

# DISCLAIMER

Set forth in this document is the text of the individual state entries from the **October 1996** edition of the Office of the Pardon Attorney's publication, *Civil Disabilities of Convicted Felons: A State-by-State Survey*. The Survey is provided for informational purposes only, as an aid to further inquiry. The Office of the Pardon Attorney does not have official responsibility for the interpretation of the law of any state, and found in compiling the survey that in a number of jurisdictions there was disagreement among agencies about the interpretation of state law. Further, the laws in the many states are revised frequently. This edition of the survey was published in October 1996 based on comprehensive research that ended in May 1996. The reader is therefore cautioned that the relevant state agency should always be contacted for a current and authoritative interpretation of state law. Similarly, the relevant federal agency should be contacted for current and authoritative interpretations of applicable federal statutes. The views expressed in the survey on questions of federal or state law do not necessarily represent the official position of the Department of Justice.

The Survey's section on federal law has been omitted because a more recent version is located at [http://www.usdoj.gov/pardon/collateral\\_consequences.pdf](http://www.usdoj.gov/pardon/collateral_consequences.pdf). The appendices have also been omitted. The pages of the remaining portions set forth here have been renumbered and are therefore different from the printed version of the 1996 survey. Although the pagination and format of the individual state entries differ from the printed version, the text of the entries is the same, with the exception of the correction of several typographical errors.

Comments are welcome and should be sent to the survey's principal author, Deputy Pardon Attorney Susan M. Kuzma, Office of the Pardon Attorney, U.S. Department of Justice, 500 First St., N.W., Suite 400, Washington, D.C. 20530.

## INTRODUCTION

Under federal law and the laws of many states, conviction of a felony has consequences that may continue long after a sentence has been served. For example, convicted felons may lose essential rights of citizenship, such as the rights to vote and to hold public office, and may be restricted in their ability to obtain occupational or professional licenses. Under the federal gun control laws, and under the laws of many states, felons lose their firearms privileges. These and other "collateral" consequences of a felony conviction are burdens that follow from conviction, in addition to any prison sentence, probation, or fine imposed by a court. Restoration of one or more of these rights frequently can be achieved, either automatically by the passage of time or the occurrence of an event, such as completion of sentence, or through some affirmative executive or judicial act, which may be based on evidence of rehabilitation.

Although it may come as a surprise to many, a number of significant disabilities that are imposed upon conviction are imposed by state, rather than federal, law, even when the conviction is for a federal rather than state offense. The loss of the rights to vote, to hold state office, and to sit on a state jury is chief examples of such disabilities. Just as state law imposes a disability on a federal felon, so too a federal felon may be able to employ a state procedure to remove the disability, instead of employing the only presently available federal restoration mechanism, presidential pardon.<sup>1</sup>

The summaries that follow survey the principal laws of the 50 states and the District of Columbia that deal with the effect of a felony conviction upon the rights to vote, to hold office, and to sit as a juror, and upon the ability to possess firearms. While the focus of the survey is the loss and restoration of political rights and firearms privileges, employment-related disabilities are also touched upon, as are registration requirements for sex offenders. The summaries are not intended to be exhaustive, since the complexity of the law in some jurisdictions makes summarization difficult. Further, new legislative enactments and judicial and administrative interpretations arise continually. Accordingly, the text of relevant state statutes, current case law, and the policies and interpretations of state and local agencies that control the exercise of a particular right must be consulted for additional detail and up-to-date interpretation.

Our research revealed that the laws governing the same rights and privileges vary widely from state to state, making something of a national crazy-quilt of disqualifications and restoration procedures. It also showed that there was at times disagreement among agencies about how the law in a particular jurisdiction should be interpreted and applied. For this reason, our interpretations may not always command a consensus. More

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<sup>1</sup> Some states appear to have adopted the position that the Supremacy Clause of the United States Constitution precludes them from "pardoning" a federal offender, as such action would derogate from the President's pardon power. Interestingly, such states do not consider it a usurpation of federal power to impose civil disabilities and disqualifications upon federal offenders in the first instance. Other states, while accepting the proposition that only the President can forgive a federal offense by means of a pardon, nonetheless conclude that the state has the power to restore to a federal offender the rights taken away by operation of state law. See, e.g., *Arnett v. Stumbo*, 287 Ky. 433, 153 S.W.2d 889 (Ky. 1941).

importantly, the uncertain state of the law in various jurisdictions raises questions about a convicted felon's ability to determine his legal rights and responsibilities, which obviously can have serious consequences for affected individuals. This is particularly true in connection with some felons' legal ability under federal law to possess firearms.

Although our survey emphasizes certain consequences of a federal felony conviction,<sup>2</sup> we found that not all states have paid consistent attention to the place of federal offenders in the state's scheme for loss and restoration of civil rights. While some state statutes expressly address federal offenses, both as to the loss of rights and as to the availability of restoration procedures, many do not. The disabilities imposed upon felons under state law generally are assumed to apply with the same force whether the conviction is a state or federal one; in only a few states have particular disabilities been held not to apply to federal offenders. Similarly, state laws dealing with restoration of rights do not always address how federal felons' rights may be regained. This is particularly true when state-law disabilities for state offenders may be removed only by a state pardon. In at least 16 states, federal offenders cannot avail themselves of the state procedure for restoring one or more of their civil rights, either because state law restores that right to state offenders only through a pardon and federal offenders are ineligible for a state pardon, or because a state procedure to restore rights to state offenders is unavailable to federal offenders.<sup>3</sup>

The varied availability of state remedies to federal felons underscores the fact that the only method prescribed by federal law for restoring rights, aside from federal firearms privileges, is presidential pardon; there is no general federal statutory procedure for restoring rights or expunging a criminal record.<sup>4</sup> Accordingly, in at least these 16 states,

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<sup>2</sup> We have not attempted to describe all the adverse legal consequences of a felony conviction, or to cover in depth the adverse consequences of conviction of a crime other than a felony. Nor have we attempted to include consequences imposed under municipal law, or by corporate charter or otherwise by private organizations. In addition, although disabilities may attend upon being charged with or agreeing to pretrial diversion for a crime, we have not attempted to explore those issues or to define what is meant by "conviction" of a crime, which may vary from jurisdiction to jurisdiction and from context to context. For example, a person may not be considered "convicted" for some purposes until sentence is imposed, or may not be considered "convicted" if he pleads nolo contendere to the offense. Further, the treatment of military convictions, juvenile adjudications, and convictions in foreign countries or tribal courts is not covered to any significant degree in this survey. Finally, the issue of the effective dates of particular disabilities and restoration procedures is not addressed in any detail, but should be considered before concluding that a particular disability or restoration procedure applies as a result of a particular conviction.

<sup>3</sup> For example, a presidential pardon is needed to restore to federal felons the right to sit on a jury in at least the following states: California, Delaware, Hawaii, Louisiana, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Carolina, Utah, Vermont (if the offender was sentenced to prison), and West Virginia. In addition, in some states, a state procedure for restoring rights is unavailable for certain types of offenses or offenders. Accordingly, a pardon is necessary to restore rights in such circumstances.

<sup>4</sup> There are in some cases specific, narrow expungement procedures for certain types of convictions. For example, before its amendment, 21 U.S.C. § 844(b) permitted expungement of official records of misdemeanor convictions for possession of marijuana. Currently, for defendants who were less than 21 years old at the time of the offense, 18 U.S.C. § 3607 permits a court to impose probation without

federal offenders must obtain a presidential pardon in order to exercise one or more of their three political rights.

Our research further revealed that, despite considerable variation among the states, their laws regarding the loss and restoration of rights generally reflect five patterns. In the first pattern, the right to vote, the right to hold office, or the right to sit on a jury is not lost as a result of a conviction or is lost only if the offender is incarcerated upon conviction and are automatically restored upon release from incarceration. In a second pattern, these rights are automatically restored by the completion of the sentence, by obtaining a certificate of discharge from the sentence, or by the passage of time. In a third pattern, rights may be restored through a judicial or administrative procedure, which typically requires that the offender have completed his or her sentence and imposes a waiting period for seeking restoration and which may require a demonstration of law-abidingness and rehabilitation. In a fourth pattern, one or more rights may be regained only by a pardon. Finally, in a small number of states, one or more rights are permanently lost.

Typically, state statutes that impose disabilities upon voting, office holding, and sitting as a juror apply upon conviction of a “felony” or an “infamous crime” (which may be defined under state law as a felony), but sometimes apply upon conviction of a “crime of moral turpitude” or certain designated offenses, such as, concerning the right to vote, an election-law crime. State statutes imposing firearms disabilities tend to be more narrow, in that they may not apply upon conviction of every “felony,” but, for example, only upon conviction of a “crime of violence,” or upon conviction of specifically designated offenses, including weapons or drug violations, that may include misdemeanors.

In all but three states, the right to vote is lost, although in many states the right to vote is lost only if the offender is incarcerated. Further, the right to vote is most likely to be restored automatically upon release from incarceration or completion of the sentence, or by the passage of time. The right generally hardest to regain is the right to sit on a jury, although a number of states preclude restoration of the right to hold office, even by a state pardon, at least for convictions of certain offenses. State procedures for restoring civil rights are more predominantly administrative than judicial, although the judicial remedies of deferred adjudication, probation without adjudication, setting aside the conviction, reduction of a felony to a misdemeanor, and expungement, at least for first offenders, are not uncommon.

States generally impose numerous occupational and licensing disabilities upon convicted felons. While a number of states forbid automatic denial of employment or licensure because of a conviction after a certain time has passed (although they may except certain occupations and/or certain convictions from this prohibition), states generally permit consideration of criminal conduct as grounds for revoking or denying

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entry of a judgment of conviction for violations of 21 U.S.C. § 844, and, upon the defendant’s successful completion of probation, to expunge official records regarding the charge.

public employment or occupational or professional licensure, or for imposing sanctions upon the license or permit holder. There is considerable variation among the states as to whether loss or denial of a license or permit based on a conviction is mandatory or discretionary. Under some occupational disability statutes, revocation and/or denial of a license or permit are mandatory for certain offenses and/or for certain occupations. For example, revocation and denial of a teaching certificate may be mandatory for someone convicted of a drug offense or of a sex offense involving children. Nearly all states have enacted statutes requiring the registration of sex offenders.

The area of firearms disabilities is a specialized and complex one, in which regulation occurs on both the state and federal levels. Each state's summary discusses only the state laws governing firearms disabilities, and notes, when available, case law dealing with the interplay between the federal firearm disability upon felons and that particular state's laws regarding the loss and restoration of civil rights and firearms privileges. (Intervening changes in state law regarding the loss and restoration of civil rights and firearms privileges, however, may have limited or eliminated the continuing applicability of some of the cited cases.) Municipal or county rules may also exist in various jurisdictions (e.g., the City of Boston), and are not covered in the summaries. Moreover, although the use of the term "firearms privileges" suggests that it has an agreed and uniform meaning, in fact there is considerable variation among the states with respect to the scope of firearms disabilities imposed.<sup>5</sup> Therefore, the reader should be aware that the loss and restoration of firearms privileges is frequently not an all-or-nothing proposition. Finally, restoration of civil rights under state law, even through a governor's pardon, does not necessarily result in restoration of state firearms privileges.

The federal firearms disability upon convicted felons raises particularly complex issues for state offenders because the applicability of the federal disability turns on the extent to which the state felon's "civil rights have been restored" under state law and the extent to which the restoration "expressly provides that the person may not ship, transport, possess, or receive firearms." (The reader should consult the firearms section of the summary of federal law for an overview of the issues.) Although federal firearms laws seem to assume that restoration of civil rights is a monolithic concept with a specific meaning, that premise is belied by the many variations documented in our survey. Federal courts have grappled with whether and to what extent the federal firearms disability applies to state felons who lost no civil rights under state law as a result of their conviction, to state felons who lost civil rights upon conviction but who had them automatically restored by operation of state law, to state felons who lost several civil

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<sup>5</sup> For example, a disability may apply only to handguns, not to long guns. In some jurisdictions only persons convicted of "violent" crimes or other designated offenses are barred from possession of firearms. A restoration procedure may apply only to long guns, or the right to possess a gun may be restored, but not the right to carry one. A felon may lose the right to possess a gun only if outside his home or place of business. Moreover, while the summaries use the terms "handgun" and "violent crime" for the sake of convenience, there is considerable variation from jurisdiction to jurisdiction in the definitions of these and other terms that determine the scope of these disabilities. Finally, although we have used the term firearms "privileges," we do not intend the term to carry a technical, legal significance, for the purposes of those jurisdictions that distinguish between a "right" and a "privilege."

rights upon conviction and who have regained some but not all those rights, to state felons who have had their political rights restored but who are still prohibited by state law from possessing firearms, and to state felons who, despite restoration of their political rights and certain firearms privileges, are still prohibited by state law from exercising other firearms privileges. Again, these complexities raise a question about the ability of the average felon to determine his legal rights and responsibilities, as well as the government's ability to effectively ensure compliance with and enforcement of the law.

For federal felons, the United States Supreme Court's 1994 decision in Beecham v. United States, 511 U.S. 368 (1994), settled the question whether the federal firearms disability imposed upon convicted federal felons is removed by the restoration of rights under state law. In that case, the Court held that federal felons remain subject to the firearms disability of 18 U.S.C. § 922(g)(1) until their rights are restored by a federal procedure, and therefore the disability continues to apply to a federal felon even if his civil rights have been restored under state law. As a result of Beecham, a federal felon's only means of regaining firearms privileges is through a presidential pardon or through the restoration process provided under 18 U.S.C. § 925(c). Since fiscal year 1992, however, Congress has prohibited the Bureau of Alcohol, Tobacco and Firearms from expending funds to process applications from individuals for relief under 18 U.S.C. § 925(c). Accordingly, unless funding is restored, federal felons may remove the federal firearms disability only by receiving a presidential pardon. The loss of funding for § 925(c) relief also eliminates an avenue by which state felons can remove their federal firearms disability, which is significant in states in which it is difficult to obtain a gubernatorial pardon or complete restoration of civil rights and firearms privileges under state law.

## ALABAMA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Article VIII, § 182 of the Alabama Constitution provides that a person convicted of certain enumerated offenses,<sup>1</sup> "of any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude," is disqualified from voting.<sup>2</sup> Anyone who is not a qualified elector or who has been convicted of "treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary" is ineligible to hold public office. Ala. Code § 36-2-1(a)(1), (3). Persons convicted of "embezzlement of the public money, bribery, perjury, or other infamous crime" are ineligible to serve in the legislature or to hold "any office of trust or profit." Ala. Const. art. IV, § 60. See Hogan v. Hartwell, 242 Ala. 646, 7 So. 2d 889 (1942) (disqualification from office applies to federal as well as state convictions).<sup>3</sup> Any person convicted of a felony under federal law or the law of any state while holding "any office or place under the authority of [the] state" forfeits his office. Ala. Code § 36-9-2; Norris v. Humber, 674 So. 2d 77 (Ala. 1995); Hendrix v. Hunt, 607 So. 2d 1254 (Ala. 1992). The right to serve on a jury is lost if the conviction is for an offense involving moral turpitude. Ala. Code § 12-16-60(a)(4).

A felony conviction may result in the loss of a professional or occupational license. E.g.: attorney (Ala. Code § 34-3-86(1)); certified public accountant (§ 34-1-12(5), (6)); physician (§ 34-24-360(4)); dentist (§ 34-9-18(a)(5), (11)). Alabama has a registration requirement for sex offenders. Ala. Code § 13A-11-200, et seq.

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<sup>1</sup> The enumerated offenses are: treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery "on the wife," bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, being a vagrant or tramp, and various election crimes.

<sup>2</sup> This provision, however, was held unconstitutional by the United States Supreme Court in Hunter v. Underwood, 471 U.S. 222 (1985), a case in which persons convicted of misdemeanors deemed to involve moral turpitude (passing worthless checks) challenged the validity of Article VIII, § 182 on equal protection grounds. The relief awarded by the Eleventh Circuit, whose decision was affirmed by the Supreme Court, was to allow the plaintiff class to register to vote. See Underwood v. Hunter, 730 F.2d 614 (11th Cir. 1984). See also Hobson v. Pow, 434 F. Supp. 362 (N.D. Ala. 1977) (holding unconstitutional and unenforceable the disqualification of "wife beaters"); United States v. Brittain, 319 F. Supp. 1058 (N.D. Ala. 1970) (declaring Alabama's antimiscegenation statute unconstitutional).

<sup>3</sup> For a consideration of what constitutes an "office of trust or profit," see Alabama Highway Department v. State Personnel Board, 628 So. 2d 878 (Ala. Civ. App. 1993). What constitutes a "conviction" is considered in Alabama ex rel. Woods v. Thrower, 272 Ala. 344, 131 So. 2d 420 (1961).

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Civil rights lost as a result of a felony conviction may be regained only through a pardon. The state's pardoning power is generally vested in the Board of Pardons and Paroles.<sup>4</sup> Ala. Const. amend. 38; Ala. Code § 15-22-36. A state pardon does not relieve civil and political disabilities unless "specifically expressed in the pardon." Ala. Code § 15-22-36(c). A person who has forfeited his office as a result of felony conviction is not restored to that office by a pardon. Ala. Code § 36-9-2. See Hendrix v. Hunt, *supra*. Except in cases of treason or impeachment, a person whose right to vote has been lost by conviction, "whether the conviction was had in a state or federal court," but who has been pardoned "may be restored to his citizenship with right to vote by the state board of pardons and paroles when specifically expressed in the pardon." Ala. Code § 17-3-10. No state pardon may be granted to an individual who has not completed three years of permanent parole or his sentence of less than three years unless the pardon is based on innocence. Ala. Code § 15-22-36. Persons convicted of a felony or certain other offenses involving danger to the person must submit to the taking of a DNA sample as a mandatory condition of pardon. Ala. Code § 36-18-25(f).

While federal felons are encouraged to seek a presidential pardon to restore their civil rights, the Board advises that it does accept applications from federal felons without first requiring them to request a presidential pardon. See Hogan v. Hartwell, *supra* (the state may restore by pardon a federal offender's right to hold state public office, lost by operation of Ala. Code § 36-2-1). A pardon application from an out-of-state felon residing in the state will be accepted only if the jurisdiction of conviction declines to restore his civil rights.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of committing or attempting to commit a "crime of violence"<sup>5</sup> is prohibited from owning, possessing, or controlling a "pistol."<sup>6</sup> Ala. Code § 13A-11-72. A 1991 state court decision suggests that a state pardon that restores civil and political rights also restores the right to own or possess a handgun under state law to one who lost that right by the operation of Ala. Code § 13A-11-72. See State ex rel. Sokira v. Burr, 580 So. 2d 1340 (Ala. 1991). The Eleventh Circuit, relying on Sokira, concluded that a certificate restoring civil and political rights from the state Board of Pardons and Paroles removed the state firearms disability under Ala. Code § 13A-11-72 (and was effective to remove the federal firearms disability) resulting from conviction of a state crime of violence. United States v. Swanson, 947 F.2d 914 (11th Cir. 1991). The State Board of Pardons and Paroles, however, in response to Sokira, has restricted the effect of future pardons, stating that the "Board does not intend, and has never

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<sup>4</sup> Except in cases of treason, impeachment, or in which a death sentence was imposed. Ala. Code § 15-22-36(a). The Governor has the power to grant commutations and reprieves to persons under a sentence of death. Ala. Const. amend. 38.

<sup>5</sup> Crime of violence is defined to include murder, manslaughter (except manslaughter arising from operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping, and larceny. Ala. Code § 13A-11-70(2).

<sup>6</sup> "Pistol" is defined as any firearm with a barrel less than 12 inches in length. Ala. Code § 13A-11-70(1).



intended, to restore the right to possess firearms to individuals who lost that right under State or Federal law," and that restoration of firearms privileges, if intended, would be set forth in "clear and unequivocal language." Board Order of March 25, 1992.

## ALASKA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of "a crime that constitutes a felony involving moral turpitude under state or federal law" loses the right to vote from the date of conviction through the date of unconditional discharge. Alaska Stat. § 15.05.030. Accord, Alaska Stat. § 33.30.241(a). No person convicted of a felony may serve on a jury until his unconditional discharge. Alaska Stat. §§ 09.20.020; 33.30.241(b). Alaska law does not generally prohibit felons from holding public office; however, specific statutes may deal with particular offices. For example, a regional school board member who is convicted of a felony involving moral turpitude or an offense involving a violation of the oath of office while serving as a school board member may not continue to serve. Alaska Stat. § 14.08.045(a)(4). A judge shall be removed from office upon final conviction of a "crime punishable as a felony under state or federal law." Alaska Stat. § 22.30.070(b).

