

SEPTEMBER 17, 2005

PUERTO RICO

I. Automatic Restoration of Rights: Puerto Rico's Constitution provides that "[s]uspension of civil rights including the right to vote shall cease upon service of the term of imprisonment imposed." P.R. Const. art. II, § 12. According to the Puerto Rico Board of Parole, the Governor of Puerto Rico has taken the position since the early 1980's that the right to vote during imprisonment has not been suspended, so that prisoners may vote. In any event, all civil rights are automatically reestablished to a convict who has served his sentence, without any intervention on the part of the Governor being necessary; executive clemency remains limited to eliminating the collateral consequence -- obtainment of license for practicing certain professions, driver's license, carrying of weapons, etc. -- that exist independently of the convict's civil and political rights. 1960 Op. P.R. Sec'y Justice No. 33.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* Governor alone has authority to pardon violations of local law. P.R. Const. art. IV, § 4. He is required to keep a record of all pardons and "official signatures and recommendations in favor of each application." 3 P.R. Laws Ann. §10(1). Parole Board may make non-binding advisory recommendations to Governor.
- *Eligibility:* No formal eligibility restrictions, but informal policy of recent governors has imposed a five-year waiting period following completion of sentence. Governor's pardon power does not extend to federal offenses.
- *Effect:* A grant of full pardon "erases forever" a conviction. 1960 Op. P.R. Sec'y Justice No. 33. The pardon document by its terms "eliminates" the conviction from police and court records.
- *Process:* Pardon process administered by the Puerto Rico Board of Parole. <http://www.jlbp.gov.pr/>. Application form at <http://www.cjpf.org/clemency/PuertoRicoApp2.pdf>. Corrections Department makes recommendation to Parole Board, which in turn makes recommendation to Governor. *See id.*; *see also* 3 P.R Laws Ann. § 80 (Secretary of Justice must investigate and report to Governor on all applications for pardon and commutation referred to him). No hearing. Process usually takes about one year.
- *Frequency of Grants:* From 200 to 250 applications each year, about 10% granted. In 2004, 26 pardons (14 conditional, no guns, good behavior). With expansion of expungement authority in spring of 2005, *see* Part IB

below, number of applications are expected to decline. Source: Parole Board.

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B. Judicial sealing or expungement of adult felony convictions:

- *Expungement authority:* Broad expungement authority under 34 P.R. Laws Ann. § 1731 et seq., as amended by Law. No. 314 (September 15, 2004). (Chapter 119 is entitled “Elimination of Convictions of Misdemeanors from Criminal Record,” though it authorizes such elimination for all felonies.)
- Misdemeanants may also apply in the first instance to the Superintendent of Police, who has independent authority to “eliminate” the conviction from the record; if Superintendent denies petition, he may go to court for relief.
- *Eligibility:* Misdemeanants and non-violent felony offenders may apply to the “court of first instance” for an order “eliminating” a conviction from their record, six months after completion of sentence for misdemeanants and five years after completion of sentence for a felony offense, as long as they have completed the sentence and not committed any further crimes, and court finds that they have “a good moral reputation in the community.” § 1731(a), (b) and (c). (New law shortening eligibility waiting periods took effect May 1, 2005, when the new penal code went into effect. Waiting periods may be further reduced “for the meritorious cases.”) In a following section that is not numbered, the court also has authority to “eliminate” violent felony convictions, including rape and murder, “as long as twenty (20) years have elapsed since serving the sentence for the last conviction, and that during time he/she has committed no offenses and that has a good reputation in the community.”
- *Process:* In order to obtain an order under § 1731, the petitioner must first file in the district court of his domicile, which is required to hold a hearing at which counsels for relevant district attorney and Superintendent of Police must be present. *See* § 1732. May file in person or in writing. Hearing unnecessary if D.A. approves petition. *See also* § 1732 below: The “elimination of the antecedents from the

penal records shall be at the discretion of the Court, in agreement to the evaluation of the social and criminal record of the convict and based on the socio-penal reports which credit his/her rehabilitation.” If district court denies petition, may appeal to court of first instance, whose decision is final. § 1733.

- *Certification of Rehabilitation for Prison Inmates:* In addition to § 1731, new penal code authorizes Secretary of Corrections to file motion with court in which he may certify that a person who has not completed his prison term has been totally rehabilitated. The Procurator General and victim may respond, and court may then issue certificate attesting to rehabilitation. *See* art. 104, Law No. 149 (June 18, 2004, art. 149 effective May 1, 2005). Procedure for implementing law has been developed by Department of Corrections, including affidavit of two psychiatrists.
- *Contact:* Alexis Bird, 787-224-8103; Department of Corrections Legal Counsel’s Office. Art 104.
- *Comments:* In Puerto Rico’s hotly contested elections, prisoner vote (including prisoner families) is considered very important (represents 50,000 votes). Issue of prisoner voting comes up every year.

C. Administrative certificate: N/A.

III. Nondiscrimination in Licensing and Employment: N/A