

AUGUST 15, 2007

TEXAS**I. Automatic Restoration of Rights:**

Right to vote is lost upon conviction of “any felony,” Tex. Const. art. 6, § 1, as is the right to sit on a jury. Tex. Gov’t Code Ann. § 62.102(7). Right to vote automatically restored upon completion of sentence. Tex. Elec. Code Ann. § 11.002. Other civil rights are restored only through a pardon, or gubernatorial restoration of rights for federal and foreign first offenders pursuant to Tex. Code Crim. Proc. Ann. art. § 48.05(a). Persons convicted in other states must seek relief in the jurisdiction of their conviction.

II. Discretionary Restoration Mechanisms:**A. Executive pardon:**

- *Authority:* Under Tex. Const. art. 4, § 11(b), the Governor may not issue a pardon except upon affirmative written recommendation from a majority of the members of the Board of Pardons and Paroles (except for a one-time 30-day reprieve in a capital case). See Texas Board of Pardons and Paroles, Executive Clemency in Texas, http://www.tdcj.state.tx.us/bpp/exec_clem/exec_clem.html (May 28, 2005). Board consists of seven members appointed by the Governor to staggered six-year terms. Tex. Gov’t Code Ann. § 508.031(a). Governor also selects chair. Board members are full-time government employees. They may be removed by the governor that appointed them at any time; those appointed by another governor may be removed only for cause.
- *Eligibility:* Upon completion of sentence. 37 Tex. Admin. Code § 143.5. Generally outstanding fines or other monetary obligations do not bar consideration. Applications from misdemeanants accepted. See also first offender restoration available to federal and foreign offenders, discussed below.
- *Effect:* Full pardon defined as “an unconditional act of executive clemency by the governor which serves to release the grantee from the conditions of his or her sentence and from any disabilities imposed by law thereby.” 37 Tex. Admin. Code § 141.111. Pardon restores all civil rights lost as a result of conviction, and removes barriers to some, but not all, types of employment and professional licensing. The state board advises that “licenses are granted at the discretion of the state licensing boards of each profession, and it is advisable to contact those boards directly to learn whether a pardon is necessary or sufficient to restore licensing eligibility in a particular field.” See Texas Board of Pardons and Paroles, Executive Clemency in Texas, *supra*. See also Tex. Op. Atty. Gen. No. MW-270 (1980) (pardon does not entitle felony offender to be certified as peace

officer); *Dixon v. McCullen*, 527 F. Supp. 711 (N.D. Tex. 1981) (pardon removes some, but not all, legal disabilities; it does not overcome statute automatically excluding convicted persons from certification as a police officer.)

Expungement following pardon: According to state pardon board, “A person who is convicted and who receives a full pardon is entitled under Article 55.01(a)(1)(B) to an expunction of all records and files relating to the conviction.” See Texas Board of Pardons and Paroles, Executive Clemency in Texas, *supra*. The record is not automatically expunged upon a grant of a full pardon. “This can only be accomplished by petitioning a court in the county of conviction.” After expungement, an individual may deny the fact of conviction. Tex. Code Crim. Proc. Ann. art. 55.01(a)(1)(B). Full pardon does not relieve obligation to register as sex offender. Only a “special pardon” — a full pardon on the grounds of innocence — declares a person innocent of the crime and provides for complete freedom from legal implications of the conviction. Arts. 62.11(b) and (c). See also art. 62.0105, which lists several grounds on which a court may exempt a person from obligation to register.

- *Process:* Applicant files petition with Board Executive Clemency Section, which conducts an investigation. Individual board members review each petition and cast their vote without consulting with others. Texas law allows Board members to perform their duties in clemency matters without meeting as a body, and without holding a public hearing. Tex. Gov’t Code Ann. § 508.047(b). (In this respect, Texas is unique among statutory pardon boards that have decision-making authority.) No hearing required for applicants for first offender restoration of rights, though three character affidavits are required. Board must recommend to the Governor in writing by majority. All Board recommendations for and against clemency are public information. The Board does not publish substantive criteria upon which it makes decisions in clemency matters.*
- *Frequency of Grants:* The Board received 358 applications for full pardon in FY 2002, and recommended 56 favorably; no pardons were granted by the Governor that year. The Board received 238 applications for pardon in FY 2003, and recommended 76 favorably; 67 were granted by the

* Texas legislature is currently considering legislation that would require the Board to meet before deciding capital cases, though there has not yet been any effort to extend this process to other clemency cases. Senate Bill 548 would require the board to meet formally to decide clemency requests at the prison where the inmate is housed. Board members also would be allowed to participate in the meeting over a telephone conference call or via a video conference. S.B. 548, 79th Leg. (Tex. 2005). The meetings would not be public, but the inmate would be allowed to be present, unless there were overriding security issues. The inmate’s lawyer and someone representing the victim’s family also could participate. The Board could meet privately to discuss the case. But the chairman, at the conclusion of deliberations, would have to announce each member’s vote on the petition, and each member would have to sign his or her written recommendation.