A professional or occupational license may be denied, suspended, or revoked because of a felony conviction. E.g.: insurance agent (Alaska Stat. § 21.27.410(a)(7)); accountant (§ 08.04.450(5), (6)); nurse (§ 08.68.270(2)); real estate broker (§ 08.88.171(a)). Alaska has a registration requirement for sex offenders. Alaska Stat. §§ 11.56.840; 12.63.010, et seq.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to serve on a jury are automatically restored to felons upon unconditional discharge. Alaska Stat. §§ 09.20.020; 15.05.030; 33.30.241. Other disabilities may be relieved by a pardon. The pardon power, except in cases of impeachment, is vested in the Governor. Alaska Const. art. III, § 21; Alaska Stat. § 33.20.070. While the Governor has the power to pardon offenses against the laws of the Territory of Alaska, Alaska Stat. § 33.20.070, persons convicted under federal law or convicted under the law of another state are ineligible for a Governor's pardon.

Alaska law also permits state judges to suspend imposition of sentence and place a person on probation, after discharge from which the person may have his conviction set aside. Alaska Stat. § 12.55.085(e). This relief, however, is not available for certain recidivists and for certain offenses, including sex offenses and offenses in the commission of which the defendant used a firearm. Alaska Stat. § 12.55.085(f).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of a state or federal felony may not possess a firearm<sup>1</sup> capable of being concealed on the person. Alaska Stat. § 11.61.200(a)(1). This disability is removed 10 years from the date of unconditional discharge (except when the offense is one against a person<sup>2</sup>), or when the conviction has been set aside or the offense has been pardoned. Alaska Stat. § 11.61.200(b)(1)-(3). In addition, a convicted felon during the period of disability may not live in a dwelling where he knows concealable firearms are kept unless he obtains written authorization from the court or the head of the law enforcement agency in his community. Alaska Stat. § 11.61.200(a)(10).

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<sup>1</sup>"Firearm" is defined to include pistols, revolvers, rifles, and shotguns. Alaska Stat § 11.81.900(b)(22).

<sup>2</sup>Examples of such offenses are homicide, assault, kidnapping, sexual offenses, and robbery. See Alaska Stat. tit. 11, ch. 41.

## ARIZONA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Conviction of a felony suspends the rights to vote, to hold public office, and to serve on a jury. Ariz. Const. art. 7, § 2; Ariz. Rev. Stat. Ann. §§ 13-904(A)(1) - (3); 16-101(5); 21-201(3). Also suspended during imprisonment are "any other civil rights the suspension of which is reasonably necessary for the security of the institution in which the person is confined or for the reasonable protection of the public." Ariz. Rev. Stat. Ann. § 13-904(A)(4).

A person may not be disqualified from public employment nor may a person whose civil rights have been restored be denied an occupational or professional license, permit, or certificate solely because of a conviction; however, a person may be denied public employment and a person whose civil rights have been restored may be denied a license "if the offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought." Ariz. Rev. Stat. Ann. § 13-904(E).<sup>1</sup> E.g.: insurance agent (Ariz. Rev. Stat. Ann. § 20-316(A)(6)); certified public accountant (§§ 32-721(2), 32-741(A)(1)); dentist (§§ 32-1263(2), 32-1290); nurse (§ 32-1663(A)(2), (D)(2)); pharmacist (§ 32-1927(A)(2)).

Arizona has a registration requirement for sex offenders. Ariz. Rev. Stat. Ann. § 13-3821, et seq. A court may require a person adjudicated a delinquent based on the commission of a sex offense to register, and the duty to do so continues until he is 25 years old. Ariz. Rev. Stat. Ann. § 13-3821(C).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

For a first felony offender (state or federal), civil rights, other than those pertaining to firearms, are automatically restored upon completion of the term of probation or upon an unconditional discharge from imprisonment and upon completion of payment of any fine or restitution. Ariz. Rev. Stat. Ann. § 13-912. A person convicted under Arizona law of more than one felony may have his civil rights restored by the sentencing court two years after absolute discharge from imprisonment, Ariz. Rev. Stat. Ann. § 13-906, or, if sentenced to probation, upon discharge from probation. Ariz. Rev. Stat. Ann. § 13-905(A). A person convicted of more than one federal felony may apply for restoration of civil rights on the same terms (two years after discharge from imprisonment or upon discharge from probation, depending on his sentence) to the Superior Court of his county of residence. Ariz. Rev. Stat. Ann. §§ 13-909(A); 13-910. There are no provisions in Arizona law for restoring civil rights lost as a result of a felony conviction in a state other than Arizona.

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<sup>1</sup> This provision does not apply to law enforcement agencies. Ariz. Rev. Stat. Ann. § 13-904(F).

Arizona law also permits certain state offenders to have their convictions set aside by the sentencing court after successful completion of probation or sentence and discharge. This relief generally releases the person "from all penalties and disabilities resulting from the conviction." Ariz. Rev. Stat. Ann. § 13-907(A).<sup>2</sup> This procedure is unavailable to anyone convicted of a criminal offense involving the infliction of serious physical injury, the use or exhibition of a deadly weapon or dangerous instrument, a victim less than 15 years old, or a violation of the state's laws defining sexual offenses. Ariz. Rev. Stat. Ann. § 13-907(B).

The Governor has the authority to grant pardons, except in cases of treason or impeachment. Ariz. Const. art. 5, § 5. A state pardon has the effect of restoring civil rights, including firearms privileges, but cannot be obtained for a conviction under federal law or the law of a state other than Arizona.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

The "right to possess a gun or firearm" is suspended for any person convicted of a felony, Ariz. Rev. Stat. Ann. § 13-904(A)(5), and the length of the suspension depends on the number of offenses of conviction and their nature. A person convicted within or outside Arizona of a felony may not possess a deadly weapon (including pistols, revolvers, rifles, and shotguns, Ariz. Rev. Stat. Ann. § 13-3101(1)) if his civil rights have not been restored. Ariz. Rev. Stat. Ann. §§ 13-3101(6)(b), 13-3102(A)(4).<sup>4</sup> The automatic restoration of civil rights provision for first offenders "does not apply to a person's right to possess weapons as defined in § 13-3101," Ariz. Rev. Stat. Ann. § 13-912(B); instead, the first offender must make an application to the court pursuant to Ariz. Rev. Stat. Ann. § 13-906.

Under § 13-906, firearms privileges are never restored to persons convicted of a "dangerous offense."<sup>5</sup> Persons convicted of a "serious offense"<sup>6</sup> must wait 10 years after

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<sup>2</sup> The section, however, permits use of the conviction in any subsequent prosecution of the person by the state or a subdivision thereof. Thus, it would appear that relief under this section would not remove firearms disabilities. See also United States v. Herrell, 588 F.2d 711 (9th Cir. 1978), cert. denied, 440 U.S. 964 (1979)(concluding that similarly worded predecessor statute did not eliminate state conviction as basis for federal felon-in-possession charge under 18 U.S.C. § 922).

<sup>3</sup> United States v. Geyler, 932 F.2d 1330 (9th Cir. 1991), dealt with the interaction between the federal firearms disability and the Arizona law concerning the loss and restoration of civil rights and firearms privileges; however, the predicate offense in Geyler was a federal felony and its specific holding was rejected in United States v. Beecham, 511 U.S. 368 (1994).

<sup>4</sup> A person who is adjudicated delinquent is also prohibited from possessing firearms. Ariz. Rev. Stat. §§ 13-3101(6)(b), 13-3102(A)(4).

<sup>5</sup> A "dangerous offense" refers to "a felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another." Ariz. Rev. Stat. § 13-604(P).

<sup>6</sup> "Serious offense" is defined to include any of the following Arizona offenses, or offenses committed outside Arizona that would constitute one of the following offenses under Arizona law: first-degree or second-

discharge from probation or prison to seek restoration of their firearms privileges, and all other felons must wait two years after discharge to seek restoration. The restoration procedure applies to federal as well as state felons. A person convicted of two or more felonies who has received an absolute discharge from imprisonment must have his or her firearms privileges restored through court action, and is not eligible to seek restoration until two years after discharge. Ariz. Rev. Stat. § 13-906(A), (B).<sup>7</sup>

A pardon may also operate to restore state firearms privileges, if it specifically so states. As noted, a state pardon is unavailable for federal or out-of-state offenses.

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degree murder; manslaughter; aggravated assault resulting in serious physical injury or involving the discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument; sexual assault; any dangerous crime against children; arson of an occupied structure; armed robbery; first-degree burglary; kidnapping; or sexual conduct with a minor less than 15 years old. Ariz. Rev. Stat. 13-604(U).

<sup>7</sup> Special restoration provisions relating to juvenile adjudications are set forth in Ariz. Rev. Stat. § 13-912.01. Firearms privileges may be restored by the adjudicating judge, but only if the juvenile was placed on probation. For persons adjudicated delinquent based on the commission of a "dangerous offense," a "serious offense," first- or second-degree burglary, or arson, firearms privileges may not be restored until the person is 30 years old. For adjudications based on the commission of any other felony, the adjudicating judge may restore firearms privileges two years after the date of discharge from probation.

## ARKANSAS

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person who has been convicted of a felony forfeits the right to vote. Ark. Const. art. 3, §§ 1, 2, amended by Ark. Const. amend. 8; amend. 51, § 11(a)(4). This disqualification has been held to apply to federal felons. Merritt v. Jones, 259 Ark. 380, 533 S.W.2d 497 (1976). A person convicted of embezzlement of public money, bribery, forgery, or other "infamous" crime, may not hold any office of trust or profit. Ark. Const. art. 5, § 9. A felon is disqualified from jury service. Ark. Code Ann. § 16-31-102(a)(4).

A professional or occupational license may be revoked, suspended, or denied as a consequence of a felony conviction. Examples of such licenses include: physician (Ark. Code Ann. § 17-95-409(a)(2)(A)(i)); dentist (§ 17-82-316(b)(3)(C)); psychologist (§ 17-97-310(a)(2)); podiatrist (§ 17-96-308(a)(2)); public accountant (§ 17-12-601(5)); landscape architect (§ 17-36-306(5)).

Arkansas has a registration requirement for sex offenders. Ark. Code Ann. § 12-12-901, et seq.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored to all convicted felons upon completion of sentence. Ark. Const. amend. 51, § 11(a)(4). Restoration of the right to serve on a jury requires a gubernatorial pardon. Ark. Code Ann. § 16-31-102(a)(5). The Supreme Court of Arkansas indicated in Ridgeway v. Catlett, 238 Ark. 323, 379 S.W.2d 277 (1964), that eligibility to hold public office is not restored by a state pardon. The right to hold office is, however, restored by expungement in accordance with Ark. Code Ann. §§ 16-93-301 to 16-93-303 (described below), or similar expungement statute of another state. Ark. Code Ann. § 7-6-102(d); see Powers v. Bryant, 309 Ark. 568, 832 S.W.2d 232 (1992).

The pardon power, except in cases of treason or impeachment, is vested in the Governor, who is assisted by the investigation and recommendation of the Post Prison Transfer Board. Ark. Const. art. 6, § 18; Ark. Code Ann. § 16-93-204.<sup>1</sup> Felons convicted under federal law or the law of another state are eligible for a Governor's pardon to restore the right to serve on a jury.

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<sup>1</sup> Ark. Code Ann. § 3-2-102 declares it an abuse of power and an impeachable offense to pardon anyone convicted of violating the laws against the unlawful manufacture or sale of liquor, except on proof that the person was not guilty.

An expungement procedure is available to some persons who are pardoned. Ark. Code Ann. § 16-90-605.<sup>2</sup>

Arkansas law provides for deferred adjudication and expungement in certain circumstances. A person who has no prior felony conviction, who has not previously availed himself of the benefits of deferred adjudication, and who pleads guilty or nolo contendere may be placed upon probation and have further proceedings deferred. Ark. Code Ann. §§ 16-93-302(a)(1), 16-93-303(a)(1). Upon successful completion of or earlier release from probation, the defendant is discharged without an adjudication of guilt and the record is expunged, if consistent with the expungement procedures set forth in Ark. Code Ann. §§ 16-90-901 to 16-90-905. A person whose record is expunged "shall have all privileges and rights restored, shall be completely exonerated, and the record which has been expunged shall not affect any of his civil rights or liberties, unless otherwise specifically provided for by law." Ark. Code Ann. § 16-90-902(a). Expunged records may nonetheless be disclosed if the person applies for employment with a criminal justice agency or is subsequently convicted, or in connection with a prosecution. Ark. Code Ann. § 16-90-903(a)(2), (3), (4).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

No person who has been "convicted of a felony" may own or possess a firearm,<sup>3</sup> unless the person has been granted a pardon expressly restoring the ability to possess a firearm, or "unless authorized by and subject to such conditions as prescribed by the Governor, or his designee" or the Bureau of Alcohol, Tobacco, and Firearms (or other designee of the United States Department of the Treasury). Ark. Code Ann. § 5-73-103(a)(1), (b)(i). The Governor may, without granting a pardon, restore firearms privileges upon the recommendation of the chief law enforcement officer in the jurisdiction of the felon's residence if the offense occurred more than eight years ago and did not involve the use of a weapon. Ark. Code Ann. § 5-73-103(d).

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<sup>2</sup> For persons pardoned on or after July 15, 1991, the Governor notifies the sentencing court of the pardon, and the court issues an order expunging all records relating to the conviction. Persons convicted before July 15, 1991, must apply for expungement. Expungement is unavailable to anyone who has been convicted of a sex offense, an offense resulting in death or serious physical injury, or an offense involving a victim less than 18 years old. Ark. Code Ann. § 16-90-605.

<sup>3</sup> "Firearm" is defined in Ark. Code Ann. § 5-1-102(6) to include both long guns and handguns.



## CALIFORNIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

The right to vote is suspended while a person is imprisoned or on parole for the conviction of a felony. Cal. Const. art. II, § 4; Flood v. Riggs, 80 Cal. App. 3d 138, 145 Cal. Rptr. 573 (1st Dist. 1978). Persons who have been convicted of a felony or malfeasance in office, and whose civil rights have not been restored, are disqualified from jury service. Cal. Civ. Proc. Code § 203(a)(5).

Any person convicted of vote-buying, bribery, perjury, forgery, malfeasance in office, or other high crime is disqualified from public office. Cal. Const. art. VII, § 8; Cal. Gov't Code § 1021; Cal. Penal Code §§ 67, 68, 74, 88, 98.<sup>1</sup> Earlier similar provisions of California law have been held to extend to federal convictions. Helena Rubenstein Internat'l v. Younger, 71 Cal. App. 3d 406, 139 Cal. Rptr. 473 (2d Dist. 1980). Additional disqualification statutes include: disqualification from public office for embezzlement of public money or falsification of public account records, Cal. Penal Code § 424; disqualification from holding office as a peace officer upon conviction of felony, Cal. Gov't Code § 1029(a).

A conviction of a crime may result in the denial, suspension, or revocation of a professional or business license if the crime is substantially related to the qualifications, functions, or duties of the business or profession.<sup>2</sup> Cal. Bus. & Prof. Code § 490. Some of these licenses include: law (Cal. Bus. & Prof. Code § 6060(b)); real estate (§ 10177(b)); medicine (§ 2236); nursing (§ 2761(f)); physical therapy (§ 2660(d)). Conviction of certain drug or sex offenses results in suspension and revocation of credentials issued by the State Board of Education or the Commission on Teacher Credentialing, Cal. Educ. Code § 44425, or in the loss of other jobs in the field of education. E.g., Cal. Educ. Code § 44435.

California has a registration requirement for sex offenders, Cal. Penal Code §§ 290-290.7, which expressly includes federal offenses. Cal. Penal Code § 290(a)(2). Felony sex offenders and persons convicted of certain violent crimes are required to provide blood and saliva samples for DNA testing. Cal. Penal Code § 290.2.

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<sup>1</sup> The California Constitution specifically disqualifies persons convicted of vote-buying, and permits laws to be passed disqualifying persons convicted of bribery, perjury, forgery, malfeasance in office, or other "high crimes." Cal. Const. art. VII, § 8. Cal. Gov't Code § 1021 provides that persons are disqualified from any office who are convicted of "designated crimes as specified in the [California] Constitution and laws." Cal. Penal Code §§ 67, 68, 74, 88, and 98 define bribery and gratuity offenses.

<sup>2</sup> See Golde v. Fox, 98 Cal. App. 3d 167, 159 Cal. Rptr. 864 (1st Dist. 1979) (conviction of possession of marijuana for sale is substantially related to business of real estate broker as it shows lack of honesty and integrity); Windham v. Board of Medical Quality Assurance, 104 Cal. App. 3d 461, 163 Cal. Rptr. 566 (2d Dist. 1980) (federal conviction for income tax evasion is substantially related to the practice of medicine).

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored upon completion of a sentence to confinement, including any period of parole. Cal. Const. art. II, § 4. Other civil rights may be regained only through a pardon. Under the California Constitution, the pardon power, except in cases of impeachment, is vested in the Governor, after investigation and recommendation by the Board of Prison Terms. Cal. Const. art. V, § 8; Cal. Penal Code §§ 4800, 4812 - 4813. The Governor's office advises that current policy is to accept a pardon application only if 10 years have passed from completion of sentence. The 10-year rule may be waived, however, in exceptional circumstances if the applicant can demonstrate a specific need for pardon. A pardon may not be granted to a recidivist unless a majority of judges of the State Supreme Court so recommend. Cal. Const. art V, § 8; Cal. Penal Code § 4852.16.

Federal felons and persons convicted under the laws of a state other than California are ineligible for a gubernatorial pardon, and may regain their civil rights (other than the right to vote, which, as noted, is suspended only during a period of incarceration or parole) in California only through a pardon or "action analogous to a pardon" in the jurisdiction of their conviction. Therefore, a federal felon residing in California may regain his rights to hold public office and to sit on a jury only by obtaining a presidential pardon.

A gubernatorial pardon does not seal or expunge the record of conviction, and, although it restores the convicted person to "all the rights, privileges, and franchises of which he or she has been deprived in consequence of that conviction or by reason of any matter involved therein," it does not preclude a state agency from considering the conviction in license proceedings. Cal. Penal Code §§ 4852.15, 4853.

California law provides two paths to a gubernatorial pardon for a person convicted of a felony under California law. In addition to applying directly to the Governor for a pardon, a state felon may first apply to the superior court of his county of residence for a certificate of rehabilitation after the required period of rehabilitation and residency.<sup>3</sup> Cal. Penal Code §§ 4852.06, 4852.19. The certificate is an order embodying a court's finding that the defendant is rehabilitated and its recommendation that he be pardoned. Cal. Penal Code § 4852.13. When issued, the certificate is forwarded to the Governor and treated as an application for full pardon.

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<sup>3</sup> The felon must have lived in California for at least three years immediately preceding the filing of the application, and must have completed parole or probation. Cal. Penal Code §§ 4852.01, 4852.06. In addition to the three-year residency requirement, the felon is required to complete a period of rehabilitation, which in most cases, is an additional two or four years, depending on the severity of the offense. Cal. Penal Code § 4852.03(a)(1), (2). The period of rehabilitation is measured from the date of discharge from custody due to completion of sentence or release on parole or probation, whichever is sooner. Cal. Penal Code § 4852.03(a). Persons who are serving mandatory life parole, under a death sentence, or in the military are ineligible to apply for a certificate of rehabilitation. Cal. Penal Code § 4852.01(d). Felons convicted of a California offense who are ineligible to apply for the certificate of rehabilitation because they reside outside of California may apply directly to the Governor for a pardon.

The Governor may, but is not obligated to, grant the pardon and may, but is not obligated to, do so without further investigation. Cal. Penal Code § 4852.16.

The certificate of rehabilitation does not itself restore any civil rights, but a full and unconditional pardon based upon a certificate of rehabilitation restores "all civil and political rights of citizenship, including but not limited to . . . the right to vote" and, for persons not convicted of a felony involving the use of a dangerous weapon, firearms privileges. Cal. Penal Code § 4852.17.

