

MARCH 10, 2007

TENNESSEE

I. Automatic Restoration of Rights:

Voting: Tennessee has changed its rules on restoration of voting rights several times in the past 30 years, and as a result has created what is perhaps the most confusing situation in the nation. The Tennessee Constitution provides that persons convicted of an “infamous crime” shall not be permitted to register to vote. Tenn. Const. art. 1, § 5. By statute, conviction of a felony renders an individual “infamous,” and disqualified from voting. Tenn. Code. Ann. § 40-20-112. Effective July 1, 2006, all but a few categories of serious felony offenders convicted after 1981 are eligible to have their right to vote restored upon expiration of sentence, and may register upon obtaining a “certificate of restoration” from prison authorities or from the Board of Probation and Parole. *See* §§ 40-29-202(a), 203(a). All court-ordered restitution must be paid, § 40-29-202(b), and a convicted person must also be current in child support obligations. § 40-29-202(c). Persons convicted of murder, rape, treason or voter fraud are permanently ineligible to vote (presumably unless pardoned). § 40-29-204.*

Other civil rights: Persons convicted of “a felony or an infamous crime and sentenced to the penitentiary” are disqualified from office unless and until their rights have been restored by a court. Tenn. Code Ann. § 40-20-114. Also disqualified from holding office, without regard to their sentence, are those convicted of bribery, larceny, or any “infamous” offense. § 8-18-101(1). Persons convicted of specified “infamous crimes” are also disqualified from jury service, § 22-1-102, and a sentence of imprisonment disqualifies a person from serving as executor, administrator, or guardian. § 40-20-115. These rights may be restored only through the judicial procedure described in § 40-29-101 through 105, notwithstanding restoration of the right to vote. *See* § 40-29-201(c).**

Firearms: For felony offenders convicted between 1986 and 1996 and not sentenced to the penitentiary, firearms rights are restored automatically by the

* Prior to the passage of Chapter 860 (signed into law on June 14, 2006), Tennessee had one of the most complex felony disenfranchisement schemes in the country. Persons convicted after 1996, between 1981 and 1986, and prior to 1973, were permanently disenfranchised unless pardoned by the governor or restored to the vote by action of a court. Persons convicted between 1973 and 1981, and *most* of those convicted between 1986 and 1996, were automatically eligible to vote upon completion of sentence, and were permitted to register upon obtaining a “certificate of restoration” from prison authorities or from the Board of Probation and Parole. § 40-29-105(a) and (b). As under current law, those convicted of murder, rape, treason, voter fraud were permanently disenfranchised. § 40-29-105(b)(2).

** Prior to the passage of Chapter 860, *see* note 1 *supra*, the automatic restoration procedure specified in § 40-29-105(b)(3) for persons convicted between 1986 and 1996 accomplished restoration of all civil rights. *See* Tenn. Op. Att’y Gen. No. 02-119 (2002). The law makes clear that this is no longer the case. § 40-29-201(c).

“certificate of restoration” provided for in §§ 40-29-105(b). *See* Tenn. Op. Att’y Gen. No. 02-119. However, persons convicted during this ten-year period who were sentenced to the penitentiary (and presumably also persons convicted prior to 1986 and after 1996) must obtain a court order before being allowed to carry a firearm. *Id.* Persons convicted of a violent offense may never regain the right to possess a handgun. *State v. Johnson*, 79 S.W.3d 522, 528 (Tenn. 2002). Persons who are subject to federal firearms disabilities by virtue of not having had their rights restored under state law, are ineligible for a handgun permit under state law. *See* Tenn. Code Ann. § 39-17-1351(b); *see also* Tenn. Op. Att’y Gen. No. 02-119.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: Governor has full authority to pardon, except in cases of impeachment – Tenn. Const. art. 3, § 6; Tenn. Code Ann. § 40-27-101. Governor may be advised by Board of Probation and Parole, but its role does not limit his power. *See* Tenn. Code Ann. §§ 40-28-104(a)(10), 40-28-128. Governor may also issue exonerations, signifying innocence. § 40-27-109. Governor required to keep a record of the reasons for each clemency grant and associated documents, and “submit the same to the general assembly when requested.” § 40-27-107.
- *Administration*: Board of Probation and Parole is composed of seven members appointed by the Governor to six-year terms. Board makes “nonbinding” recommendations to governor, “based upon its application of guidelines and criteria adopted by the governor.” Tenn. Code Ann. § 40-28-104(a)(10). *See also* Tenn. Comp. R. & Regs. § 1100-1-1-.15(1)(d)6.
- *Eligibility*: Pardon application form (available from the Board), provides that an applicant must have completed sentence, including any period of community supervision. In addition, the Governor “will give serious consideration” to pardon requests where: 1) applicant has had no conviction for five years since completion of sentence for which he seeks pardon; 2) applicant has “demonstrated good citizenship,” which means “both specific achievements and incident-free behavior;” and 3) petition has demonstrated with proper verification a specific and compelling need for a pardon.” *See also* “Criteria” below. Federal and out-of-state offenders are not eligible for a Governor’s pardon.
- *Effect*: Pardon has limited legal effect, and does not restore civil or other rights lost under state law, and is not entered into a law enforcement database. An individual who receives a pardon that restores full rights of citizenship must still petition the court for restoration. § 40-29-105(c). A pardon is of limited effect where other collateral disabilities are

