

MARCH 12, 2007

## UTAH

### I. Automatic Restoration of Rights:

Civil rights: Persons convicted of a felony lose the right to vote. *See* Utah Code Ann. § 20A-2-101(2)(b) (“Convicted felon” whose rights have not been restored may not vote). For persons convicted in Utah state court, right to vote is restored automatically upon 1) a sentence to probation by the sentencing court; 2) upon release on parole by the Board of Pardons; or 3) upon successful completion of a term of incarceration. § 20A-2-101.5. Federal offenders and out-of-state offenders are presumably remitted to the restoration procedures in their state of conviction.

Eligibility to serve on jury lost unless and until conviction expunged. § 78-46-7(2). No provision on public office, except that a person may be removed for “high crimes and misdemeanors” or malfeasance in office. §§ 77-5-1 (impeachment of governor and other state officers), § 77-6-1 (removal from office of justices of the peace and municipal officers).

Firearms: Restrictions on firearms have been tightened in recent years. Now no persons convicted of any felony may possess any firearm or other “dangerous weapon,” defined broadly. Utah Code Ann. §§ 76-10-503(1) and (2). Persons convicted of “crime of violence” or on probation or parole, formerly the only category regulated, subject to greater penalties. *Id.*\* Firearms restrictions may be removed only by expungement (if eligible) or pardon.

### II. Discretionary Restoration Mechanisms:

#### A. Executive pardon:

- *Authority* to pardon vested in Board of Pardons and Paroles. Utah Const. art VII, § 12; Utah Code Ann. § 77-27-5(4). (The Governor may grant respites or reprieves in all cases of convictions for offenses against the state except treason or conviction on impeachment, but these respites or reprieves may not extend beyond the next session of the board.). Board is composed of five full-time salaried members, and five pro tem members

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\* Until 2000 amendment, these restrictions did not apply to target concessions, shooting ranges, competitions, and hunting. *See* Utah Cod Ann. 76 -10-512 (1999). These exceptions are now available only to juvenile offenders. *See* Laws 2000, c. 303, § 8, eff. May 1, 2000.

who fill in and are paid on a per diem basis, all appointed by Governor to five-year terms. § 77-27-2.\*\*

- *Eligibility* – Board only considers those whose sentences have been expired for five years and who have exhausted judicial remedies including expungement. Utah Admin. Code § 671-315. State offenders only.
- *Effect*: Restores all rights, relieves legal disabilities. Board generally specifies whether pardon restores firearms privileges.
- *Process*: Hearing, majority vote, reasons given. Pardon may not be granted except after a full hearing before the board, in open session, and after previous notice to DA, judge, and law enforcement of the time and place of the hearing has been given. Utah Admin. Code § 671-315. Board may deny pardon by majority vote without hearing. The proceedings of the Board shall be recorded and filed as provided by statute with all papers used upon the hearing. Utah Admin. Code § 671-304. Decisions by majority. Utah Const. art VII, § 12. The decision of the Board is reduced to writing, including a rationale for the decision, and published. Utah Admin. Code § 671-305.
- *Frequency of Grants*: Board receives only three to five requests for pardon a year, and about 10 have been granted in the past decade. Possibility of regaining rights through judicial expungement makes pardon process less important. Source: Board of Pardons and Paroles.
- *Contact*: John Greene, Administrator, Board of Pardons and Paroles, 801-261-6464.

B. Judicial sealing or expungement of adult felony convictions:

- *Expungement*: A person convicted of a crime may petition the convicting court for an expungement of the record of conviction. Utah Code Ann. § 77-18-11(1). Certain crimes are excepted: capital and first degree felonies, forcible second degree felonies, sex offense involving a minor, vehicular homicide, other sex offenses. § 77-18-11(11), citing § 77-18-12, amended by 2005 Utah Laws 2.
  - *Eligibility*: complex eligibility requirements set out in § 77-18-12. Seven years for felony, three to five for misdemeanors. Longer (10 years) for alcohol- and drug-related offenses. Recidivists must wait 20