A state felon sentenced to probation (and not then under another sentence or charged with another crime) may also apply to the sentencing court to set aside the conviction and dismiss the charges after completion of sentence. Cal. Penal Code § 1203.4(a). The felon "shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted." This procedure, however, does not relieve the felon of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or licensure by a state or local agency, or for contracting with the California State Lottery, nor does it permit the felon to possess a gun; in addition, the conviction may be used in a subsequent prosecution for any other offense. Cal. Penal Code § 1203.4(a). This procedure does not remove the duty to register as a sex offender. Cal. Penal Code § 290.1.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>4</sup>

A person convicted, under the law of California or of any other state, of a felony or an offense that involves the violent use of a firearm<sup>5</sup> may not own, possess, or have custody of any type of firearm.<sup>6</sup> Cal. Penal Code § 12021(a). A person convicted of a federal felony may not own, possess, or have custody of any type of firearm, including a rifle or a shotgun, if the conduct that led to conviction would be punishable as a felony under California law or the sentence imposed for the federal felony exceeds 30 days' imprisonment or a fine greater than \$1,000. Cal. Penal Code § 12021(f).

The right to own and possess any type of weapon that may lawfully be possessed and owned by other citizens is restored by a full and unconditional pardon based on a certificate of rehabilitation, except for persons ever convicted of a felony "involving the use of a dangerous weapon." Cal. Penal Code § 4852.17. In granting any other pardon the Governor may restore firearms privileges, except to persons who were ever convicted of an offense "involving the use of a dangerous weapon." Cal. Penal Code § 4854. State firearms privileges are restored to a federal felon who has received a presidential pardon. Harbert v. Deukmejian, 117 Cal. App. 3d 779, 173 Cal. Rptr. 89 (2d Dist. 1981).

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<sup>4</sup> For a consideration of the interaction between the federal firearms disability and California law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Varela, 993 F.2d 686 (9th Cir. 1993).

<sup>5</sup> These offenses are described in Cal. Penal Code § 12001.6.

<sup>6</sup> "Firearm" is defined to include both long guns and handguns. Cal. Penal Code § 12001(b).

## COLORADO

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person "serving a sentence of detention or confinement in a correctional facility, jail, or other location or while serving a sentence of parole" (unless he is awaiting trial) is ineligible to register to vote or to vote in any election. Colo. Rev. Stat. § 1-2-103(4). Eligibility for jury service is not lost by conviction, since the disqualification statute was repealed in 1989. A person convicted of a felony is disqualified from holding public office while incarcerated or while on release from actual confinement on conditions of probation. Colo. Rev. Stat. § 18-1-105(3). Disqualification from the State General Assembly or office of trust or profit, however, continues after incarceration for individuals convicted of embezzlement of public money, bribery (or solicitation thereof), or perjury (or subornation thereof). Colo. Const. art. XII, § 4; Colo. Rev. Stat. § 18-1-105(3).

Conviction of a felony or crime involving moral turpitude does not automatically disqualify an individual from public employment or a professional or occupational license, but it may be taken into account in determining whether an applicant has the good moral character to qualify for such employment or license, Colo. Rev. Stat. § 24-5-101, and in denying, revoking, or suspending a license. *E.g.*: dentist (Colo. Rev. Stat. § 12-35-118(b)); engineer (§ 12-25-108(c)); nurse (§ 12-38-117(b)); pharmacist (§ 12-22-125(1)(b)); physician (§ 12-36-117(h)); realtor (§ 12-61-113(m)). No person convicted of a felony or crime involving moral turpitude may be certified as a peace officer unless he has received a pardon. Colo. Rev. Stat. § 24-31-304(a). Colorado has a registration requirement for sex offenders (including persons adjudicated as a juvenile based on the commission of a sex offense). Colo. Rev. Stat. § 18-3-412.5.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to hold public office, except for the disqualification from public office for certain offenses, are restored automatically upon completion of a sentence of confinement, including parole or release from actual confinement on conditions of probation. Colo. Rev. Stat. §§ 1-2-103(4), 18-1-105(3). The pardon power is vested in the Governor, except in cases of treason or impeachment. Colo. Const. art. IV, § 7; Colo. Rev. Stat. § 16-17-102. Pardon applications are not generally accepted until at least 10 years after completion of sentence.<sup>1</sup> Persons convicted under federal law or the law of another state are ineligible for a gubernatorial pardon.

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<sup>1</sup> For a discussion of the procedural requirements relating to the issuance of a pardon, see People ex rel. Garrison v. Lamm, 622 P.2d 87 (Colo. App. 1980).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

Any person convicted of a felony (or attempt or conspiracy to commit a felony) under the law of any state or of the United States may not possess, use, or carry on his person a firearm<sup>3</sup> or a dangerous weapon.<sup>4</sup> Colo. Gen. Stat. § 18-12-108(1), (2). The penalty is enhanced if the felon does so within 10 years of conviction of, or within 10 years of release from supervision for, burglary, arson, or any felony involving the use of force or the use of a deadly weapon. Colo. Rev. Stat. § 18-12-108(2)(c).<sup>5</sup>

No procedure is specifically provided under state law to restore firearms privileges. Accordingly, state felons must seek a gubernatorial pardon to have their state firearms privileges restored.

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<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Colorado law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Hall, 20 F.3d 1066 (10th Cir. 1994).

<sup>3</sup> "Firearm" is defined to include both handguns and long guns. Colo. Rev. Stat. § 18-1-901(3)(h).

<sup>4</sup> "Dangerous weapon" is defined to include a firearm silencer, machine gun, short shotgun, short rifle, or ballistic knife. Conn. Gen. Stat. § 18-12-102(1).

<sup>5</sup> The Colorado Supreme Court has held that it is an affirmative defense to a prosecution under Colo. Rev. Stat. § 18-12-108 that the defendant's purpose in possessing weapons was the defense of his home, person, and property. State v. Ford, 193 Colo. 459, 568 P.2d 26 (1977). This holding was based upon an interpretation of Art. II, § 13 of Colorado's Constitution, which specifically guarantees the right to bear arms in defense of one's home, person, or property.

## CONNECTICUT

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A felony conviction deprives an individual of the rights to vote, to hold public office, and to serve on a jury. Conn. Gen. Stat. §§ 9-46(a), (b); 51-217(a).

A person may not be denied state employment or an occupational or professional license solely because of conviction of a crime. Conn. Gen. Stat. § 46a-80(a).<sup>1</sup> Such employment or license, however, may be denied, suspended, or revoked by reason of conviction if it is determined that the person is not suitable for the job, taking into account the nature of the offense and its relationship to the job, the rehabilitation of the person, and the age of the conviction. Conn. Gen. Stat. §§ 46a-80(b), 46a-81(a). Examples of professions or occupations in which conviction of certain crimes may be relevant to the licensing process include: day care center operator or worker (Conn. Gen. Stat. § 19a-87a(a)); psychologist (§ 20-192); public accountant (§ 20-281a(8)).

Connecticut has a registration requirement for sex offenders, Conn. Gen. Stat. § 54-102r, and requires HIV testing (on request of the victim) and the giving of a blood sample for DNA analysis by persons convicted of designated sexual offenses. Conn. Gen. Stat. §§ 54-102b, 54-102g.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is regained by submission of proof that all fines resulting from the conviction have been paid and that the felon has been discharged from his sentence, including parole or probation. Conn. Gen. Stat. § 9-46a. Restoration of the right to vote results in automatic restoration of the right to hold public office. Conn. Gen. Stat. § 9-46(b). The right to serve on a jury is automatically restored seven years after conviction (unless the felon is then incarcerated). Conn. Gen. Stat. § 51-217(a).

The State Board of Pardons has primary authority for granting pardons and commutations. Conn. Gen. Stat. § 18-26. The Governor has limited power to grant reprieves after conviction. Conn. Const. art. 4, § 13. Felons convicted under federal law or the law of another state are ineligible for a state pardon. Conn. Gen. Stat. § 18-26(a) (jurisdiction conferred "in the case of any person convicted of any offense against the state").

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

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<sup>1</sup> This limitation does not apply to law enforcement agencies. Conn. Gen. Stat. § 46a-81(b).

A person convicted of a capital offense, of certain Class D felonies,<sup>2</sup> or, with certain exceptions, of a Class A, B, or C felony may not possess a firearm.<sup>3</sup> Conn. Gen. Stat. § 53a-217. In addition, persons convicted of a felony or certain violent misdemeanors lose the right to obtain a permit to carry a pistol or revolver. Conn. Gen. Stat. §§ 29-28(b); 29-29.<sup>4</sup> Felons also lose the right to obtain an eligibility certificate to purchase a pistol or revolver, Conn. Gen. Stat. §§ 29-36f; 29-36j, or a permit to purchase firearms other than pistols and revolvers. Conn. Gen. Stat. § 29-37a. No procedure other than pardon exists at the state level for restoring firearms privileges.

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<sup>2</sup> These felonies include a variety of offenses, such as third-degree burglary, robbery, and sexual assault. Conn. Gen. Stat. § 53a-217.

<sup>3</sup> "Firearm" is defined to include both handguns and long guns. Conn. Gen. Stat. § 53a-3(19).

<sup>4</sup> Nor can a felon obtain a permit to carry any other "dangerous or deadly weapon or instrument." Conn. Gen. Stat. § 53a-206. While Conn. Gen. Stat. § 53a-3(6) indicates that the term "deadly weapon" as used in § 53-206 does not include a firearm, the definition of the term "dangerous instrument" may include long guns. See Conn. Gen. Stat. § 53a-3(7).

## DELAWARE

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony forfeits the right to vote. Del. Const. art. V, § 2; Del. Code Ann. tit. 15, § 1701. Offenders convicted of certain election law violations are prohibited from voting for 10 years following completion of sentence. Del. Const. art. V, § 7; Del. Code Ann. tit. 15, § 1701. Convicted felons who have not had their civil rights restored may not serve on juries. Del. Code Ann. tit. 10, § 4509(b)(6). Individuals convicted of embezzlement of public money, bribery, perjury, or other "infamous" crimes are not eligible to hold a seat in the legislature or any office of trust, honor, or profit. Del. Const. art. II, § 21. The Governor has the power to remove from office a public officer convicted of misbehavior in office or an "infamous" crime. Del. Const. art. XV, § 6. See Slawik v. Folsom, 410 A.2d 512 (Del. 1979) (power to remove from office includes removal for federal convictions).

A professional or occupational license may be revoked or suspended for conviction of certain crimes. E.g.: medicine (Del. Code Ann. tit. 24, § 1731(b)(2)); dentistry (tit. 24, 1131(2)); accounting (tit. 24, § 117(a)(4), (5)); real estate (tit. 24, § 2912(c)). A sentencing court may subject sex offenders convicted on or after June 27, 1994, to the state's registration requirement (including persons adjudicated a juvenile delinquent because of the commission or attempted commission of a sex offense who have been discharged or paroled from Juvenile Corrections). Del. Code Ann. tit. 11, § 4120.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The power to pardon, except in cases of impeachment, is vested in the Governor but only upon the written recommendation of a majority of the Board of Pardons after a full hearing. Del. Const. art. VII, § 1. According to the State's Attorney General, a pardon restores the right to serve on a jury and probably the right to vote, but does not restore the right to hold public office. See State ex rel. Weir v. Peterson, 369 A.2d 1076 (Del. 1976).<sup>1</sup> Felons convicted under federal law or the law of another state are apparently not eligible for a gubernatorial pardon.<sup>2</sup>

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<sup>1</sup> The Supreme Court of Delaware held in Fonville v. McLaughlin, 270 A.2d 529 (Del. 1970), that a procedure under former Del. Code Ann. tit. 11, § 4332(i) for striking from court records a guilty plea after successful completion of probation did not remove the disqualification from office under Del. Const. art. II, § 21. The court further noted that this procedure did not expunge the conviction. No expungement procedure is provided under the current version of the statute.

<sup>2</sup> Persons convicted under Delaware law and sentenced to prison may receive a certificate of discharge issued by the Board of Parole one year after the date of release from confinement, or sooner if the sentence expires earlier. A discharge "shall have the effect of restoring all civil rights lost by operation of law upon commitment." Del. Code Ann. tit. 11, § 4347(i). The office of the Delaware Attorney General, however, <sup>1</sup> The Supreme Court of Delaware held in Fonville v. McLaughlin, 270 A.2d 529 (Del. 1970), that a procedure under former Del. Code Ann. tit. 11, § 4332(i) for striking from court records a guilty plea after successful completion of probation did not remove



## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

Under state law, the following persons, whether convicted in Delaware or elsewhere, may not purchase, own, possess, or control any deadly weapon:<sup>3</sup> a person convicted of a felony or a crime of violence involving bodily injury to another, whether or not armed with, or having in his possession any weapon during the commission of such felony or crime of violence; and a person convicted of the unlawful use, possession, or sale of drugs. Del. Code Ann. tit. 11, § 1448. Firearms privileges are "almost certainly" not restored by a Governor's pardon, or by a certificate of discharge or expungement, according to the State Attorney General's office.

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the disqualification from office under Del. Const. art. II, § 21. The court further noted that this procedure did not expunge the conviction. No expungement procedure is provided under the current version of the statute.

<sup>2</sup> Persons convicted under Delaware law and sentenced to prison may receive a certificate of discharge issued by the Board of Parole one year after the date of release from confinement, or sooner if the sentence expires earlier. A discharge "shall have the effect of restoring all civil rights lost by operation of law upon commitment." Del. Code Ann. tit. 11, § 4347(i). The office of the Delaware Attorney General, however, advises that these "civil rights" are limited to those "commonly exercised in everyday life," and exclude firearms privileges and the rights to vote, to serve on a jury, and to hold public office.

<sup>3</sup> "Deadly weapon" is defined in Del. Code Ann. tit. 11, § 222(6) & (10) to include all firearms.

## DISTRICT OF COLUMBIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A felon's right to vote is suspended only during imprisonment. D.C. Code Ann. § 1-1302(7)(A).<sup>1</sup> Because eligibility for public office is generally contingent upon being a qualified elector, a felon is also disqualified from seeking or holding public office, including the offices of Mayor and City Council member, but only during a period of incarceration. D.C. Code Ann. §§ 1-225, 1-241(c). Members of the Board of Elections and Ethics may be removed from office by the Mayor upon conviction of a felony in the District of Columbia (or elsewhere if the offense would be a felony under District of Columbia law). D.C. Code Ann. § 1-1304(a)(5). Likewise, a member of the Board of Directors of the Washington Convention Center may be removed if convicted of a felony or a violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act. D.C. Code Ann. § 9-602(e). Conviction of a federal felony or crime that would be a felony in the District of Columbia is grounds for removal of a District of Columbia judge. D.C. Code Ann. § 11-1526(a)(1). A person convicted of a felony loses the right to serve on a jury (unless he seeks certification, described *infra*). D.C. Code Ann. § 11-1906(b)(2)(B).

A felon may not serve as the personal representative of a decedent in the probate of an estate if his sentence has not expired or has expired within 10 years (unless pardoned on the basis of innocence). D.C. Code Ann. § 20-303(b)(4). Various occupational and professional licenses may be denied, revoked, or suspended upon conviction. *E.g.*: health care professional (D.C. Code Ann. § 2-3305.3(a)(1)); veterinarian (§ 2-2729(a)(2)); attorney (§ 11-2503); liquor license (§ 25-115(g)(1)).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to hold many public offices are restored upon release from imprisonment. D.C. Code Ann. §§ 1-225; 1-241(c); 1-1302(7)(A). The right to serve on a jury may be restored to a felon one year after completion of a term of incarceration, probation, or parole following appropriate certification as set forth in the jury system plan. D.C. Code Ann. § 11-1906(b)(2)(B).

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<sup>1</sup> For the purpose of the disqualification from voting, the term "felony" includes violations of the election, lobbying, and conflict of interest laws, many of which are otherwise misdemeanors. D.C. Code Ann. § 1-1302(7)(B).

Individuals convicted of felonies in the District of Columbia are eligible to apply for a presidential pardon. According to the Office of the United States Attorney, the Mayor of the District of Columbia at most has the authority to grant pardons for violations of municipal ordinances under the provisions of D.C. Code Ann. § 1-311.<sup>2</sup>

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person "convicted in the District of Columbia or elsewhere of a felony" may not own, keep, or have in his possession or under his control a pistol. D.C. Code Ann. § 22-3203(a)(2).<sup>3</sup> Nor may such persons obtain a registration certificate for any firearm (including both long guns and handguns) or ammunition. D.C. Code Ann. §§ 6-2313(a)(9), 6-2361(3).

A registration certificate is also denied to anyone who has been convicted: (1) of a "crime of violence"<sup>4</sup>; (2) of a "weapons offense"<sup>5</sup>; (3) of any violation of the D.C. laws requiring registration of guns or ammunition; (4) within the previous five years of a drug offense; or (5) within the past five years of any offense involving threats to do bodily harm or assault under the D.C. Code<sup>6</sup> or "any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm." D.C. Code Ann. § 6-2313.

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<sup>2</sup> Section 1-311 provides that the Mayor "may grant pardons and respites for offense against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the Legislative Assembly, and the police and building regulations of the District."

<sup>3</sup> "Pistol" is defined as any firearm with a barrel length of less than 12 inches. D.C. Code Ann. § 22-3201(a). Also prohibited from possessing a pistol is anyone convicted of prostitution (D.C. Code Ann. § 22-2701), keeping a bawdy house (D.C. Code Ann. § 22-2722), or vagrancy (D.C. Code Ann. §§ 22-3302 to 3306). D.C. Code Ann. § 22-3203(a)(3).

<sup>4</sup> "Crime of violence" is defined in D.C. Code Ann. §§ 6-2302(5) and 22-3201(f) to mean any of the following crimes, or an attempt to commit any of them, committed in any jurisdiction (but excluding larceny or attempted larceny): murder; manslaughter; first- or second-degree sexual abuse; child sexual abuse; mayhem; maliciously disfiguring another; abduction; kidnapping; burglary; robbery; housebreaking; any assault with intent to kill, or to commit first- or second-degree sexual abuse, child sexual abuse, or robbery; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment in the penitentiary; arson; or extortion or blackmail accompanied by threats of violence.

<sup>5</sup> "Weapons offense" is defined in D.C. Code Ann. § 6-2302(18) to mean "any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device."

<sup>6</sup> Specifically, offenses under D.C. Code Ann. § 22-504 or § 22-507.

## FLORIDA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony loses the rights to vote and to hold public office. Fla. Const. art. VI, § 4; Fla. Stat. Ann. § 97.041(2)(b). A person convicted of a felony under Florida law or an offense under federal law or the law of another state that would be a felony if committed in Florida also loses the right to serve on a jury. Fla. Stat. Ann. § 40.013(1)

A person may not be disqualified from public employment solely because of a criminal conviction unless the conviction was for a felony or a first-degree misdemeanor and directly related to the position of employment sought. Fla. Stat. Ann. § 112.011(1)(a). A person whose civil rights have been restored may not be denied an occupational or professional license solely because of a criminal conviction unless the conviction was a felony or first-degree misdemeanor and directly related to the occupation or profession for which the license is sought. Fla. Stat. Ann. § 112.011(1)(b). These restrictions do not apply to law enforcement or correctional agencies,<sup>1</sup> Fla. Stat. Ann. § 112.011(2)(a), or to the fire department, as to which a four-year disqualification is imposed (unless the person receives a pardon or has his civil rights restored). Fla. Stat. Ann. § 112.011(2)(b). Furthermore, a person convicted on or after October 1, 1990, of a felony sale of, trafficking in, or conspiracy to sell or traffic in drugs is disqualified from public employment and from applying for an occupational license, permit, or certificate unless he has completed his sentence or complied with certain conditions. Fla. Stat. Ann. § 775.16. Examples of occupations in which conviction may prevent employment or licensing include: teacher (Fla. Stat. Ann. § 231.28(1)(e)); bartender (§ 562.13(3)(a)(3)); liquor license (§ 561.15).

Florida has a registration requirement for felons, which includes persons convicted of a federal crime that would be a felony under Florida law, Fla. Stat. Ann. § 775.13, and a registration requirement for "sexual predators" whose current offense was committed on or after October 1, 1993. Fla. Stat. Ann. § 775.22(2).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The civil rights of a person convicted of a felony are suspended until restored by pardon or restoration of civil rights. Fla. Stat. Ann. § 944.292. The power to grant pardons and to restore civil rights (except in cases of treason or impeachment) is vested in the Governor, with the approval of three members of the Cabinet (collectively known as the Clemency Board). Fla. Const. art. IV, § 8(a). The Governor has the discretion to deny, for any reason, any request for

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<sup>1</sup> A law enforcement agency has the broad discretion to refuse to certify an applicant as a law enforcement officer if it deems him to be of bad character or unfit, and may take into account even pardoned state convictions in making this determination. See *Sandlin v. Criminal Justice Standards & Training Comm'n*, 531 So. 2d 1344 (Fla. 1988).

clemency. State felons may not apply for pardon until 10 years have elapsed following completion of sentence. Rules of Executive Clemency of Florida, 5A. Federal felons are not eligible for a gubernatorial pardon.

