizes sentencing court to “set aside” misdemeanor and minor felony conviction (Class C, except sex and traffic offenses, and some other minor crimes), and records of criminal matters that did not result in a conviction. Upon application, order must issue unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice. § 137.225(11). (Statute as originally enacted in 1971 covered almost all offenses. 1971 Or. Laws chap. 434, § 2. Prior to 1993 amendments, more serious offenses eligible subject to a 10-year eligibility waiting period. Courts had no discretion to reject set-aside ex. on eligibility grounds. Or. Rev. Stat. § 137.225(1991); 1993 Or. Laws chap. 664, § 2; *see also State v. Langan*, 718 P.2d 719, 723 (Or. 1986) (statutory criteria, not discretion of trial court, control whether set aside should be granted)).
- *Effect:* Restores all rights and relieves all disabilities and seals record of the conviction. “Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.” Or. Rev. Stat. § 137.225(3). Person whose conviction has been set aside is “able to represent to prospective employers that you have not been convicted of that crime.” Oregon Executive Clemency and Pardon Application, *supra*. Set-aside also restores gun rights. Or. Rev. Stat. § 266.170(4)(a). However, Oregon courts have held that it is not a true expungement. *See State v. Langan*, 718 P. 2d 719 (1986)(noting that “expungement” is a “misnomer” because a set-aside order “is not designed to ‘rewrite history’ and deny the occurrence of an event but to limit the purposes for which official records may be used to exhume that past event”). Purpose of statute “to enhance employment and other opportunities for such formerly convicted persons...[The statute] does not, however, impose any duty on members of public who are aware of conviction to pretend that it does not exist.”

Bahr v. Statesman Journal Co., 624 P.2d 664 (Or. App.), *rev. den.* 631 P.2d 341 (Or. 1981).

- *Eligibility*: Three years from the date judgment was pronounced for felonies, one year for nonconviction records, subject in either case to there having been no other conviction in past 10 years, or arrest within three years. Or. Rev. Stat. § 137.225(1)(a),(b). No standard set forth in statute.
- *Procedure*: Prosecutor must be served with copy of motion and given opportunity to oppose. Or. Rev. Stat. § 137.225(2)(a). Victim notified by prosecutor, § 137.225(2)(b), and given opportunity to be heard by court, § 137.225(3).
- *Frequency*: For the seven months between July 2005 and January 2006, the Oregon courts granted over 500 adult felony set-asides.

C. Administrative certificate: N/A

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

Except for teachers licenses, a commission or agency may not deny, suspend or revoke an occupational or professional license “solely” for the reason that the applicant or licensee has been convicted of a crime, but “it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.” Or. Rev. Stat. § 670.280(2).

[The state may] deny an occupational or professional license or impose discipline on a licensee based on conduct that is not undertaken directly in the course of the licensed activity, but that is *substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required*. In determining whether the conduct is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required, the licensing board, commission or agency shall consider the relationship of the facts with respect to the conduct and all intervening circumstances to the specific occupational or professional standards.

Or. Rev. Stat. § 670.280(3)(emphasis supplied). *See Dearborn v. Real Estate Agency*, 997 P.2d 239, 242 (Or. App. 2000). (drug conviction unrelated to licensee's past or future conduct in professional real estate activity), *aff'd in relevant part*, 53 P.3d 436, 440-42 (Or. 2002). No provision governing public or private employment.

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