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\*\* Until 1992 constitutional amendment, the Board of Pardons consisted of the Governor, the Attorney General, and the Justices of the Supreme Court. See Utah Const. Art. VII, § 12 (1991). See also National Governors' Ass'n, Guide to Executive Clemency Among the American States 149-150 (1988).

years. Utah Code Ann § 77-18-12(3). Application forms and instructions at <http://www.utcourts.gov/howto/expunge/#district>

- *Process:* Utah Code Ann. § 77-18-12. Court must require a “certificate of eligibility”, which is issued after investigation by the Utah Bureau of Criminal Identification. See § 77-18-12; § 53-10-202.5. The statutory fee for each certificate of eligibility is \$25. § 77-18-11(2)(b). Notice must be given to prosecutor, DOC, victim. § 77-18-11. If prosecutor or victim objects, or if petitioner disagrees with conclusions of the UCBI, petitioner may ask for a hearing. The court in its discretion may also request a written evaluation by Adult Parole and Probation of the Department of Corrections, which shall include a recommendation concerning expungement, certification that the petitioner has completed all requirements of sentencing and probation or parole, and any rationale that would support or refute consideration for expungement. The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and the prosecuting attorney and the victim. § 77-18-11(6). The prosecutor or victim may object, in which case the judge will order a hearing. If neither objects, court has authority to issue expungement without a hearing, in reliance on the UBCI certificate. 77-18-11(10). If petitioner found to be eligible, the court “shall issue a certificate . . . unless there is clear and convincing evidence to persuade the court that it would be contrary to the interest of the public to grant a requested expungement.” § 77-18-13(2).
- *Effect:* A person receiving expungement “may respond to any inquiry as though the conviction did not occur.” § 77-18-13(3). Otherwise expungement of uncertain effect. E.g., it may still be used for various purposes, as in subsequent sentencing or firearms prosecution. Utah Code Ann. §§ 77-18-13(3), 77-18-15(4), (7). *Doe v. Dep’t of Pub. Safety*, 782 P.2d 489 (Utah 1989) (Department of Public Safety could not ask about or obtain expunged convictions of applicant for employment with Department of Corrections; prohibition against employer asking about expunged convictions was not exception to or limitation upon general expungement provisions; and expungement statute’s failure to limit rights of licensing agencies to receive information did not give Department right to expunged information). See *Thompson v. Dep’t of Treasury*, 557 F. Supp. 158 (D. Utah, 1982) (judicial expungement granted to petitioner under Utah statutes did not completely erase prior convictions and, therefore, petitioner was not entitled to relief from federal firearms disability). See Michael D. Mayfield, Comment, *Revisiting Expungement: Concealing Information in the Information Age*, 1997 Utah L. Rev. 1057, 1058-60.

- *Contact*: Marlene Bills, 801-238-7192. marleneb@email.utcourts.gov; Patricia A. Nosanchuk, patrician@email.utcourts.gov, court data processing, 801-578-3831. jolenec@email.utcourts.gov. UBCI contact Becky Jones at 801-965-4445.
- *Frequency of Grants* – In CY 2003 the Utah courts expunged 321 felony convictions in CY 2004 they expunged 335 felony convictions. They expunged 540 misdemeanor convictions in CY 2003 and 701 misdemeanor convictions in CY 2004. About 50% of petitions for expungement are approved. Source: Office of Utah Court Administration.
- *Nonconviction records*: Utah Code Ann. § 77-18-10. Person arrested may petition for expungement if acquitted or charges dismissed 30 days after arrest. Class C misdemeanors where adjudication deferred may also qualify.

C. Administrative certificate: N/A

**III. Nondiscrimination in Licensing and Employment:** N/A

Utah Admin. Code 606-2-2(U) and (V): Antidiscrimination regulations of Utah Labor Commission provide that it is improper to ask about arrest records not leading to conviction, and inquiry about felony conviction “advisable only if job-related.”

Utah has no general law regulating consideration of conviction in employment or licensure. It does apply a direct relationship test in connection with termination of gasoline franchise arrangements. See Utah Code Ann. § 13-12-3(6)(b) (restricting termination except “Where the alleged grounds are caused by the conviction of the dealer or distributor . . . of a criminal offense directly related to the business”).