A felon convicted under federal law or the law of another state who is a legal resident of Florida may apply to the Office of Executive Clemency for restoration of civil rights (without the specific authority to own, possess, or use firearms), which will be granted without hearing by the Clemency Board if the Florida Parole Commission certifies that all conditions of the sentence have been satisfied. Rules of Executive Clemency of Florida, 9D. A state felon who is certified by the Florida Parole Commission as having satisfied all the conditions of his sentence may receive without hearing a certificate from the Clemency Board restoring his civil rights (without the specific authority to own, possess, or use firearms). Rules of Executive Clemency of Florida, 9A.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of "a felony in the courts of this state or of a crime against the United States which is designated as a felony" or convicted of an offense under the laws of another state or country punishable by imprisonment for a term exceeding one year may not own or have in his care, custody, possession, or control any firearm (which includes both long guns and handguns). Fla. Stat. Ann. §§ 790.001(6); 790.23(1). Nor may he carry a concealed weapon. Fla. Stat. Ann. § 790.23(1). These prohibitions do not apply to a person whose "civil rights and firearm authority have been restored," Fla. Stat. Ann. § 790.23(2), or who has received a full pardon. Rules of Executive Clemency of Florida, 4A. The Clemency Board will not entertain a request for restoration of civil rights including "specific authority to own, possess, or use firearms" until eight years after completion of sentence. Rules of Executive Clemency of Florida, 5D.

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<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Florida law concerning the loss and restoration of civil rights and firearms privileges, see James v. United States, 19 F.3d 1 (11th Cir. 1994); United States v. Owens, 15 F.3d 995 (11th Cir. 1994).

## GEORGIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony involving moral turpitude loses the right to vote until completion of sentence. Ga. Const. art. II, § I, III(a); Ga. Code Ann. § 21-2-216(b).<sup>1</sup> A person who is not a registered voter or who has been convicted of a "felony involving moral turpitude" may not hold any office or appointment of trust, unless his civil rights have been restored and 10 years have passed since completion of sentence without subsequent conviction of another felony involving moral turpitude. Ga. Const. art. II, § II, III.<sup>2</sup> A person convicted of a felony involving moral turpitude under the laws of Georgia, or of any other jurisdiction if the offense would be a felony under Georgia law, loses the right to hold any civil office, "unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Paroles." Ga. Code Ann. § 45-2-1(3). Persons convicted under federal law or the law of any state of "fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude" may not run for or be elected to municipal, county, or state office or serve in various election-related positions unless their civil rights have been restored. Ga. Code Ann. §§ 21-2-8, 21-3-5. A person convicted of a federal or state felony or any offense involving moral turpitude is ineligible to be a sheriff. Ga. Code Ann. § 15-16-1(c)(1)(F). The state Attorney General has concluded that this provision applies to federal convictions. 1980 Op. Att'y Gen. 201 (No. 80-96) (1980).

A person convicted of a felony loses the right to sit on a grand or petit jury. Ga. Code Ann. §§ 15-12-60(b)(2), 15-12-120; 1983 Op. Att'y Gen. 69 (No. 83-33) (1983). The disqualification from grand jury service has been interpreted to apply only to persons convicted after 1976, and only to those convicted of felonies under Georgia law, not under federal law or the law of another state. Clark v. State, 255 Ga. 370, 338 S.E.2d 269 (1986).

State examining boards may deny or revoke an occupational or professional license, or impose discipline upon a licensee, because of a conviction of any felony or of a crime involving moral turpitude in any state or federal court. Ga. Code Ann. § 43-1-19(3). E.g.: chiropractor (Ga. Code Ann. § 43-9-12(a)(3)); dentist (§ 43-11-47(a)(3)); dietician (§ 43-11A-15(3)). Georgia has a registration requirement for "sexually violent predators." Ga. Code Ann. § 42-1-12.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

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<sup>1</sup> 1986 Op. Atty Gen. 25 (No. 86-15) (1986) concluded that "generally, a drug related offense classified as a felony is a felony involving moral turpitude which will remove a person's right to vote."

<sup>2</sup> A previous provision disqualifying persons convicted of a felony involving moral turpitude from voting and holding office was applied to a federal conviction in Hulgan v. Thorton, 205 Ga. 753, 55 S.E.2d 115 (1949), and was concluded to apply to federal offenses in 1962 Op. Att'y Gen. 131 (1962).

The right to vote is restored upon completion of sentence. Ga. Const. art. II, § I, III(a). To regain the right to sit on a jury, either a pardon or restoration of civil rights is necessary. 1983 Op. Att'y Gen. 69 (No. 83-33) (1983). To regain the right to hold office lost as a result of conviction of a "felony involving moral turpitude," the person must have had his rights restored and must wait 10 years after completion of sentence and have no subsequent conviction of a felony involving moral turpitude. Ga. Const. art. II, § II, III. See also 1983 Op. Att'y Gen. 69 (No. 83-33) (1983).<sup>3</sup>

The power to pardon and to remove disabilities is vested in the state Board of Pardons and Paroles, although it may be prohibited from issuing a pardon in certain cases.<sup>4</sup> Ga. Const. art. IV, § II, II. The Governor is expressly precluded from exercising power or authority over pardons. Ga. Code Ann. § 42-9-56. A pardon relieves "civil and political disabilities imposed because of [a] conviction," Ga. Code Ann. § 42-9-54, which has been interpreted to include the rights to vote, to hold office, and to sit on a jury. 1954-56 Op. Att'y Gen. 506 (1956). A pardon, however, does not restore a convicted felon to a public office he was forced to relinquish because of the conviction. Morris v. Hartsfield, 186 Ga. 171, 197 S.E. 251 (1938).<sup>5</sup>

For a felon convicted under federal law or the law of Georgia or another state, the state Board of Pardons and Paroles will issue a "Restoration of Rights and Removal of Disabilities" if he has completed his sentence and lived a law-abiding life for five years. This relief not only restores basic civil rights, but also the right to be licensed by the state.<sup>6</sup>

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<sup>3</sup> Ga. Code Ann. § 45-2-1(3), however, would appear to require restoration of rights by means of a pardon for those persons disqualified under that section from holding civil office.

<sup>4</sup> The Georgia Constitution permits the General Assembly to adopt mandatory minimum sentences for armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery, which then prohibits the Board of Pardons and Paroles from pardoning a person convicted of such an offense during the mandatory minimum portion of the sentence, except upon the ground of innocence. Likewise, the Georgia Constitution permits the General Assembly to adopt sentences of life without parole upon conviction of murder or upon a second conviction of any of the offenses enumerated above after a previous conviction for murder or any of those offenses, in which case the Board is prohibited from pardoning except upon the ground of innocence. The General Assembly may also prohibit a pardon except upon the ground of innocence for a second conviction of a crime bearing a possible life sentence or for a person serving consecutive life sentences for offenses committed in the same series of acts. Ga. Const. art. IV, §II, II(b)(2), b(3), (c), (e).

<sup>5</sup> In Barbour v. Democratic Executive Committee, 246 Ga. 193, 269 S.E.2d 433 (1980), it was held that a state pardon did not restore eligibility to be a sheriff. The case involved an earlier version of the state constitution, which specifically empowered the state legislature to establish higher qualifications for sheriff than otherwise provided by the state constitution for elected officials. See 1980 Op. Att'y Gen. 120 (No. 80-56) (1980). The current state constitution states that various county officers, including sheriffs, "shall have such qualifications, powers, and duties as provided by general law." Ga. Const. art. IX, § I, III. Ga. Code Ann. § 15-16-1(c)(1)(F) expressly provides that the disability relating to service as a sheriff does not apply to convictions of "homicide by vehicle which occurred prior to January 1, 1965, and which did not involve the offense of driving a motor vehicle under the influence of alcohol or drugs" for which the person received a pardon.

<sup>6</sup> While the Board of Pardons and Paroles maintains that a pardon restores licensing privileges ("extraordinary rights"), some state licensing boards adhere to an early contrary state Attorney General opinion, which concluded that licensing privileges are not restored by a pardon. These boards consequently may refuse to

Certain first offenders prosecuted under Georgia law may be placed on probation or sentenced to confinement without an adjudication of guilt. Ga. Code Ann. § 42-8-60. Upon successful completion of probation or sentence, the offender is discharged without a court adjudication of guilt; the discharge "completely exonerate[s] the defendant of any criminal purpose and shall not affect any of his civil rights or liberties." Ga. Code Ann. § 42-8-62(a). While those sentenced to confinement are considered "convicted" during the period of incarceration, Ga. Code Ann. § 42-8-65(c), after discharge the offender is "not considered to have a criminal conviction," Ga. Code Ann. § 42-8-62(a), and "is to suffer no adverse effect upon his civil rights or liberties." 1990 Op. Att'y Gen. 105 (No. U90-6) (1990). Thus, an offender sentenced to probation under this scheme is not disqualified from jury service during the probation period, 1990 Op. Att'y Gen. 105 (No. U90-6) (1990), or from voting, 1974 Op. Att'y Gen. 48 (No. 74-26) (1974). A discharge may not be used to disqualify the offender from employment. Ga. Code Ann. § 42-8-63. A finding of guilt for a discharged offense, however, "may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted" to discharge the offender pursuant to this procedure. Ga. Code Ann. § 42-8-65(a).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>7</sup>

A person convicted of a felony<sup>8</sup> under the laws of any state or the United States loses the right to receive, possess, or transport a firearm (defined to include handguns, rifles, and shotguns, Ga. Code Ann. § 16-11-131(a)(2)). Ga. Code Ann. § 16-11-131(b). This prohibition does not apply to a person who has received a pardon that expressly authorizes the receipt, possession, or transportation of a firearm. Ga. Code Ann. § 16-11-131(c).<sup>9</sup> In addition, persons who have obtained relief from federal firearms disabilities under 18 U.S.C. § 925(c),<sup>10</sup> or who have been convicted of federal or state felonies pertaining to antitrust violations, unfair trade practices, or restraint of trade may apply to the Board of Public Safety for restoration of state firearms privileges, which will be granted upon proof that restoration of firearms privileges "would not be contrary to the public interest," and that the exercise of firearms privileges by the

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grant a license if an applicant has been convicted of any felony or crime of "moral turpitude." See Effect of a Pardon on Extraordinary Rights, 1954-56 Op. Att'y Gen. 506 (1956).

<sup>7</sup> For a consideration of the interaction between the federal firearms disability and Georgia law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Kolter, 849 F.2d 541 (11th Cir. 1988).

<sup>8</sup> "Felony" is defined as "any offense punishable by imprisonment for a term of one year or more." It includes a court-martial conviction for an offense that "would constitute a felony under the law of the United States." Ga. Code Ann. § 16-11-131(a)(1).

<sup>9</sup> A first offender who is placed on probation by a Georgia state court and who is subsequently discharged without an adjudication of guilt is also relieved of this state firearms disability upon discharge. Ga. Code Ann. § 16-11-131(e).

<sup>10</sup> Since Congress has not appropriated funding for this restoration process since fiscal year 1992, this method of restoring state firearms privileges is not currently available.



person "would not present a threat to the safety of the citizens of Georgia." Ga. Code Ann. § 16-11-131(d).

Under Georgia law, a license issued by a probate judge of the county of residence is required to carry a handgun.<sup>11</sup> Ga. Code Ann. § 16-11-129(a). A license may not be issued to: (1) any person convicted of a felony under federal law or the law of Georgia or any other state who has not been pardoned; (2) a person who has been convicted of a forcible misdemeanor<sup>12</sup> and who has not been free of all restraint or supervision for that crime for at least five years; (3) a person who has been convicted of a violation of certain state firearms laws<sup>13</sup> and who has not been free of all restraint or supervision for that crime for at least three years; or (4) a person who has been convicted of an "offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance or other dangerous drug," regardless of how much time has passed since completion of sentence. Ga. Code Ann. § 16-11-129(b)(3), (5).

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<sup>11</sup> Such a license authorizes the recipient to carry a handgun in any county of Georgia for five years, even if he or she changes county of residence. Ga. Code Ann. § 16-11-129(a).

<sup>12</sup> A "forcible misdemeanor" is "any misdemeanor which involves the use or threat of physical force or violence against any person." Ga. Code Ann. § 16-1-3(7).

<sup>13</sup> These offenses are: carrying a concealed weapon, in violation of Ga. Code Ann. § 16-11-126; carrying a deadly weapon to or at public gatherings, in violation of Ga. Code Ann. § 16-11-127; and carrying a pistol without a license, in violation of Ga. Code Ann. § 16-11-128.

## HAWAII

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A felon's right to vote is suspended during incarceration, but not during probation or parole. Haw. Rev. Stat. § 831-2(a)(1). The right to serve on a jury is forfeited upon conviction of a felony in state or federal court. Haw. Rev. Stat. § 612-4(4).

A felon may not seek or hold public office from the time of sentence until final discharge. Haw. Rev. Stat. § 831-2(a)(2). A felon forfeits any public office held at the time of sentencing, as of the date of sentence for state convictions and as of the date a certification of sentence is filed in the Lieutenant Governor's office for persons convicted under federal law or the law of another state. Haw. Rev. Stat. § 831-2(b).<sup>1</sup>

With certain exceptions, a person may not be denied public employment or an occupational or professional license solely by reason of a prior conviction of a crime. Haw. Rev. Stat. § 831-3.1(a), (d). Hiring and licensing entities may, however, consider a conviction (other than an expunged conviction or a conviction for a penal offense for which no jail sentence may be imposed or a misdemeanor 20 or more years ago not followed by any other conviction) as a possible justification for refusal, suspension, or revocation of employment or a license when the offense directly relates to possible performance in the job and it is determined that "the person so convicted has not been sufficiently rehabilitated to warrant the public trust." Haw. Rev. Stat. § 831-3.1(b). To determine the sufficiency of the rehabilitation, "discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors." *Id.* Hawaii has a registration requirement for sex offenders. Haw. Rev. Stat. § 707-743.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is restored upon release from incarceration; the right to seek and hold public office is (except for treason) restored upon final discharge. Haw. Rev. Stat. § 831-2. Only a pardon restores the right to serve on a jury. Haw. Rev. Stat. § 612-4(4). The power to grant pardons is vested in the Governor. Haw. Const. art. V, § 5. While the Hawaii Constitution specifically permits the legislature to "authorize the governor . . . to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State," Haw. Const. art. V,

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<sup>1</sup> Persons convicted of "any act, attempt, or conspiracy to overthrow the state or federal government by force or violence," however, lose permanently the right to seek and hold public office. Haw. Rev. Stat. § 831-2(c).

§ 5, no statute expressly authorizes restoration of federal felons' civil rights.<sup>2</sup> Therefore, it would appear that federal felons and felons convicted in another state may not obtain a Governor's pardon or restoration of civil rights.

Hawaii has a procedure for conditional discharge of certain state drug offenders who have no prior drug convictions and who have not previously had a discharge and dismissal of a drug offense. Haw. Rev. Stat. § 712-1255. Under this procedure, the sentencing court defers adjudication and places the defendant on probation, upon successful completion of which the court discharges the defendant and dismisses the charge without an adjudication of guilt. The dismissal "is not a conviction . . . for purposes of disqualifications or disabilities imposed by law upon conviction of a crime." Haw. Rev. Stat. § 712-1255(3). If the person was 20 years old or younger when the violation occurred, he may apply for expungement after the discharge and dismissal. Haw. Rev. Stat. § 712-1256.

A more general procedure for deferring acceptance of a plea of guilty or no contest and placing the defendant on probation is provided under Haw. Rev. Stat. § 853-1. If the defendant successfully completes probation, the court discharges him and dismisses the charges without an adjudication of guilt. Haw. Rev. Stat. § 853-1. One year after the discharge and dismissal, the defendant may apply for expungement (except for certain offenses, such as prostitution, Haw. Rev. Stat. § 712-1200). Haw. Rev. Stat. § 853-1(e). The procedure, however, is available only to persons with no previous felony conviction and no previous deferred adjudications, and does not apply to many state offenses. Haw. Rev. Stat. § 853-4.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted in Hawaii or elsewhere of any felony, any "crime of violence,"<sup>3</sup> or any offense involving the illegal sale of any drug is disqualified from owning, controlling, or possessing a firearm or ammunition.<sup>4</sup> Haw. Rev. Stat. § 134-7.<sup>5</sup> The office of the state's Attorney General has advised that, in light of the existence of federal firearms disabilities, Governor's pardons, as a matter of policy, expressly state that possession of a firearm is not authorized by the pardon; however, express authorization to possess a firearm under state law may be granted by the Governor when requested by a pardon applicant and good cause is shown.

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<sup>2</sup> E.g., Haw. Rev. Stat. § 353-72 merely requires the Director of Public Safety and the Hawaii Paroling Authority to consider "every application for pardon which may be referred to them by the governor," and to provide the Governor with a recommendation on each.

<sup>3</sup> "Crime of violence" is defined as "any offense, as defined in Title 37 [the Hawaii penal code], that involves injury or threat of injury to the person of another." Haw. Rev. Stat. § 134-1.

<sup>4</sup> "Firearm" is defined to include long guns and handguns. Haw. Rev. Stat. § 134-1.

<sup>5</sup> Likewise, a person less than 25 years old who has been adjudicated by a family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug is prohibited from owning, possessing, or controlling any firearm or ammunition. Haw. Rev. Stat. § 134-7(d).

## IDAHO

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A sentence of custody to the Idaho State Board of Correction suspends all civil rights during the period of imprisonment, including the right to refuse treatment authorized by the sentencing court. The person, however, may exercise "all civil rights that are not political" during any period of parole or probation, other than firearms rights and the right to refuse treatment. Idaho Code § 18-310(1).

A state agency may demote, suspend, or discharge an employee who is convicted of official misconduct in office, any felony, or any other crime involving moral turpitude. Idaho Code § 67-5309(n)(9). State licensing boards may revoke, suspend, or refuse to issue a license because of conviction of a felony in several fields, including: law (Idaho Code § 3-301(1)); teaching (§ 33-1208(1)(f)-(k)); veterinary medicine (§ 54-2113(5)); pharmacy (§ 54-1726(c)(1)); dentistry (§ 54-923); podiatry (§ 54-608(3)); architecture (§ 54-305(1)(d)); and accounting (§ 54-219(e), (f)). Idaho has a registration requirement for sex offenders. Idaho Code § 18-8301, et seq.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Except for certain enumerated offenses, a person convicted of any Idaho felony is upon final discharge restored to all rights lost upon conviction.<sup>1</sup> Idaho Code § 18-310(2). Pardons are issued by the Idaho Commission of Pardons and Parole. Idaho Const. art. IV, § 7; Idaho Code §§ 20-210, 20-240.<sup>2</sup> The Commission has authority to grant pardons, except in cases of treason and impeachment, only as provided by statute. Idaho Const. art. IV, § 7. By statute, the Commission may not grant pardons for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, or manufacture or delivery of controlled substances. In such cases, the Governor has the authority to pardon, upon recommendation of the Commission. Idaho Code § 20-240. Felons convicted under federal law or the law of another state are not eligible for a state pardon. See Idaho Const. art. IV, § 7 (authority "only as provided by statute, to grant . . . pardons . . . in all cases of offenses against the state").

Except in cases of treason or murder, a state judge may suspend execution of a judgment during the first 180 days of a sentence to the custody of the State Board of Correction or withhold judgment, and place the defendant on probation. Idaho Code § 19-2601. Upon application and showing of compliance with the terms of probation, the court may terminate the

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<sup>1</sup> Excepted are persons convicted of treason and, insofar as firearms rights are concerned, persons convicted on or after July 1, 1991, of any of the Idaho offenses listed in n. 4, infra.

<sup>2</sup> Pardon applications may be submitted to the Commission three years after completion of sentence (five years for violent or sexual offenses). Rules of the Commission of Pardons and Parole 550.01(a).

sentence or set aside the plea of guilty or conviction of the defendant and dismiss the case. The dismissal "shall have the effect of restoring the defendant to his civil rights." Idaho Code § 19-2604(1). Further, if a sentence to the custody of the State Board of Correction was imposed but suspended (except for certain sex offenses involving minors), the court may amend the judgment of conviction from a term of custody of the State Board of Correction to "confinement in a penal facility," and the amended judgment "may be deemed to be a misdemeanor conviction." Idaho Code § 19-2604(2), (3).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A sentence of custody to the Idaho State Board of Correction suspends the right to ship, transport, possess, or receive firearms. Idaho Code § 18-310(1). This right is automatically restored upon "final discharge of a person convicted of any Idaho felony," except for those convicted of treason or certain enumerated felonies committed after July 1, 1991.<sup>4</sup> Idaho Code § 18-310(2). A person convicted of a crime enumerated in § 18-310, or of "a comparable felony crime in another state, territory, commonwealth or other jurisdiction of the United States," may not purchase, own, possess, or have under his custody or control a firearm<sup>5</sup> unless his conviction has been "nullified by expungement, pardon, setting aside the conviction or other comparable procedure," or his "civil right to bear arms either specifically or in combination with other civil rights has been restored by any other provision of Idaho law." Idaho Code § 18-3316.