concerned, because these are not considered “punishment,” *e.g.*, disqualification from employment as police officer. *See* Tenn. Op. Att’y Gen. No. 84-063 (1984) (person convicted of felony may not serve as police officer even if pardoned by the Governor, and hence is subject to prosecution for carrying a firearm). Pardon does not entitle a person to expungement; it is a “forgiving” but “not a forgetting.” *See, e.g., State v. Blanchard*, 100 S.W.3d 226, 131 (Tenn. Crim. App. 2002). However, a pardon may be helpful in connection with employment and licensing decisions. For example, according to the Board, applications for some nursing licenses provide that an applicant need not report a felony conviction if it has been pardoned. In addition, a pardon may serve as grounds for a court order restoring civil rights. *See* Tenn. Code Ann. §§ 40-29-105(b)(1)(A), (c)(2)(A).

- *Process:* Hearing held by Board in every case where applicant deemed worthy of favorable consideration. *See* Tenn. Comp. R. & Regs. § 1100-1-1-.15(1)(b)2, (c)1. After determination of eligibility, Board collects background information about the crime and applicant’s adjustment since release. § 1100 - 1-1-.15(1)(d)1-4. Hearing is not held in every case (2/3 of applications filed are denied without a hearing). If a hearing is held, Board notifies various interested parties, including prosecutor, judge and police. The legislative oversight committees also receive notification of the hearing. After Board makes its recommendation to Governor, it forwards to legislative oversight committees the names of those it is recommending and those it is not, along with reasons in each case. § 1100-1-1-.15(1)(f).
- *Criteria:* By statute Board of Probation and Parole must base clemency recommendations “upon its application of guidelines and criteria adopted by the governor.” Tenn. Code Ann. § 40-28-104(a)(10). The Governor’s eligibility guidelines set forth on the pardon application form (available from the Board) are described above. To demonstrate good citizenship, an applicant must provide written communication from at least five persons verifying the period of good citizenship, and written verification of a specific and compelling need. “The need for a pardon will not be found compelling when other provisions of the law provide appropriate relief for the petitioner.”

The Board’s formal regulations set forth additional criteria for granting a pardon, which include the nature and severity of the crime, the applicant’s previous criminal record, the views of the trial judge and the district attorney general who prosecuted the case; the comparative guilt of others involved in the applicant’s offense; the applicant’s circumstances in the community; any mitigating circumstances surrounding the offense; the views of the community, victims of the crime or their families, institutional staff, parole officers or other interested parties; and medical and psychiatric evaluation when required by Board. Tenn. Comp. R. & Regs. § 1100-1-1-.15(1)(d)6.

- *Frequency of Grants:* From 1996 to 2002 (Governor Donald Sundquist), the Board received 241 applications for pardon, granted a hearing in 32 cases, and recommended about half of these favorably to the Governor. Fifteen pardons were granted by Governor Sundquist. From 2003 to May 2005 (Governor Phil Bredesen), the Board received 47 applications, and granted six hearings, but no pardons have yet been granted. Source: Board of Probation and Parole.
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B. Judicial Restoration or Expungement

- *Judicial Restoration of Rights:* Tenn. Code Ann. § 40-29-101 provides a procedure through which "[p]ersons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court *may* have their full rights of citizenship restored by the circuit court." § 40-29-101 (emphasis added). (As noted in section I, above, the right to vote can be restored without court action upon expiration of sentence. *See* § 40-29-202(a) and 203(a).) A petition may be based on a pardon or expiration of the maximum sentence, and the petitioner must also demonstrate to the court that he or she "merits having full rights of citizenship restored." § 40-29-105(c).
- *Process:* The judicial restoration procedure requires filing of petition in circuit court in county of residence with proper notice to both federal and state prosecutors and proof of character. Tenn. Code Ann. §§ 40-29-102 through 104. Federal and out-of-state offenders residing in the state are also eligible. Petitioner must demonstrate to the court that "ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability and veracity, and is generally esteemed as such by the petitioner's neighbors." Tenn. Code Ann. § 40-29-102. There is a presumption that the full citizenship rights of the petitioner shall be restored, which may be overcome only upon proof by a preponderance of the evidence either 1) that the petitioner is not eligible for restoration or 2) there is otherwise good cause to deny the petition. *See* Tenn. Code Ann. § 40-29-105(c)(3).
- *Pretrial diversion, exoneration:* Tenn. Code Ann. § 40-15-102 through 106. Misdemeanants and Class D felony offenders who have had no prior deferral (ex. sex offenders) may be placed on probation for up to two years. Upon successful conclusion the court will expunge record. Convictions may also be expunged in case where there has been an "exoneration" from Governor in case of innocence. § 40-27-109(a). *See State v. Blanchard, supra*, 100 S.W.3d at 228. Effect of expunging records of criminal charge is to restore person to position he or she

occupied prior to arrest or charge, and thus persons whose records have been expunged may properly decline to reveal or acknowledge existence of charge. Tenn. Code Ann. § 40-32-101(B) and (C). *See also Pizzillo v. Pizzillo*, 884 S.W.2d 749 (Tenn. Crim. App. 1994). Expunged records remain available to law enforcement.

- *Nonconviction records*: Tenn. Code Ann. § 40-32-101(A). Court may order “destruction” of records in case of acquittal, or where charges dismissed.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment: N/A