Governor (of which 35 were pardons to Tulia defendants). About 20% of all applications for pardon are from misdemeanants. Source: Texas Board of Pardons and Parole.

- *First Offender Restoration Process:* For federal and foreign felony offenders with only one conviction (including misdemeanors), not involving drugs, guns, violence or firearms, Governor may also restore civil rights under Tex. Code Crim. Proc. Ann. art. 48.05. This authority is also dependent upon receiving an affirmative recommendation from the Board. This is “a form of pardon that restores all civil rights under the laws of this state that an individual forfeits as a result of the individual's conviction of an offense, except as specifically provided in the certificate of restoration.” Art. 48.05(k). An individual convicted of a prior federal offense may not apply for restoration of civil rights forfeited in the state as a result of the federal conviction if the individual has also been convicted of a misdemeanor offense. Tex. Op. Atty. Gen. No. DM-486 (1998). Federal and foreign first offender become eligible for restoration of rights three years after federal convictions, and two years after foreign convictions. Tex. Code Crim. Proc. Ann. art. 48.05(b)(2). Offenders may apply either to local sheriff, who sends it on to the Board, or directly to the Board, which conducts a paper review.
- *Contact:* Maria Ramirez, Board of Pardons and Parole, 512-406-5852, maria.ramirez@tdcj.state.tx.us.

B. Judicial sealing or expungement of adult felony convictions:

- *Expungement:* Under Art. 55.01 of the Texas Code of Criminal Procedure, “expunction” of all records may be ordered in cases where an arrest does not result in a conviction, or where the offense has been subsequently pardoned. Individuals are entitled to expungement of acquittals, dismissals, and arrests not leading to conviction, unless they arise out of a “criminal episode,” another offense for which the person was convicted or remains to be prosecuted, or if the person has been convicted of another crime within the previous five years. Expungement applies to pardons restoring civil rights, as well as pardons predicated upon a finding of innocence. *See Ex parte Hernandez*, 165 S.W.3d 760, 763 (Tex. App.-Eastland, 2005). Except for Class C misdemeanors, offenders are not entitled to expunction where a period of community supervision has been ordered, even if the charges are later dismissed pursuant to a deferred adjudication plan. § 55.01(2)(B). See below.
- *Procedure:* Expungement of “all records and files relating to the arrest” may be accomplished by petitioning the district court in the county of conviction. Tex. Code Crim. Proc. Ann. art. 55.01(a)(1)(B). Once an applicant for expungement of arrest records demonstrates his eligibility under the

provisions of the statute governing expungement of records, the trial judge does not have the discretion to dismiss the petition or deny the request for an expunction. *Perdue v. Texas Dept. of Public Safety*, 32 S.W.3d 333, 334-35 (Tex. App. 2000). Pursuant to the procedure set forth in art. 55.02, the court order shall order any records and files that are the subject of the petition to be returned to the court or “destroyed.” Art. 55.02, § 5(d). The effect of expungement: “the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited,” and “the person arrested may deny the occurrence of the arrest and the existence of the expunction order.” Art. 55.03(a) and (b). “When questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, [the person] may state only that the matter in question has been expunged.” Art. 55.03(c).

- *Deferred adjudication nondisclosure*: Under Section 411.081 of the Texas Government Code, a person placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, who subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, may petition the court for an “order of nondisclosure.” See Acts 2005, 79th Leg., ch. 177, § 3, and ch. 1309, § 3, eff. Sept. 1, 2005. A person may petition the court regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense. Under Art. 42.12, most offenses are eligible for deferred adjudication, except for DUI, repeat drug trafficking near school, and a range of repeat felony sex crimes. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is “in the best interest of justice,” the court “shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication.” An order of nondisclosure prohibits criminal justice agencies from disclosing to the public criminal history record information related to an offense, and criminal history record information subject to an order of nondisclosure is excepted from required disclosure under the Public Information Act. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, one of the licensing and employment agencies listed in 411.081(i), or the person who is the subject of the order. (The agencies listed in (i) include schools, hospitals, various public licensing boards and agencies.)

If a law enforcement agency receives a request for information subject to a section 411.081(d) nondisclosure order from a person who is not authorized to receive the information, the agency may inform the person that it has “no record.” Op. Atty. Gen. 2004, No. GA-0255. A person may petition the court that placed the person on deferred adjudication for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Waiting periods for

serious misdemeanors (2 years) and felonies (5 years) and certain serious offenses excepted. *See* also Tex. Code Crim. Proc. art. 42.12, § 5(a) and (c) (“a dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense,” but it may be taken into account in subsequent prosecution, and for various licensing purposes.) See FAQs at http://www.txdps.state.tx.us/administration/crime_records/pages/faq.htm. *See also State v. Macais*, 30 K.A.2d 79, 39 P.3d 85 (Kans. App. 2002)(Texas deferred adjudication is counted as a prior conviction for sentencing purposes in Kansas as Texas court can defer adjudication only after defendant pleads guilty or nolo contendere).

C. Administrative certificate

N/A

III. Nondiscrimination in Licensing and Employment:

Tex. Occupations Code Ann. § 53.021(a): “A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.”