A felon who does not qualify for automatic restoration may apply to the Commission of Pardons and Parole no sooner than five years after final discharge to restore his right to ship, transport, possess, and receive firearms. Idaho Code § 18-310(3). This relief is unavailable, however, for anyone convicted of murder in the first or second degree or any of the enumerated felonies the sentence for which was enhanced for the use of a firearm in the commission of the crime. Idaho Code § 18-310(3). The Commission of Pardons and Parole advises that it does not have the authority to restore state firearms privileges to federal felons under § 18-310.

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<sup>3</sup> For a consideration of the interaction between the federal firearms disability and Idaho law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Gomez, 911 F.2d 219 (9th Cir. 1990). NB: Gomez involved an earlier version of Idaho law concerning firearms privileges different from the state firearms law set forth in this section.

<sup>4</sup> The enumerated offenses are: aggravated assault; aggravated battery; assault with intent to commit a serious felony; battery with intent to commit a serious felony; burglary; lewd conduct with a minor or child under 16; sexual abuse of a child under 16; felonious rescuing prisoners; escape by one charged with, convicted of, or on probation for a felony; unlawful possession of a firearm; degrees of murder; voluntary manslaughter; assault with intent to murder; administering poison with intent to kill; kidnapping; mayhem; rape; male rape; robbery; ritualized abuse of a child; cannibalism; felonious manufacture, delivery, or possession with intent to manufacture or deliver, or possession of a controlled or counterfeit substance; drug trafficking; or attempt, conspiracy, or solicitation to commit any of these crimes. Idaho Code § 18-310(1), (2)(A).

<sup>5</sup> "Firearm" is defined to include both long guns and handguns. Idaho Code § 18-3316(3).

A permit to carry a concealed weapon<sup>6</sup> outside one's home or fixed place of business<sup>7</sup> cannot be obtained by a person "ineligible to own, possess or receive a firearm under the provisions of state or federal law"; a person "adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year"; a person who has been "adjudicated guilty of or received a withheld judgment or suspended sentence for one (1) or more crimes of violence constituting a misdemeanor" (unless three years have passed since disposition or pardon); or, a person who has had "entry of a withheld judgment for a criminal offense which would disqualify him from obtaining a concealed weapon license." Idaho Code § 18-3302(1)(a), (c), (h), (i), (7).

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<sup>6</sup> A concealed weapon includes certain knives, pistols, and revolvers, as well as any other deadly or dangerous weapon; it does not include lawfully possessed shotguns and rifles. Idaho Code § 18-3302(7).

<sup>7</sup> A license is not required to carry a concealed weapon outside the city limits while engaged in lawful hunting or other outdoor activity. Idaho Code § 18-3302(12)(d).

## ILLINOIS

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person sentenced to imprisonment loses the right to vote until released from prison. Ill. Const. art. III, § 2; Ill. Comp. Stat. ch. 730, § 5/5-5-5(c). A person convicted of a felony, bribery, perjury, or other "infamous crime" loses the right to hold public office until completion of sentence. Ill. Const. art. XIII, § 1; Ill. Comp. Stat. ch. 730, § 5/5-5-5(b). A convicted felon may not serve as an executor of a will or administrator of an estate. Ill. Comp. Stat. ch. 755, §§ 5/6-13(a), 5/9-1.<sup>1</sup>

A person convicted of a felony may not do business with the state until one year after the date of completion of sentence, Ill. Comp. Stat. ch. 30, § 505/10-3, and may be denied state employment when the offense involved "infamous or disgraceful conduct." Ill. Comp. Stat. ch. 20, § 415/8B.4. An occupational or professional license may be revoked, denied, or suspended because of a felony conviction. E.g.: medicine (Ill. Comp. Stat. ch. 225, § 60/22(A)(3), (B)); real estate (ch. 225, §§ 455/11, 455/18(b)); engineering (ch. 225, § 325/24); pharmacy (ch. 225, § 85/30(a)(14), (c)).

Illinois has a registration requirement for sex offenders, Ill. Comp. Stat. ch. 730, § 150/1, et seq., which expressly applies to federal convictions. Ill. Comp. Stat. ch. 730, § 150/2(A)(1), (C). Special registration provisions apply to child sex offenders, Ill. Comp. Stat. ch. 730, § 152/101, et seq., and to child murderers convicted of first-degree murder committed on or after June 1, 1996, against a victim under 18 years old. Ill. Comp. Stat. ch. 730, § 150/2(C-5).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored upon release from prison. Ill. Const. art. III, § 2; Ill. Comp. Stat. ch. 730, § 5/5-5-5(c). The right to hold public office is automatically restored upon completion of sentence. Ill. Comp. Stat. ch. 730, § 5/5-5-5(b).<sup>2</sup> "[A]ll license rights and privileges" lost as the result of a felony conviction are automatically restored upon completion of sentence of imprisonment or upon discharge from probation, conditional discharge, or periodic imprisonment, unless a state licensing board determines that restoration would not be in the public interest. Ill. Comp. Stat. ch. 730, § 5/5-5-5(d).<sup>3</sup>

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<sup>1</sup> Illinois law does not appear specifically to exclude convicted felons from jury service, although it requires jurors to be "[f]ree from all legal exception, of fair character, of approved integrity, [and] of sound judgment." Ill. Comp. Stat. ch. 705, § 305/2.

<sup>2</sup> Persons convicted of mutilation of election materials or perjury in an election matter are disqualified from office for a period of five years following completion of sentence. Ill. Comp. Stat. ch. 10, §§ 5/29-6, 5/29-10(b).

<sup>3</sup> This section does not apply to the suspension or revocation of a driver's license. Ill. Comp. Stat. ch. 730, § 5/5-5-5(d).

The pardon power is vested in the Governor, who is assisted by recommendations of the Prisoner Review Board. Ill. Const. art. V, § 12; Ill. Comp. Stat. ch. 730, § 5/3-3-13. Felons convicted under federal law or the law of another state are ineligible for a gubernatorial pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>4</sup>

A person convicted of a felony under the laws of Illinois or any other jurisdiction may not possess a firearm<sup>5</sup> or ammunition, unless relief from this disability is granted by the Department of State Police. Ill. Comp. Stat. ch. 720, § 5/24-1.1(a).<sup>6</sup> The State Police Department will grant relief if it is established that: (1) the felon has not been convicted of a "forcible felony" within the preceding 20 years or that 20 years have passed since release from imprisonment for that offense; (2) he is not likely to act in a manner dangerous to public safety; and (3) restoration of firearms privileges would not be "contrary to the public interest." Ill. Comp. Stat. ch. 430, § 65/10(c).

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<sup>4</sup> For a consideration of the interaction between the federal firearms disability and Illinois law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Gipson, 985 F.2d 412 (8th Cir.), cert. denied, 510 U.S. 823 (1993); United States v. Erwin, 902 F.2d 510 (7th Cir.), cert. denied, 498 U.S. 859 (1990).

<sup>5</sup> "Firearm" is defined to include both long guns and handguns. Ill. Comp. Stat. ch. 430, § 65/1.1.

<sup>6</sup> Under state law, a Firearms Owner's Identification Card is generally required to acquire or possess any firearm or ammunition. Felons cannot obtain such a card; however, the Director of the Department of State Police may grant relief to anyone prohibited from possessing a firearm under Ill. Comp. Stat. ch. 720, § 5/24-1.1. Ill. Comp. Stat. ch. 430, §§ 65/2(a), 65/4(a)(2)(ii), 65/10(c). Also excluded from obtaining a Firearms Owner's Identification Card is anyone convicted in the past five years of domestic battery, battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in another jurisdiction in which a firearm was used or possessed. Ill. Comp. Stat. ch. 430, § 65/4(a)(2)(viii).



## INDIANA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person "imprisoned following conviction" of a "crime" may not vote during imprisonment. Ind. Code § 3-7-13-4(a).<sup>1</sup> A person "under a sentence imposed for an offense" is disqualified as a juror. Ind. Code § 33-4-5-7(b)(4). Persons convicted of a felony under Indiana law or the law of another jurisdiction is disqualified from holding or being a candidate for elected office. Ind. Code § 3-8-1-5(b)(3).<sup>2</sup> This provision has been held to apply to federal offenses. Wilson v. Montgomery County Election Board, 642 N.E.2d 258 (Ind. Ct. App. 1994). In addition, persons convicted of certain federal offenses<sup>3</sup> lose the right to hold public office. Ind. Code § 5-8-3-1. Any public officer convicted of a felony during his term of office is removed from office at the time of sentencing. Ind. Code § 5-8-1-37(b)(1). State judges may be suspended upon plea of guilty or no contest to, or finding of guilt of, and removed upon final conviction of, a state or federal felony. Ind. Const. art. 7, § 11. Persons convicted of misdemeanor violations of the laws prohibiting bribery, official misconduct, and conflicts of interest may be ineligible at the direction of the sentencing court to hold an office of trust or profit for a fixed term not to exceed 10 years. Ind. Code § 35-50-5-1.1.

A professional or occupational license generally may not be revoked, suspended, or denied because the holder or applicant has been convicted of an offense, but the offense conduct may be taken into account in determining "whether the applicant or holder should be entrusted to serve the public in a particular capacity." Ind. Code § 25-1-1.1-1. In addition, an occupational or professional license may be revoked or suspended for conviction of certain drug offenses (generally involving possession of drugs or drug paraphernalia), Ind. Code § 25-1-1.1-2, and must be revoked or suspended for conviction of other drug offenses (generally involving trafficking or manufacture of certain drugs). Ind. Code § 25-1-1.1-3. Rule 13 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys precludes convicted felons from taking the bar examination.

Indiana has a registration requirement for persons convicted of certain sexual offenses involving minors, which applies to certain persons adjudicated delinquent because of the commission of a sexual offense involving a minor. Ind. Code §§ 5-2-12-4, 5-2-14-5.

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<sup>1</sup> See also Ind. Const. art. 2, § 8, which permits the legislature to pass laws disenfranchising persons convicted of an "infamous crime."

<sup>2</sup> "Felony" is defined as "a conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year," but does not include a conviction for which the person has been pardoned or certain state misdemeanors. Ind. Code § 35-50-2-1(b).

<sup>3</sup> These offenses are evading the Selective Service Act, conspiring or attempting to defraud the United States government, seditious utterances, and any other crime against the laws of the United States when the sentence imposed exceeds six months. Ind. Code § 5-8-3-1.

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored to felons upon release from incarceration or other lawful detention, Ind. Code § 3-7-13-4(b), and the right to serve on a jury is automatically restored upon completion of sentence, including any period of probation or parole. Ind. Code § 33-4-5-7. Disabilities affecting a felon's right to hold public office are removed only by a pardon.

Except for cases of treason and impeachment, the pardon power is vested in the Governor, who is assisted by the recommendations of the Parole Board. Ind. Const. art. 5, § 17; Ind. Code § 11-9-2-1. A person convicted of a federal crime or a crime under the laws of another state is ineligible for a gubernatorial pardon. Fifteen years after discharge from probation, imprisonment, or parole (whichever is later), a felon may petition the state police department to limit access to his criminal history to criminal justice agencies. Ind. Code § 35-38-5-5.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>4</sup>

Under Indiana law, a license is required for a person to carry a handgun<sup>5</sup> in his vehicle or on his person, except in his dwelling, on his property, or in his fixed place of business. Ind. Code § 35-47-2-1. Among the persons excluded from the category of "proper persons" eligible to obtain such a license are: (1) any person who has been convicted of resisting law enforcement or of a weapons offense under Indiana law within five years of applying for the license; (2) any person convicted of a crime for which he could have been sentenced for more than one year; (3) and any person convicted of a "crime involving an inability to safely handle a handgun." Ind. Code §§ 35-47-1-7, 35-47-2-3. For offenses committed after June 30, 1994, a person convicted of a felony is also specifically prohibited from obtaining a license, pursuant to Ind. Code § 35-47-2-3(f)(1). It is unlawful to sell, give, or deliver a handgun to a person with a felony conviction. Ind. Code § 35-47-2-7(b)(1).

A full Governor's pardon for a felony other than an offense against the person (such as murder, voluntary or involuntary manslaughter, aggravated battery, kidnapping, or rape) or for a violation of the handgun laws removes any state firearms disability if 15 years have elapsed between the time of the offense and the application. Ind. Code § 35-47-2-20(a)(2). The Governor may also issue a pardon that conditions removal of firearms disabilities upon a determination by the Superintendent of State Police "that circumstances have changed to such an extent since the pardoned conviction was entered that the applicant for the permit or license is likely to handle handguns in compliance with the law." Ind. Code § 11-9-2-4. If such a

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<sup>4</sup> For a consideration of the interaction between the federal firearms disability and Indiana law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Lee, 72 F.3d 55 (7th Cir. 1995); United States v. McKinley, 23 F.3d 181 (7th Cir. 1994).

<sup>5</sup> "Handgun" is defined as any firearm with a barrel length less than 16 inches or an overall length of less than 26 inches. Ind. Code § 35-47-1-6.

conditional pardon is issued for a felony or for a firearms violation, the firearms disability is removed when the Superintendent makes that determination. Ind. Code §§ 11-9-2-4, 35-47-2-20(b). Indiana law does not provide for restoration of handgun privileges to a federal felon.

## IOWA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

No person convicted of any "infamous crime" is eligible to vote. Iowa Const. art. II, § 5. The voter registration of any person "shall be cancelled" upon notification by the clerk of the district court, the United States Attorney, or the state registrar to the county commissioner of registration of the person's "conviction of a felony as defined in section 701.7 or conviction of an offense classified as a felony under federal law."<sup>1</sup> Iowa Code § 48A.30.

It is grounds for contesting an election that the incumbent had been "duly convicted of a felony." Iowa Code § 57.1(2)(c). Conviction of a felony is also grounds for removal of an appointed state officer. Iowa Code § 66.26(8). The disqualification from holding office has been held to apply to federal felons. State ex rel. Dean v. Haubrich, 248 Iowa 978, 83 N.W.2d 451 (1957). A felon is not disqualified from jury service, but may be challenged for cause. Iowa Rule Civil Proc. 187(f); Iowa Rule Crim. Proc. 17(5).

Conviction of a felony "related to the profession or occupation of the licensee" or "that would affect the licensee's ability to practice within a profession" is grounds for suspending or revoking a professional license in a number of health-related occupations, including medicine, podiatry, osteopathy, psychology, chiropractor, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, pharmacy, cosmetology, barbering, dietetics, mortuary science, and social work. Iowa Code §§ 147.2, 147.55(5). Other fields in which conviction of a felony may be relevant to the licensing decision include: accountant (Iowa Code § 542C.21(5)); real estate broker (§ 543B.29(5)); landscape architect (§ 544B.15(5)).

Iowa has a registration requirement for persons convicted of a "criminal offense against a minor, sexual exploitation, or a sexually violent offense," and for certain persons adjudicated delinquent as a result of a "criminal offense against a minor" or a "sexually violent offense." Iowa Code § 692A.2.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The Governor has the authority, except in cases of treason or impeachment, to grant a pardon and to restore the rights of citizenship, with the advice of the Board of Parole. Iowa Const. art. IV, § 16; Iowa Code §§ 914.1 - 914.3. Federal felons may obtain restoration of civil rights from the Governor, but not a pardon. State ex rel. Dean v. Haubrich, *supra*.

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<sup>1</sup> Iowa Code § 701.7 provides that a crime is a felony "when the statute defining the crime declares it to be a felony."

Persons convicted under Iowa law and sentenced to probation may, upon discharge, be recommended by the sentencing court for restoration of citizenship rights. Iowa Code § 907.9. In addition, for certain defendants the court may defer judgment and place the defendant on probation, Iowa Code § 907.3; upon discharge, the "court's criminal record with reference to the deferred judgment" is expunged. Iowa Code § 907.9.<sup>2</sup>

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A person "convicted of a felony in any state or federal court" may not knowingly have under his dominion and control, receive, transport, or cause to be transported a "firearm or offensive weapon."<sup>4</sup> Iowa Code § 724.26. In addition, a person "convicted of a felony" or "convicted of a crime defined in chapter 708" (involving offenses against the person, but excluding assault and harassment) may not obtain or maintain a permit to own a pistol or revolver, Iowa Code § 724.15(1)(b), (e), nor may he obtain a permit to carry weapons. Iowa Code § 724.8(2), (6).

For the purposes of § 724.8 and § 724.26, "felony" means "any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less." Iowa Code § 724.25(1). These firearms disabilities do not apply to a person "who is eligible to have [his] civil rights regarding firearms restored under section 914.7 and who is pardoned or has had [his] civil rights restored by the President of the United States or the chief executive of a state and who is expressly authorized by the President of the United States or such chief executive to receive, transport, or possess firearms or destructive devices." Iowa Code § 724.27. Iowa Code § 914.7 provides that, notwithstanding the other code provisions regarding pardons and restorations of rights, "a person who has been convicted of a forcible felony, a felony violation of chapter 124 [dealing with controlled substances] involving a firearm, or a felony violation of chapter 724 [dealing with weapons] shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms."<sup>5</sup>

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<sup>2</sup> This procedure does not apply to forcible felonies (defined in Iowa Code § 702.11 to include felonious child endangerment, assault, murder, many sexual abuse offenses, kidnapping, robbery, arson in the first degree, and burglary in the first degree) or to certain recidivists. Iowa Code § 907.3.

<sup>3</sup> For a consideration of the interaction between the federal firearms disability and Iowa law concerning the loss and restoration of civil rights and firearms privileges, see *Bell v. United States*, 970 F.2d 428 (8th Cir. 1992).

<sup>4</sup> "Offensive weapon" is defined in Iowa Code § 724.1 to include such objects as a machine gun, bomb, and sawed-off shotgun. "Firearm" is not defined, but appears to include both long guns and handguns.

<sup>5</sup> Section 914.7 further provides that a person 17 years old or younger "who commits a public offense involving a firearm which is an aggravated misdemeanor against a person or a felony shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms."

## KANSAS

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted in state or federal court of a crime punishable by imprisonment for one year or longer and sentenced to imprisonment forfeits the rights to vote, to hold public office, and to serve on a jury until final discharge from parole or conditional release or discharge from custody by expiration of the prison sentence. Kan. Stat. Ann. § 21-4615(1), (2).

A licensing board may consider an applicant's felony conviction, but the conviction is not an absolute bar to licensure. Kan. Stat. Ann. § 74-120. A felony conviction may result in suspension or revocation of a license. *E.g.*: healing arts (Kan. Stat. Ann. § 65-2836(c)); nursing (§ 65-1120(a)(2)); pharmacy (§ 65-1627(a)(2), (c), (d)); psychology (§ 74-5324(a)); accounting (§ 1-311(a)(5), (6)).

Kansas has a registration requirement for sex offenders, which expressly applies to federal convictions. Kan. Stat. Ann. § 22-4902. Persons convicted of, or adjudicated as a juvenile offender based on the commission of, certain sexual offenses involving children or certain violent offenses under Kansas law are required to submit blood and saliva samples for DNA analysis. Kan. Stat. Ann. § 21-2511.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

When lost by reason of a sentence of imprisonment, a felon's rights to vote, to hold public office, and to serve on a jury are automatically restored upon completion of sentence or upon a final order of discharge. Kan. Stat. Ann. §§ 21-4615(2), 22-3722. One year after conditional release or parole (or sooner if the sentence expires sooner), a state offender may apply to the parole board for a certificate of discharge, which will restore his civil rights. Kan. Stat. Ann. § 22-3722.

The pardon power is vested in the Governor, who is assisted by the reports of the Kansas Adult Authority. Kan. Const. art. 1, § 7; Kan. Stat. Ann. § 22-3701. Felons convicted under federal law or the law of another state are not eligible for a state pardon. Kan. Stat. Ann. § 22-3701 (Governor has power to pardon "any person convicted of a crime in any court of this state").

A procedure for expunging certain state convictions is set out in Kan. Stat. Ann. § 21-4619. A waiting period of three or five years is required, depending on the seriousness of the offense, and some offenses (certain sexual offenses involving children) may not be expunged. Kan. Stat. Ann. § 21-4619(a), (b), (c). After the order of expungement is entered, the person "shall be treated as not having been convicted of the crime" except that the conviction may be considered for certain purposes, such as at trial or sentencing for a subsequent offense, and must be disclosed in certain circumstances, such as in connection with specified licensing decisions.

Kan. Stat. Ann. § 21-4619(f). In addition, “expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.” Kan. Stat. Ann. § 21-4619(h).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

A person convicted of a “person felony”<sup>2</sup> or drug violation under Kansas law or substantially similar law of another jurisdiction may not possess a firearm if he possessed a firearm at the time of the commission of the offense. Kan. Stat. Ann. § 21-4204(a)(2). A person convicted of a “nonperson felony” under Kansas law or substantially similar law of another jurisdiction who possessed a firearm at the time of the offense is prohibited from possessing firearms for a period of 10 years from conviction or release from incarceration. Kan. Stat. Ann. § 21-4204(a)(4)(B). These disabilities also apply to persons adjudicated a juvenile offender when the adjudication is based on an act that, if done by an adult, would trigger application of the disability. Kan. Stat. Ann. § 21-4204(a)(2), (a)(4)(B).

Disabilities for shorter periods are also imposed upon persons convicted of certain offenses who did not possess a firearm at the time of the offense. For certain enumerated offenses generally involving violence,<sup>3</sup> a person who within the past 10 years has been convicted under Kansas law or substantially similar law of another jurisdiction or released from incarceration may not possess a firearm if he has not had his conviction expunged or pardoned. Kan. Stat. Ann. § 21-4204(a)(4)(A). Persons convicted of any other felony under Kansas law or substantially similar law of another jurisdiction are prohibited from possessing a firearm for five years from conviction or release from incarceration. Kan. Stat. Ann. § 21-4204(a)(3). These disabilities also apply to persons adjudicated a juvenile offender when the adjudication is based on an act that, if done by an adult, would trigger application of the disability. Kan. Stat. Ann. § 21-4204(a)(3), (a)(4)(A).

The Court of Appeals for the Tenth Circuit has ruled that a certificate of discharge under Kan. Stat. Ann. § 22-3722 does not operate to restore the right to possess firearms, and that the state firearms privileges of a felon who was disabled by statute from possessing pistols for five years but who had received a certificate of discharge were not restored until five years after his

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<sup>1</sup> For a consideration of the interaction between the federal firearms disability and Kansas law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Burns, 934 F.2d 1157 (10th Cir. 1991), cert. denied, 502 U.S. 1124 (1992).

<sup>2</sup> “Person felony” is a state-law classification of offenses for sentencing purposes, see Kan. Stat. Ann. § 21-4704, and includes such crimes as murder, manslaughter, aggravated assault, aggravated battery, kidnapping, aggravated robbery, rape, and aggravated burglary. See, e.g., Kan. Stat. Ann. §§ 21-3401-3404, 21-3410, 21-3414, 21-3420, 21-3427, 21-3501, 21-3716.

<sup>3</sup> The enumerated offenses are first- and second-degree murder, voluntary and involuntary manslaughter, aggravated assault and aggravated assault on a law enforcement officer, aggravated battery, aggravated battery against a law enforcement officer, criminal threat, kidnapping, aggravated kidnapping, aggravated robbery, rape, aggravated criminal sodomy, aggravated sexual battery, aggravated burglary, and a number of drug offenses. Kan. Stat. Ann. § 21-4204(a)(4).

release from prison. United States v. Burns, 934 F.2d 1157 (10th Cir. 1991), cert. denied, 502 U.S. 1124 (1992).



## KENTUCKY

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person who has been convicted "in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the general assembly may declare," or who is incarcerated at the time of the election, may not vote. Ky. Const. § 145. A person convicted of a felony loses the rights to serve on a jury and to hold public office. Ky. Const. § 150; Ky. Rev. Stat. Ann. § 29A.080(2)(e). The disqualification from office has been held to apply to federal felons. Arnett v. Stumbo, 287 Ky. 433, 153 S.W.2d 889 (1941).

A person may be denied public employment or an occupational or professional license on account of a felony conviction. Ky. Rev. Stat. Ann. §§ 335B.010, 335B.020. E.g.: insurance (Ky. Rev. Stat. Ann. § 304.9-440(1)(f)); dentistry (§ 313.130(1)); nursing (§ 314.091(1)(b)); medicine (§ 311.595(4)). Kentucky has a registration requirement for persons convicted of committing or attempting to commit a sex crime. Ky. Rev. Stat. § 17.510.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote, to hold public office, and to sit on a jury can be restored by a pardon. Ky. Const. §§ 145, 150; Ky. Rev. Stat. Ann. § 29A.080(2)(e). The power to pardon, except in cases of impeachment, is vested in the Governor, who may grant either a full pardon or a restoration of citizenship, also known as a "partial pardon." Ky. Const. § 77; Arnett v. Stumbo, supra. While a federal offender is ineligible for a full pardon, he may obtain a partial pardon. A partial pardon reinstates the rights to vote, to serve on a jury, and to hold public office. See Arnett v. Stumbo, supra (federal felon pardoned by Governor eligible to vote and hold elected public office notwithstanding absence of presidential pardon). The practice has been to require the consent of the United States Attorney for the district of conviction before granting relief to a federal offender.

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

A person convicted of a state or federal felony after January 1, 1975, is prohibited from possessing, manufacturing, or transporting a handgun, and a person convicted of a state

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<sup>1</sup> For a consideration of the interaction between the federal firearms disability and Kentucky law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Warren, 973 F.2d 1304 (6th Cir. 1992).

or federal felony after July 15, 1994, is prohibited from possessing, manufacturing, or transporting any firearm.<sup>2</sup> Ky. Rev. Stat. Ann. § 527.040(1). This right can be restored by a full Governor's pardon expressly restoring firearms privileges or by a presidential pardon. Ky. Rev. Stat. § 527.040(1);<sup>3</sup> Op. Att'y Gen. 77-739 (1977).

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<sup>2</sup> "Firearm" is defined to include both long guns and handguns. Ky. Rev. Stat § 527.010(4).

<sup>3</sup> Section 527.040 also restores state firearms privileges when relief from federal firearms disabilities has been granted under 18 U.S.C. § 925(c). Since Congress has not appropriated funding for the § 925(c) process since fiscal year 1992, this method of restoring state firearms privileges is not currently available.

## LOUISIANA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person "under an order of imprisonment for conviction of a felony" may not vote. La. Const. art. I, § 10; accord, La. Rev. Stat. Ann. § 18:102. The disqualification from voting applies to federal convictions. 1978-79 Op. Att'y Gen. 103 (No. 79-787) (1980).<sup>1</sup> See also La. Const. art. I, § 20 (providing that rights of citizenship are restored upon termination of "state or federal supervision following conviction"). A felon loses the right to serve on a jury unless pardoned. La. Rev. Stat. § 13:3041; La. Code Crim. Proc. Ann. art. 401(A)(5). The latter provision has been held to embrace federal convictions. State v. Baxter, 357 So. 2d 291 (La. App. 1978).

A person is not eligible to be a candidate in an election if he is under an order of imprisonment for a felony. La. Rev. Stat. §§ 18:451, 461. Conviction of a federal or state felony during a term of office is grounds for removal of the officeholder. La. Rev. Stat. Ann. § 42:1411(A). See also La. Const. art. X, § 24(A) (dealing with impeachment of state officials); La. Rev. Stat. § 33:713 (commissioners, city managers, department heads forfeit office if "convicted of a crime" and sentenced to imprisonment). Judges may be removed from office upon conviction of a felony. La. Const. art. V, § 25(C). A person convicted of a federal or state felony may not be confirmed as a testamentary executor or administrator of an estate. La. Code Civ. Proc. Ann. art. 3097(A)(3).

A person may not be denied certain professional or occupational licenses solely because of his criminal record unless he was convicted of a felony and the crime directly relates to the position or occupation. La. Rev. Stat. Ann. § 37:2950(A). This restriction, however, does not apply to many licensing boards, including those for major fields such as law enforcement, medicine, law, engineering, pharmacy, and dentistry. See, e.g., civil engineering (La. Rev. Stat. Ann. § 37:698(A)(3), (4), (5)); dentistry (§ 37:776(A)(2)); medicine (§ 37:1285(A)(1), (2)); psychology (§ 37:2359(B)(4), (5)). La. Rev. Stat. Ann. § 37:2950(D). State courts are required to notify the appropriate licensing authority when a licensee is convicted of a felony drug offense. La. Code Crim. Proc. Ann. art. 892.2. Conviction of a felony is grounds for removal from classified service. La. Const. art. XIV, § 15.1(30)(a)(8). Louisiana has a registration requirement for sex offenders. La. Rev. Stat. Ann. § 15:540, et seq.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

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<sup>1</sup> In Crothers v. Jones, 239 La. 800, 120 So. 2d 248 (1960), however, the Louisiana Supreme Court held that former Article VIII, § 6 of the Louisiana Constitution, disqualifying from voting persons "convicted of any crime which may be punishable by imprisonment in the penitentiary," did not disenfranchise federal felons, and that a former statutory provision specifically disqualifying federal felons from voting violated the state Constitution.

"Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense." La. Const. art. I, § 20. This provision restores only the "basic rights" of citizenship (e.g., rights to vote and hold office), not privileges (e.g., liquor license). State v. Adams, 355 So. 2d 917 (La. 1978); 1978-79 Op. Att'y Gen. 103 (No. 79-787) (1980). In addition, under La. Code Crim. Proc. Ann. art. 401(A)(5), the right to serve on a jury is not restored unless the person is pardoned. Accord, State v. Baxter, 357 So. 2d 271 (La. 1978)<sup>2</sup>; State v. Haynes, 514 So. 2d 1206 (La. App. 1987).<sup>3</sup>

Upon recommendation of the Board of Pardons, the Governor may pardon "those convicted of offenses against the state." La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(A). Although these provisions had been interpreted to permit the Governor to pardon federal felons,<sup>4</sup> in February 1996 the Board of Pardons resolved to discontinue processing applications for federal felons.

A first offender (defined as a person "convicted within this state of a felony" but never previously convicted of a felony under federal law or the law of any state or country, La. Rev. Stat. Ann. § 15:572(C)) "shall be pardoned automatically upon completion of his sentence without a recommendation of the Board of Pardons and without action by the governor." La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(B). This "first-offender pardon" restores "all rights of citizenship and franchise," La. Rev. Stat. Ann. § 15:572(D), and applies to convictions on or after January 1, 1975. While federal felons had been considered eligible for this relief, see 1978-79 Op. Att'y Gen. 103 (No. 79-787) (1980) (see also State v. Baxter, 357 So. 2d 271 (La. 1978), in February 1996 the Louisiana Board of Pardons discontinued processing applications from federal felons for this relief.

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<sup>2</sup> The relationship between La. Const. art. I, § 20 and La. Code Crim. Proc. Ann. art. 401(A)(5), however, is not discussed in Baxter.

<sup>3</sup> The court in Haynes held that art. 401(A)(5) is not incompatible with La. Const. art. I, § 20 because La. Const. art. V, § 33 allows the state legislature to set additional qualifications for jurors.

<sup>4</sup> Despite the wording of the state's constitutional and statutory provisions, federal felons were regarded as eligible for a gubernatorial pardon. See 1978-79 Op. Att'y Gen. 103 (No. 79-787) (1980) ("time-honored practice . . . has resulted in a contemporaneous construction of the meaning of 'offenses against the state' to include federal and extraterritorial convictions"). But see State v. Baxter, 357 So. 2d 271, 273 (La. 1978), in which the court concluded that the disability from jury service arising from conviction of a federal felony could only be removed by a presidential pardon, and stated, "The power of the Governor of Louisiana to pardon is limited to offenses against the State."

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>5</sup>

A person convicted of a felony "crime of violence,"<sup>6</sup> certain enumerated offenses,<sup>7</sup> a felony violation of the state's Uniform Controlled Dangerous Substances Act, an attempt to commit any of these offenses, or an equivalent offense under federal law or the law of any state, loses the right to possess firearms and to carry a concealed weapon.<sup>8</sup> La. Rev. Stat. Ann. § 14:95.1(A). This disability terminates 10 years after completion of sentence (including probation or parole), provided the offender has not during that period been convicted of any felony. La. Rev. Stat. Ann. § 14:95.1(C)(1). The right to possess a firearm may be restored at any time after completion of sentence (including probation or parole) if the felon obtains a permit from the chief law enforcement officer of the parish in which he resides. La. Rev. Stat. An. § 14:95.1(C)(2). See Op. Att'y Gen. No. 87-371 (1987).

A Governor's pardon is effective to restore firearms privileges (so long as it does not expressly withhold them) prior to the expiration of the 10-year waiting period, but a first-offender pardon is not. *State v. Wiggins*, 432 So. 2d 234 (La. 1983); Op. Att'y Gen. No. 86-804 (1986), 88-11 (1988), 91-607 (1992), 92-654 (1992).<sup>9</sup> The Board of Pardons in February 1996

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<sup>5</sup> For a consideration of the interaction between the federal firearms disability and Louisiana law concerning the loss and restoration of civil rights and firearms privileges, see *United States v. Dupaquier*, 74 F.3d 615 (5th Cir. 1996).

<sup>6</sup> "Crime of violence" is defined as "an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon." La. Rev. Stat. Ann. § 14.2(13). Specifically enumerated as included in this definition are the following offenses and attempts to commit any of them: solicitation for murder; first- and second-degree murder; manslaughter; aggravated and second-degree battery; aggravated assault; mingling harmful substances; aggravated, forcible, and simple rape; sexual battery; aggravated sexual battery; oral sexual battery; aggravated oral sexual battery; intentional exposure to the AIDS virus; aggravated, second-degree, and simple kidnapping; aggravated arson; aggravated criminal damage to property; aggravated burglary; armed, first-degree, and simple robbery; purse snatching; extortion; assault by drive-by shooting; aggravated crime against nature; carjacking; and illegal use of weapons or dangerous instrumentalities. *Id.*

<sup>7</sup> The enumerated offenses are: simple burglary; burglary of a pharmacy; burglary of an inhabited dwelling; unauthorized entry of an inhabited dwelling; felony illegal use of weapons or dangerous instrumentalities; manufacture or possession of a delayed action incendiary device; and manufacture or possession of a bomb. La. Rev. Stat. Ann. § 14:95.1(A).

<sup>8</sup> Although the terms "firearm" and "concealed weapon" are not defined in the Criminal Code, they appear to include all guns.

<sup>9</sup> Courts had previously held that a state procedure for setting aside a conviction after satisfactory conclusion of probation, under La. Code Cr. P. art. 893, did not remove the conviction as a basis for the firearms disability under § 14:95.1, *State v. Jones*, 539 So. 2d 866 (La. Ct. App. 1989); but that another state procedure for imposing probation without adjudication followed by discharge and dismissal of the charges, under La. Rev. Stat. § 40:983, removed the discharged offense as a basis for that firearms disability. *State v. Randall*, 464 So. 2d 971 (La. Ct. App. 1985). Both procedures have been repealed.

discontinued accepting applications from federal felons to restore state firearms privileges through a Governor's pardon.

## MAINE

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Conviction of a felony does not result in the loss of the rights to vote or to sit on a jury. A judgment of conviction may include an order removing a person from office. Me. Rev. Stat. Ann. tit. 17-A, § 1152(4).

A licensing agency may take into account criminal history in determining whether to grant a professional or occupational license, but the existence of a conviction is not an automatic bar to licensure. Me. Rev. Stat. tit. 5, § 5301(1). Rather, the licensing agency must determine whether the licensee or applicant is "sufficiently rehabilitated to warrant the public trust." Me. Rev. Stat. tit. 5, § 5302(1). In addition, there are time limits (three years for some professions and 10 years for others) upon considering the conviction itself, rather than the offense conduct, in the licensing decision. Me. Rev. Stat. Ann. tit. 5, § 5303. Maine requires persons convicted of gross sexual assault upon a victim less than 16 years old to register as a sex offender. Me. Rev. Stat. Ann. §§ 11002, 11003.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The pardon power, except in cases of impeachment, is vested in the Governor. Me. Const. art. 5, § 11. A person convicted under federal law or the law of another state is ineligible for a Governor's pardon.

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of a crime punishable by one year or more imprisonment under federal law or the law of any state, or of any crime "committed with the use of a dangerous weapon or of a firearm against a person,"<sup>1</sup> may not own, possess, or control any firearm<sup>2</sup> unless he has obtained a permit for it. Me. Rev. Stat. Ann. tit. 15, § 393(1). Such a person is eligible to apply for a permit five years after final discharge from sentence, but can never obtain a permit to carry a concealed firearm. Me. Rev. Stat. Ann. tit. 15, § 393(2). He may also qualify for a hunting permit. Me. Rev. Stat. Ann. tit. 12, § 7101. A Governor's pardon will restore full firearms privileges to state convicts, but as noted is not available to federal felons.

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<sup>1</sup> The statute excepts violations of the state's hunting and trapping laws in Title 12, Chapter 319, subchapter III (now repealed).

<sup>2</sup> "Firearm" is defined in Me. Rev. Stat. Ann. tit. 17-A, § 2(12-A), to include both long guns and handguns.

## MARYLAND

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of "theft or other infamous crime" loses the right to vote. Md. Ann. Code art. 33, § 3-4(c). Anyone convicted of such an offense also loses the rights to hold public office and to serve on a jury, because these rights are contingent upon being a registered voter. Md. Const. art. I, § 12; Md. Ann. Code art. 33, § 4A-1(a); Md. Code Ann., Cts. & Jud. Proc. § 8-207(b)(1). In addition, persons convicted of bribery or attempted bribery or of buying or selling votes are forever disenfranchised and disqualified from holding an office of profit or trust. Md. Const. art. I, § 6; art. III, § 50; Md. Ann. Code art. 33, § 3-4(b)(6). A state elected official or a member of a state board or commission can be suspended and removed from office upon a felony conviction. Md. Const. art. XV, § 2; Md. Ann. Code art. 41, § 1-204(a). A state judge may be removed upon conviction of any crime, Md. Const. art. IV, § 4, and a state's attorney may be removed upon conviction of bribery. Md. Const. art. V, § 9.

In addition, a person who has been convicted of a crime punishable by a fine of more than \$500 or by imprisonment of more than six months or both and who received a sentence of a fine of more than \$500 or more than six months' imprisonment or both may not serve as a juror. Md. Code Ann., Cts. & Jud. Proc. § 8-207(b)(5). A person convicted of falsifying a juror qualification form may not serve as a juror. Md. Code Ann., Cts. & Jud. Proc. § 8-207(b)(6). Persons convicted of bribing a juror or accepting a bribe as a juror are forever disqualified from sitting on a jury. Md. Ann. Code art. 27, § 25.

A felony conviction may be grounds for suspending, revoking, or denying a professional or occupational license. *E.g.*: veterinary medicine (Md. Code Ann., Agric. § 2-310(2), (3), (4)); accounting (Md. Code Ann., Bus. Occ. & Prof. § 2-315(a)(3)); dentistry (Md. Code Ann., Health Occ. § 4-315(a)(4)); nursing (Md. Code Ann., Health Occ. § 8-316(a)(4)); optometry (Md. Code Ann., Health Occ. § 11-313(3)). A person convicted of a drug offense committed on or after January 1, 1991, may be required to disclose the conviction as a condition of the issuance or renewal of a license, and the license may be denied, suspended, or revoked because of the conviction. Md. Ann. Code art. 41, §§ 1-502, 1-503. See also Md. Ann. Code art. 27, § 298A (court to notify licensing authorities of certain drug convictions). Maryland has a registration requirement for child sex offenders. Md. Ann. Code art. 27, § 692B (renumbered to § 792 effective October 1, 1996).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The disability from voting for a first offender lasts only until the sentence is completed, including probation or parole, Md. Ann. Code, art. 33, § 3-4(c) (except for persons convicted of bribery, attempted bribery, or buying or selling votes, who are permanently disenfranchised and disqualified from holding office, Md. Const. art. I, § 6; art. III, § 50). As a result, first offenders



also regain the right to hold office upon completion of sentence.<sup>3</sup> The right to serve on a jury is also restored upon completion of sentence, to the extent that the disability flows from being ineligible to vote; however, any disability relating to the nature of the offense or sentence under Md. Code Ann. Cts. & Jud. Proc. § 8-207(b)(5), (6), or Md. Ann. Code art. 27, § 25, presumably must be removed by a pardon. Recidivists must obtain a pardon in order to regain their civil rights.

The pardon power is vested in the Governor, except in cases of impeachment. Md. Const. art. II, § 20. The Maryland Parole Commission makes a recommendation to the Governor about every pardon application. Md. Ann. Code art. 41, § 4-504(b)(3). According to the Maryland Parole Commission, a person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon.

A person who has been convicted of only one state criminal act, which is not a "crime of violence,"<sup>4</sup> and who has received a full and unconditional pardon from the Governor, may petition for expungement of police and court records pertaining to the charge. Md. Ann. Code art. 27, § 737(a)(7).<sup>5</sup> In addition, a procedure for imposing probation prior to judgment is available for state offenses, which provides that upon successful completion of probation the person is discharged without judgment of conviction and is not "convicted" for the purposes of any disqualification or disability imposed because of conviction of crime. Md. Ann. Code art. 27, § 641.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

Effective October 1, 1996, a person convicted of a "crime of violence," a violation classified as a felony in Maryland, a violation classified as a misdemeanor in Maryland that carries a statutory penalty of more than two years, or a violation classified as a common-law offense for which the person received a term of imprisonment of more than two years loses the right to buy, rent, transfer, or possess a "regulated firearm,"<sup>6</sup> and may not be a licensed dealer of

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<sup>1</sup> Md. Ann. Code art. 27, § 562C, however, provides that a state or local officer or employee who is convicted of extortion is, "notwithstanding any pardon," permanently barred from employment by state or local government.

<sup>2</sup> Effective October 1, 1996, "crime of violence" is defined to mean the following crimes or an attempt to commit any of them: abduction; arson in the first degree; burglary in the first, second, or third degree; carjacking; armed carjacking; escape; kidnapping; voluntary manslaughter; maiming; mayhem; murder in the first or second degree; rape in the first or second degree; robbery; robbery with a dangerous or deadly weapon; sexual offense in the first, second, or third degree. It also includes assault with intent to commit any of these offenses or any other offense punishable by imprisonment for more than one year. Md. Ann. Code art. 27, § 441(e).

<sup>3</sup> Expungement may be denied if the person has since been convicted of another crime (other than a traffic offense for which a prison sentence is not possible) or is presently under criminal charges. Md. Ann. Code art. 27, § 737(f)(1), (2).

<sup>6</sup> "Regulated firearm" means a handgun, defined in Md. Ann. Code art. 27, § 441(n) as a firearm with a barrel less than 16 inches long (including signal, starter, and blank pistols), or an assault weapon specified in Md. Ann. Code art. 27, § 441(d). Md. Ann. Code art. 27, § 441(r).

regulated firearms. Md. Ann. Code art. 27, §§ 442(h)(2)(i); 443(d)(4)(iii); 445(b), (d). Anyone convicted of a felony drug offense under Maryland law, or under federal law or the laws of any state if such conduct would be a felony drug offense under Maryland law, may not possess, own, carry, or transport a firearm.<sup>7</sup> Md. Ann. Code art. 27, § 291A(b). A person convicted of a felony, a misdemeanor for which a sentence of imprisonment for more than one year has been imposed (who has not been pardoned or granted relief from federal firearms disabilities), or a misdemeanor drug offense may not obtain or keep a permit to carry a handgun. Md. Ann. Code art. 27, § 36E(a)(2), (4); 36E(f).

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<sup>7</sup> "Firearm" is defined to include handguns, rifles, shotguns, assault weapons, and machine guns. Md. Ann. Code art. 27, § 291A(a).

## MASSACHUSETTS

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

The right to vote is not lost because of a conviction. A person sentenced to imprisonment for a federal or state felony forfeits any public office he currently holds. Mass. Gen. Laws Ann. ch. 279, § 30. Otherwise, conviction presumably does not affect the right to run for and hold future public office. A person who has been convicted of a felony within the past seven years or who is in the custody of a correctional institution is disqualified from jury service. Mass. Gen. Laws Ann. ch. 234A, § 4(7). In addition, a person convicted of any felony or any other offense punishable by imprisonment for more than one year may be relieved from sitting on a jury in any case or have his name stricken from the jury list. Mass. Gen. Laws Ann. ch. 234, § 8.

No person who has been convicted of a felony may be appointed as a peace officer, Mass. Gen. Laws Ann. ch. 41, § 96A. No person who has been convicted of a felony or convicted of a misdemeanor for which he was confined in any jail or house of correction is eligible to be a state correctional officer, unless, in the case of lower-ranking employees, the commissioner of the department of correction certifies that the appointment will contribute substantially to the work of the department. Mass. Gen. Laws Ann. ch. 125, § 9. No convicted felon may be appointed to be an inspector of the Department of Public Safety. Mass. Gen. Laws Ann. ch. 22, § 6A. While it is unlawful for private employers in a job application or in considering personnel action to request information about certain misdemeanor convictions, no such prohibition applies to felony convictions. See Mass. Gen. Laws Ann. ch. 151B, § 4(9). Likewise, applicants for civil service examination or registration need not furnish information about certain misdemeanor convictions, but no such prohibition applies to felony convictions. See Mass. Gen. Laws Ann. ch. 31, § 20. Certain convictions may be considered by a licensing authority in deciding whether to grant, suspend, or revoke an occupational or professional license. E.g.: medicine (Mass. Gen. Laws Ann. ch. 112, § 5); dentistry (ch. 112, § 52D); architecture (ch. 112, § 60A, 60G); psychology (ch. 112, § 128); veterinary medicine (ch. 112, § 55).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

As noted, the rights to vote and to run for and hold future public office are generally unaffected by conviction (although, as noted above, an office holder must vacate his office upon being sentenced to imprisonment for a state or federal felony). The right to serve on a jury is automatically restored seven years after completion of sentence; however, a felon may still be challenged on voir dire. Mass. Gen. Laws Ann. ch. 234, § 8; ch. 234A, § 4(7). Other disabilities attendant on a felony conviction may be alleviated by a pardon.

The pardon power, except in cases of impeachment, is vested in the Governor, who may grant a pardon with the advice and consent of the Governor's Council. Mass. Const. pt. 2, ch. 2, § 1, art. VIII; Mass. Gen. Laws Ann. ch. 127, § 152. The Governor, upon granting a pardon, orders the records of a state conviction sealed; thereafter, the existence of the conviction is

removed for most purposes. Mass. Gen. Laws Ann. ch. 127, § 152. Federal felons may apply for a gubernatorial pardon, but out-of-state felons are ineligible for this relief.

A state misdemeanor may have the record of his conviction sealed 10 years after completion of sentence, provided he has no subsequent conviction; a state felon may have his record sealed after 15 years, provided he has no subsequent conviction. Anyone who has his record of conviction sealed generally may deny the existence of the conviction, Mass. Gen. Laws Ann. ch. 276, § 100A, but the conviction may still be taken into account for the purposes of firearms disabilities. Rzeznik v. Chief of Police, 374 Mass. 475, 373 N.E.2d 1128 (1978). The records of convictions under the state's statutes regulating firearms, crimes against public justice, and the conduct of public officials and employees may not be sealed. Mass. Gen. Laws Ann. ch. 276, § 100A.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

In Massachusetts, a Firearm Identification Card is needed to own or possess a rifle or a shotgun other than in one's residence or place of business. Mass. Gen. Laws Ann. ch. 140, § 129C; ch. 269, § 10. A Firearm Identification Card is also needed to purchase a rifle, shotgun, or ammunition. Mass. Gen. Laws Ann. ch. 140, §§ 123, 131E. A person who has been convicted of a felony in any state or federal court or of a violation of any state or federal drug law may not apply for a Firearm Identification Card until five years after conviction or release from confinement, whichever is later. Mass. Gen. Laws Ann. ch. 140, § 129B. In addition, a person may not possess a "firearm," which is defined to mean a handgun,<sup>2</sup> other than in his residence or place of business, without a license to carry, and a person may not purchase a "firearm" without a license to carry. Mass. Gen. Laws Ann. ch. 140, §§ 123, 129C; ch. 260, § 10. A "person who has been convicted of a felony or the unlawful use, possession or sale of a narcotic or harmful drugs" may not obtain a license to carry. Mass. Gen. Laws Ann. ch. 140, § 131. An unconditional gubernatorial pardon restores eligibility to apply for either a Firearm Identification Card or a license to carry.

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<sup>1</sup> For a consideration of the interaction between the federal firearms disability and Massachusetts law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Caron, 77 F.3d 1 (1st Cir. 1996) (en banc); United States v. Ramos, 961 F.2d 1003 (1st Cir.), cert. denied, 506 U.S. 934 (1992), overruled in part by United States v. Caron, *supra*.

<sup>2</sup> Mass. Gen. Laws Ann. ch. 140, § 121, provides that "firearm" means "a pistol, revolver or other weapon of any description loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than sixteen inches or eighteen inches in the case of a shotgun as originally manufactured."

## MICHIGAN

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person who has been convicted in state or federal court and sentenced to confinement is not eligible to vote while confined. Mich. Const. art. 2, § 2; Mich. Comp. Laws § 168.758b. The right to serve on a jury is forfeited until completion of sentence. Mich. Comp. Laws § 600.1307a(1)(e).

Upon an office holder's conviction of an "infamous crime" or an offense involving a violation of his oath of office, the office becomes vacant. Mich. Comp. Laws § 201.3(5).<sup>1</sup> A candidate convicted of an election offense, if elected, is not permitted to enter the office to which he or she was elected. Mich. Comp. Laws §§ 168.932, 168.938. A public officer who accepts a bribe forfeits his office and is forever disqualified from holding public office, trust, or appointment. Mich. Comp. Laws § 750.118. A city officer who is convicted of a felony may be removed from office, and, if convicted of illegally providing or possessing a copy of a civil service examination or answers, is not eligible for elective or appointive city office for 20 years after conviction. Mich. Comp. Laws § 168.327. A person who has been convicted of subversion or, within the past 20 years, of a felony involving a breach of public trust is not eligible for either house of the legislature. Mich. Const. art. 4, § 7. A judge is guilty of misconduct in office if he or she is convicted of conduct that is punishable as a felony under the laws of Michigan or federal law, and may be censured, suspended, retired, or removed from his office. Mich. Const. art. 6, § 30(2); MICH. R. DISC. P. 9.205(C)(1), 9.225. See *In re Callanan*, 419 Mich. 376, 355 N.W.2d 69 (Mich. 1984).

Under Mich. Comp. Laws § 338.42, a "judgment of guilt in a criminal prosecution" "shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character," but it "may be used as evidence in the determination." If so used, the person is permitted to rebut that evidence "by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed." *Id.* Some licenses for which conviction of certain crimes may result in denial, suspension, or revocation include: private detective (Mich. Comp. Laws §§ 338.830(1)(c), 338.838(1)); private security guard (§§ 338.1056(1)(e); 338.1060(1)(c)); and real estate broker (§ 339.2505(2)). Michigan has a registration requirement for sex offenders, which expressly applies to federal convictions. Mich. Comp. Laws. § 28.721, *et seq.*

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

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<sup>1</sup> See *Attorney General* ex rel. *O'Hara v. Montgomery*, 275 Mich. 504, 267 N.W. 550, 552 (1936) ("reason for the rule [declaring vacant an office upon felony conviction of the office holder] applies equally to one convicted under the federal law and under the state law" (dictum)).

The right to vote is restored upon release from incarceration. Mich. Const. art. 2, § 2; Mich. Comp. Laws § 168.758b. A felon is disqualified from jury service only during the period of his sentence, Mich. Comp. Laws § 600.1307a(1)(e), but he may nonetheless be challenged for cause based on his conviction. MICH. CT. R. 2.511(D)(2), 6.412(D). See United States v. Driscoll, 970 F.2d 1472 (6th Cir. 1992), cert. denied, 506 U.S. 1083 (1993); United States v. Metzger, 3 F.3d 756 (4th Cir. 1993), cert. denied, 114 S. Ct. 1374 (1994). But see Froede v. Holland Ladder & Mfg. Co., 207 Mich. App. 127, 523 N.W.2d 849, 851-52 (1994) (disagreeing with Sixth Circuit's conclusion in Driscoll that right to serve on a jury is not automatically restored upon completion of sentence); and People v. LeGrone, 205 Mich. App. 77, 517 N.W.2d 270, 272 n.1, leave to appeal denied, 447 Mich. 1043, 527 N.W.2d 520 (1994) (raising question whether Mich. Comp. Laws § 600.1307a(1)(e) takes precedence over MICH. CT. R. 2.511). Certain disqualifications from office expire after passage of the requisite number of years, others are presumably removed by a pardon.

The pardon power, except in cases of impeachment, is vested in the Governor. Mich. Const. art. 5, § 14. A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon. A person convicted under Michigan law may seek a court order setting aside his conviction five years after either imposition of sentence or completion of any term of imprisonment imposed, whichever is later. Mich. Comp. Laws § 780.621. This relief is available only to persons convicted of a single offense, the maximum punishment for which was less than life imprisonment. Mich. Comp. Laws § 780.621(1), (2).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of a felony<sup>3</sup> may not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm.<sup>4</sup> Mich. Comp. Laws § 750.224f. The disability is removed three years after completion of all the terms of the sentence, including probation or parole, except for persons convicted of a "specified felony" (generally including violent and drug offenses),<sup>5</sup> who remain subject to the disability until five years have passed since completion of

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<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Michigan law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Metzger, 3 F.3d 756 (4th Cir. 1993); United States v. Gilliam, 979 F.2d 436 (6th Cir. 1992), cert. denied, 507 U.S. 1034 (1993); United States v. Driscoll, 970 F.2d 1472 (6th Cir. 1992), cert. denied, 506 U.S. 1083 (1993); United States v. Dahms, 938 F.2d 131 (6th Cir. 1991). NB: Dahms involved an earlier version of Michigan law concerning firearms privileges different from that set forth in this section.

<sup>3</sup> "Felony" is defined as "a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violate such a law." Mich. Comp. Laws § 750.224f(5).

<sup>4</sup> "Firearm" is defined in Mich. Comp. Laws §§ 28.421(a) and 750.222(b) to include both long guns and handguns.

<sup>5</sup> "Specified felony" means burglary or breaking and entering of an occupied dwelling or arson, or a felony of which an element is: (1) the use, attempted or threatened use, or substantial risk of use of physical force against a person or property; (2) the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of

the sentence and their firearms privileges are restored pursuant to the procedure set forth in Mich. Comp. Laws § 28.424. Mich. Comp. Laws § 750.224f(1), (2). The firearms disability does not apply to convictions that have been expunged, set aside, or pardoned, unless the expunction, order, or pardon expressly provides that the person may not possess a firearm. Mich. Comp. Laws § 750.224f(4). In addition, persons who are disabled from possessing firearms under § 750.224f are also prohibited from obtaining a permit to purchase, carry, or transport a pistol.<sup>6</sup> Mich. Comp. Laws § 28.422(3).

Under § 28.424 firearms privileges may be restored by the concealed weapons licensing board for the county of the felon's residence five years after completion of the sentence if the board finds by clear and convincing evidence that "[t]he person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons." Mich. Comp. Laws § 28.424(3)(c).

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a controlled substance; (3) the unlawful possession or distribution of a firearm; or (4) the unlawful use of an explosive. Mich. Comp. Laws § 750.224f(6).

<sup>6</sup> A pistol is defined as "a loaded or unloaded firearm that is 30 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance, conceals it as a firearm." Mich. Comp. Laws § 28.421(b).

## MINNESOTA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony loses the rights to vote, to serve on a jury, and to hold public office until his civil rights are restored by discharge from sentence. Minn. Const. art. VII, §§ 1, 6; Minn. Stat. §§ 201.014, subd. 2(a); 609.165, subd. 1. A public officer convicted of bribery forfeits his office and is forever disqualified from holding public office. Minn. Stat. § 609.42, subd. 2. The disqualification from office has been held to encompass federal offenses that would be felonies under Minnesota law. State ex rel. Arpagaus v. Todd, 29 N.W.2d 810 (Minn. 1947).

A person may not be disqualified from public employment or from obtaining an occupational or professional license solely or in part because of a conviction unless the crime directly relates to the position. Minn. Stat. § 364.03, subd. 1. Even then, the person is not disqualified if he can show sufficient rehabilitation and present fitness for the position. Minn. Stat. § 364.03, subd. 3. These limitations do not apply to certain professions such as law, law enforcement, and teaching. Minn. Stat. §§ 364.08, 364.09. Professions or occupations in which a conviction may be taken into account in the licensing decision include: insurance (Minn. Stat. § 72B.08, subd. 1(f)); medicine (§ 147.091, subd. 1(c)); nursing (§ 148.261, subd. 1(3)); dentistry (§ 150A.08, subd. 1(2), (3)); pharmacy (§ 151.06, subd. 1(7)(ii), (iii)); veterinary medicine (§ 156.081, subd. 2(2)); law (§ 481.15, subd. 1(1)).

Minnesota has a registration requirement for persons convicted of or adjudicated delinquent for certain offenses, such as predatory crimes for which they were sentenced as a patterned sex offender; the requirement expressly includes federal convictions. Minn. Stat. § 243.166.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

A discharge from sentence "shall restore the person to all civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place." Minn. Stat. § 609.165, subd. 1. This restoration of civil rights does not include firearms privileges for persons convicted of a crime of violence. Minn. Stat. § 609.165, subd. 1a. Nor does it apply to forfeiture of and disqualification for public office under Minn. Stat. § 609.42, subd. 2 (forever disqualifying from public office a public officer convicted of bribery). Minn. Stat. § 609.165, subd. 3. It has been applied to federal felons. See Op. Att'y Gen. 68-h (1971); United States v. Edwards, 946 F.2d 1347, 1349 (8th Cir. 1991).<sup>1</sup>

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<sup>1</sup> Although the specific holding in Edwards -- that the federal firearms disability no longer applied to a federal felon whose civil rights were restored under Minnesota law -- was rejected by the Supreme Court in United States v. Beecham 511 U.S. 368 (1994), the basic observation in Edwards that a federal felon in Minnesota may



The power to grant a pardon "after conviction for an offense against the state" is vested in the Board of Pardons, except in cases of impeachment. Minn. Const. art. V, § 7. Accord, Minn. Stat. § 638.01 (pardon may be granted to any person "convicted of any offense against the laws of the state"). The Board has the power to grant an absolute or conditional pardon, Minn. Stat. § 638.02, subd. 1, or a "pardon extraordinary," Minn. Stat. § 638.02, subd. 2. A pardon extraordinary "has the effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers." Minn. Stat. § 638.02, subd. 2.<sup>2</sup> After a pardon extraordinary is granted, a copy of the pardon is filed with the district court in the county of conviction; the court then orders the conviction set aside and includes the copy of the pardon in the court file. Federal felons and persons convicted under the law of another state are not eligible for a state pardon. See Minn. Const. art. V, § 7; Minn. Stat. § 638.01.

Minnesota law also provides that conviction of a state crime otherwise classified as a felony "is deemed to be for a misdemeanor or a gross misdemeanor" if the sentence imposed does not exceed that permitted for a misdemeanor or gross misdemeanor, or if imposition of a prison sentence is stayed, and the defendant placed on probation and thereafter discharged without a prison sentence. Minn. Stat. § 609.13, subd. 1.

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vote, hold state office, and sit on a jury once his rights are restored by state action was not addressed in, and therefore would appear to be unaffected by, Beecham.

<sup>2</sup> To be eligible for a pardon extraordinary (unless the Board of Pardons expressly and unanimously provides otherwise), five years must have passed since discharge of the sentence (10 years for persons convicted of a "crime of violence," see footnote 4, infra) and the person must not have been convicted of any other crime during that period. Minn. Stat. § 638.02, subd. 2.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A person convicted of a federal or state "crime of violence"<sup>4</sup> is forbidden from possessing any firearm, including a pistol and semiautomatic military-style assault weapon. Minn. Stat. § 624.713, subd. 1.<sup>5</sup> With the exception of persons convicted of domestic assault involving the use

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<sup>3</sup> For a consideration of the interaction between the federal firearms disability and Minnesota law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Glaser, 14 F.3d 1213 (7th Cir. 1994); United States v. Wind, 986 F.2d 1248 (8th Cir. 1993); United States v. Ellis, 949 F.2d 952 (8th Cir. 1991); United States v. Davis, 936 F.2d 352 (8th Cir. 1991), cert. denied, 503 U.S. 908 (1992); United States v. Traxel, 914 F.2d 119 (8th Cir. 1990).

<sup>4</sup> A "crime of violence" is defined to include felony violations of malicious punishment of a child, felony violations of neglect or endangerment of a child, felony violations of chapter 152, dealing with prohibited drugs, and the following offenses, or an attempt to commit any of them, as they are defined in chapter 609 of the Minnesota laws: murder in the first, second, and third degrees; manslaughter in the first and second degrees; aiding suicide; aiding attempted suicide; felony violations of assault in the first, second, third, and fourth degrees; assaults motivated by bias under Minn. Stat. § 609.2231, subd. 4; terroristic threats; use of drugs to injure or to facilitate crime; crimes committed for the benefit of a gang; commission of a crime while wearing or possessing a bullet-resistant vest; simple or aggravated robbery; kidnapping; false imprisonment; criminal sexual conduct in the first, second, third, and fourth degrees; theft of a firearm; arson in the first and second degrees; riot; burglary in the first, second, third, and fourth degrees; harassment and stalking; shooting at a public transit vehicle or facility; reckless use of a gun or dangerous weapon; intentionally pointing a gun at or towards a human being; setting a spring gun; and unlawfully owning, possessing, or operating a machine gun or short-barreled shotgun. Minn. Stat. § 624.712, subd. 5. Crimes committed in other states or jurisdictions that would have been crimes of violence as defined in § 624.712 if they had been committed in Minnesota are also included in the definition. Effective August 1, 1996, the definition of "crime of violence" includes in addition the following: drive-by shootings; felony theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or the authorized agent of the owner; felony theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle; and felony theft involving the theft of a controlled substance, an explosive, or an incendiary device.

In State v. Moon, 463 N.W.2d 517 (Minn. 1990), the Supreme Court of Minnesota held that what constitutes a felony for the purposes of the firearms disability under § 624.712 is determined by the elements of the offense for which the defendant was originally convicted rather than by the disposition imposed by the court. Accordingly, a conviction of a state felony that was "deemed to be for a misdemeanor or a gross misdemeanor" under Minn. Stat. § 609.13, see p. supra, nonetheless qualifies as a felony for the purposes of § 624.712.

<sup>5</sup> A "pistol" is defined as a firearm designed for use by a single hand and with an overall length less than 26 inches, or a shotgun with a barrel length less than 18 inches, or a rifle with a barrel length less than 16 inches. Minn. Stat. § 624.712, subd. 2. A list of semiautomatic military-style assault weapons is set forth in Minn. Stat. § 624.712, subd. 7. The list includes 17 guns, all but five of which "are the weapons the importation of which was barred by the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury in July 1989."

The disability under § 624.713 originally applied only to pistols, and was expanded first to include military-style assault weapons, and then to include all firearms. The ban relating to all firearms under § 624.713 applies prospectively only as of August 1, 1994, so that persons under a ban as to military weapons and pistols before August 1, 1994, are not included in the disability as to all firearms. Minn. Stat. § 624.713, subd. 1. The criminal enforcement mechanism of § 624.713 for firearms other than pistols and military-style assault weapons is effective August 1, 1996. Violent felons, however, are also subject to the firearms disability described in note 7, infra, which applies to all firearms and which has had a criminal penalty since 1994.

of a firearm,<sup>6</sup> the right to possess firearms is restored to persons convicted of a crime of violence 10 years after the restoration of rights or the sentence or disposition has expired, whichever occurs first, provided the person has not been convicted of another crime of violence in that 10-year period. Minn. Stat. § 624.713, subd. 1(b).<sup>7</sup>

With the same exception, a person who "has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" other than a crime of violence is disabled from possessing firearms until discharge from sentence. Minn Stat. §§ 624.713, subd. 1(j); 609.165, subd. 1.<sup>8</sup> Subject to the same exception, persons convicted on or after August 1, 1992, of domestic assault or assault in the fifth degree in which the victim was a family or household member are not permitted to possess a pistol unless three years have elapsed from the date of conviction and the defendant has not been convicted of a similar offense. Minn. Stat. § 609.2242, subd. 3(e). Likewise, a person convicted of assault in the fifth degree after August 1, 1992, is not permitted to possess a pistol if the offense was committed within three years of a previous conviction for assault unless three years have elapsed from the date of conviction and the defendant has not been convicted of another offense of fifth-degree assault. Minn. Stat. § 609.224, subd. 3(b).

Persons convicted "in Minnesota or elsewhere of a misdemeanor or gross misdemeanor violation of chapter 152" (dealing with prohibited drugs) are also prohibited from possessing any firearm. Minn. Stat. § 624.713, subd. 1(d). This disability is removed by discharge from sentence. Minn. Stat. § 609.165, subd. 1.

Unless the Board of Pardons "expressly provides otherwise in writing by unanimous vote," a pardon extraordinary will not restore firearms privileges to violent felons until the 10-year period has expired. Minn. Stat. § 638.02, subd. 2.

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<sup>6</sup> The exception relates to persons convicted of assaulting a family or household member whom the sentencing court finds to have used a firearm for that purpose. In such a case, the court may order that the person is prohibited "from possessing any type of firearm for any period longer than three years or for the remainder of the person's life," Minn. Stat. § 609.2242, subd. 3(c), and the disability lasts for the period determined by the court. Minn. Stat. § 624.713, subd. 1(i). Otherwise, the defendant is prohibited from possessing a pistol for three years, provided he has not been convicted in the interim of another fifth-degree assault or domestic assault offense. Minn. Stat. § 609.2242, subd. 3(d), (e).

<sup>7</sup> Minn. Stat. § 609.165, subd. 1a and 1b, also prohibit violent felons from possessing firearms until 10 years after restoration of civil rights, and provide that a violent felon is no longer subject to the disability after he obtains a discharge from sentence and obtains relief from federal firearms disabilities under 18 U.S.C. § 925(c). A criminal enforcement mechanism was added to § 609.165 in 1994. Minn. Stat. § 609.165, subd. 1b.

<sup>8</sup> Subject to the same exception, a disability is also imposed for persons convicted in other states of certain domestic violence offenses. Minn. Stat. § 624.713, subd. 1(h).

## MISSISSIPPI

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Persons convicted of certain felonies<sup>1</sup> lose the rights to vote and to be appointed to any office of profit, trust, or honor. Miss. Const. art. 12, § 241; Miss. Code Ann. § 99-19-35. Persons convicted of an “infamous crime, or the unlawful sale of intoxicating liquors within a period of five years” lose the right to serve on a jury. Miss. Code Ann. § 13-5-1.<sup>2</sup> A person convicted after November 3, 1992, of any offense that is a felony under Mississippi law or of a federal felony is disqualified to hold any state office of profit or trust. Miss. Const. art. 4, § 44(2).<sup>3</sup> This disqualification does not apply to persons convicted of manslaughter or of state or federal tax offenses, unless the tax offense involved misuse or abuse of office or of money that came to the defendant through his office. Miss. Const. art. 4, § 44(3). In addition, any person convicted of bribery to procure an election or appointment to office is disqualified from holding office. Miss. Const. art. 4, § 44(1).

Professional or occupational licenses may be affected as a result of conviction, ranging from automatic denial or mandatory sanction to discretionary denial or sanction, depending on the occupation and the offense of conviction. *E.g.*: alcohol license (Miss. Code Ann. § 67-1-57(a)); apothecary (§ 41-29-303); architect (§ 73-1-29(1)(g)); attorney (§ 73-3-41); bail agent (§ 83-39-3(2)); retailer of beer and light wine (§ 67-3-19); bingo gaming supplies or equipment (§ 97-33-201(2)(a), (b)); bingo game operator (§ 97-33-57(4)(a), (b)); chiropractor (§ 73-6-19(1)(e)); dentist (§ 99-19-35); state gaming license (§ 75-76-67(3)); insurance agent (§ 83-17-123(1)(f)); nurse (§ 73-15-29(1)(b)); optometrist (§ 73-19-23(2)(c), (d)); physician (§§ 73-25-29(1)(d), (f); 99-19-35); psychologist (§ 73-31-21(1)(b)); speech pathologist, audiologist (§ 73-38-27(1)(c)); social worker (§ 73-53-13(d)(iv)); school teacher or administrator (§ 37-3-2(7)(g), (h); (8)(d), (e)); veterinarian (§ 73-39-19(c)). A felon may not serve as a sheriff's deputy (§ 19-

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<sup>1</sup> The right to vote is lost upon conviction of murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy. Miss. Const. art. 12, § 241. Because one must either be a qualified voter or a resident freeholder of the county for one year to serve on a jury, conviction of any of these offenses may cause ineligibility for jury service. Person convicted of bribery, burglary, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement or bribery may not be appointed to hold or perform the duties of any office of profit, trust, or honor. Miss. Code Ann. § 99-19-35.

<sup>2</sup> “Infamous crime” is defined as “offenses punished with death or confinement in the penitentiary.” Miss. Code Ann. § 1-3-19.

<sup>3</sup> For federal convictions on or before November 3, 1992, the Mississippi Supreme Court held that the previous version of Miss. Const. art. 4, § 44, which prohibited persons convicted of bribery, perjury, or other “infamous crimes” from holding office, did not apply to federal offenses because they are not “infamous crimes” within the meaning of that provision. *State ex rel. Muirhead v. State Board of Election Commissioners*, 259 So. 2d 698 (Miss.), *cert. denied*, 409 U.S. 851 (1972). The disqualification was also held not to apply to convictions under the law of another state. *Middleton v. Evers*, 515 So. 2d 940 (Miss. 1987).

25-19), nor as the administrator of an estate (§ 91-7-65). Persons convicted of certain crimes, including felony drug offenses or sex offenses, may not be employed by or serve as a volunteer for an entity that provides certain counseling services for children if they would provide services to children for the entity. Miss. Code Ann. § 43-31-12.

Mississippi has a registration requirement for sex offenders, Miss. Code Ann. § 45-33-1, which includes for state offenders a requirement of providing a blood sample for DNA analysis. Miss. Code Ann. § 45-33-15.

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to serve on a jury is restored five years after conviction, provided the person is either a qualified elector or a resident freeholder. Miss. Code Ann § 13-5-1. The right to hold public office is restored only by a pardon. Miss. Const. art. 4, § 44; Miss. Code Ann. § 99-19-35. The pardon power is vested in the Governor (except in cases of treason or impeachment), Miss. Const. art. 5, § 124, who may be assisted by the state Parole Board. Miss. Code Ann. § 47-7-5(3). While the right to vote is restored by a pardon, the Governor may also by executive order restore to any person discharged from probation "any civil rights lost by virtue of conviction," Miss. Code Ann. § 47-7-41, which has been interpreted to refer only to the right to vote. Op. Att'y Gen. June 27, 1983 (to Honorable Larry O. Norris). The right to vote may also be restored by a two-thirds vote of the legislature. Miss. Const. art. 12, § 253.<sup>4</sup>

Federal and out-of-state felons are not eligible for a state pardon or executive order.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

Miss. Code Ann. § 97-37-5(1) prohibits any person convicted of a felony under federal law or the law of any state from possessing a firearm, unless he has been pardoned, obtained relief from federal firearms disabilities pursuant to 18 U.S.C. § 925(c), or obtained a certificate of rehabilitation. A certificate of rehabilitation is available only to persons convicted of a felony under Mississippi law, and is obtained by applying to the court of conviction. The court, in its discretion, may issue the certificate if it finds that the applicant "has been rehabilitated," "has led a useful, productive and law-abiding life since the completion of his sentence," and "will not be likely to act in a manner dangerous to the public safety." Miss. Code Ann. § 97-37-5(3).

In addition, Miss. Code Ann. § 97-37-1(1) prohibits a person from carrying, concealed in whole or in part, a pistol, revolver, sawed-off shotgun, short-barrel rifle, or "any fully automatic

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<sup>4</sup> A person who, after conviction, served in the military during World War I or World War II and was honorably discharged may have his voting rights restored by an administrative procedure. Miss. Code Ann. § 99-19-37(1). In order to restore the right to vote in this fashion, the person must record his discharge papers in the Office of the Chancery Clerk of the county in which he wishes to vote, and if he is otherwise eligible to vote there and the papers appear to establish the grounds for reinstatement of the right to vote, "such person shall have the full right of suffrage restored as though an act had been passed by the legislature in accordance with section 253 of the constitution of the State of Mississippi." Miss. Code § 99-19-37(3).

firearm or deadly weapon"<sup>5</sup> unless he is licensed to do so.<sup>6</sup> A person who has been convicted of a felony in the courts of any state or of the United States, without having been pardoned, is ineligible to obtain such a license. Miss. Code Ann. § 45-9-101(2)(d). Similarly, persons convicted of other crimes may be denied a license. For example, an applicant must not "chronically or habitually abuse controlled substances to the extent that his normal faculties are impaired"; it is presumed that the applicant chronically or habitually uses drugs if he has been found guilty of a crime under federal or state drug laws within the three years preceding the filing of the application for a license. Miss. Code Ann. § 45-9-101(2)(e). Likewise, an applicant must not "chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired," and a person who has been convicted of two or more offenses related to the use of alcohol under state or federal law within the preceding three years is presumed to chronically and habitually use alcohol. Miss. Code Ann. § 45-9-101(2)(f).

The office of the state's Attorney General takes the position that the Governor has the power to restore by a pardon the ability to obtain a permit to carry a concealed weapon under Miss. Code Ann. § 97-37-7, but that an executive order under Miss. Code Ann. § 47-7-41 restoring civil rights must expressly restore the privilege of applying for such a permit before a felon may obtain one. Op. Att'y Gen. November 9, 1990 ("Re: § 97-37-7(2); § 47-7-41").

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<sup>5</sup> This section does not include a regular rifle or shotgun, as is evidenced by Miss. Code Ann. § 47-5-191, which defines "weapon or deadly weapon" to mean "any weapon or firearm mentioned in Section 97-37-1, and any rifle or shotgun regardless of barrel length" (emphasis added). See Carlson v. State, 597 So. 2d 657, 659 (Miss. 1992) ("Clearly, a [shot]gun with barrel length in excess of 18 inches does not fall within the ambit of § 97-37-1.").

<sup>6</sup> Among the exclusions from the coverage of this statute is carrying a firearm or deadly weapon if the person is in his home or place of business, or on real property associated therewith, is in a motor vehicle, or is engaged in a legitimate weapon-related sports activity (such as hunting, fishing, or target shooting). Miss. Code Ann. § 97-37-1(2), (3).

## MISSOURI

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of any crime may not vote while confined under a sentence of imprisonment or while on parole or probation, Mo. Rev. Stat. §§ 115.133(2), 561.026(1), and if convicted of an offense connected with the exercise of the right of suffrage is forever disqualified from voting. Mo. Rev. Stat. § 561.026(2). The disqualification from voting has been held to extend to federal offenses. *State ex rel. Barrett v. Sartorius*, 351 Mo. 1237, 175 S.W.2d 787 (1944); *Bruno v. Murdock*, 406 S.W.2d 294 (Mo. App. 1966). A person convicted of a felony under Missouri law or convicted under the law of another jurisdiction of a crime that would be a felony if committed in Missouri forfeits any office he may then hold, and is ineligible to hold office until completion of his sentence or probation. Mo. Rev. Stat. § 561.021(1)(1), (2); however, persons convicted of an offense connected with the exercise of the right of suffrage are forever disqualified from holding any elected or appointive public office. Mo. Rev. Stat. § 561.021(3). A convicted felon is ineligible for the office of sheriff. Mo. Rev. Stat. § 57.010. A felony conviction permanently disqualifies a person from jury service. Mo. Rev. Stat. § 561.026(3).

A state agency may not deny a license to a felon solely on the basis of his conviction, although a felony conviction may be considered as a factor in the decision-making process. Mo. Rev. Stat. § 314.200. For example, the State Board of Education may refuse to issue, or may revoke, a teacher's certificate upon conviction of a felony. Mo. Rev. Stat. § 168.071(2). Missouri has a registration requirement for felony sex offenders, which expressly applies to federal convictions. Mo. Rev. Stat. §§ 566.600 - 566.625. A person convicted of a felony or crime of moral turpitude may not serve as a superintendent or member of the patrol or radio personnel of the state highway patrol. Mo. Rev. Stat. § 43.060.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored upon final discharge from sentence, including probation or parole (unless the crime was connected to the exercise of the right of suffrage). Mo. Rev. Stat. § 115.133(2). The right to hold office is restored upon completion of sentence (unless the crime was connected to the exercise of the right of suffrage). Mo. Rev. Stat. § 561.021(2), (3). Felons are permanently disqualified from jury service, unless pardoned. Mo. Rev. Stat. § 561.026(3).

The pardon power is vested in the Governor, except in cases of treason or impeachment. Mo. Const. art. IV, § 7. Persons convicted under federal law or the law of another state are ineligible for a gubernatorial pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

A person convicted of any "dangerous felony,"<sup>2</sup> an attempt to commit a dangerous felony, or of a crime under the laws of any state or of the United States which, if committed in Missouri, would be a dangerous felony, may not possess a concealable firearm<sup>3</sup> for five years after conviction or release from confinement for such a conviction, whichever is later. Mo. Rev. Stat. § 571.070.1. A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States (other than a crime punishable by imprisonment of two years or less, classified as a misdemeanor, and not involving an explosive weapon, firearm, silencer, or gas gun) may not obtain a permit to acquire a concealable firearm. Mo. Rev. Stat. § 571.090.1(2). Without such a permit, it is illegal to purchase, lease, borrow, exchange, or receive a concealable firearm. Mo. Rev. Stat. § 571.080.1(1).

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<sup>1</sup> For a consideration of the interaction between the federal firearms disability and Missouri law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Meeks, 987 F.2d 575 (9th Cir. 1993); Presley v. United States, 851 F.2d 1052 (8th Cir. 1988).

<sup>2</sup> "Dangerous felony" is defined as "the felonies of arson in the first degree, assault in the first degree, forcible rape, forcible sodomy, kidnapping, murder in the second degree, and robbery in the first degree." Mo. Rev. Stat. § 556.061(8).

<sup>3</sup> This term is defined to mean a firearm with a barrel length of less than 16 inches. Mo. Rev. Stat. § 571.010(2).



## MONTANA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Under Mont. Code Ann. § 46-18-801(1), a conviction does not result in a loss of civil rights except as provided in the Montana Constitution or as specifically enumerated by the sentencing judge "as a necessary condition of the sentence directed toward the objectives of rehabilitation and the protection of society." The Montana Constitution disqualifies from voting a person serving a sentence in a penal institution for a felony conviction, Mont. Const. art. IV, § 2,<sup>1</sup> and prevents a person convicted of a felony from holding public office until final discharge from state supervision. Mont. Const. art. IV, § 4. Although the Montana Constitution does not provide for disqualification of jurors based on felony conviction, a Montana statute, Mont. Code Ann. § 3-15-303, does; however, since this disqualification is not contained in the Montana Constitution, its effect in light of § 46-18-801 is unclear.

A professional or occupational license may not be refused solely because of a previous conviction. Mont. Code Ann. § 37-1-203. A license may be denied, however, if the applicant has been convicted of a criminal offense that "relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought" and the licensing agency finds that the "applicant so convicted has not been sufficiently rehabilitated to warrant the public trust." Mont. Code Ann. § 37-1-203. As a condition of probation, parole, or deferred or suspended sentence, a judge shall impose upon a person convicted of a sexual or violent offense<sup>2</sup> reasonable employment or occupational restrictions designed to protect likely victims. Mont. Code Ann. § 46-18-255. Montana has a registration requirement for sexual and violent offenders, which expressly applies to federal convictions. Mont. Code Ann. §§ 46-23-501 to 46-23-507.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Full rights are automatically restored "by termination of state supervision for any offense against the state." Mont. Const. art. II, § 28. Accord, Mont. Code Ann. § 46-18-801(2) ("Except as provided in the Montana Constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship the same as if the conviction had not occurred.")<sup>3</sup> The

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<sup>1</sup> Accord, Mont. Code Ann. § 13-1-111(2). The disqualification of felons from voting under a previous Montana statute was held to apply to a federal felon only if his offense would have been a felony under Montana law. Melton v. Oleson, 165 Mont. 424, 530 P.2d 466 (1974).

<sup>2</sup> The definitions of "sexual offense" and "violent offense" are found in Mont. Code Ann. § 46-23-502(3), (4).

<sup>3</sup> Under Mont. Code Ann. § 46-23-301(1)(b), "[p]ardon' means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction."

Montana Attorney General advised that under a similarly worded previous version of § 46-18-801 the right to sit on a jury was restored only by a pardon.

The pardon power is vested in the Governor, who may not grant a pardon to anyone the Board of Pardons and Parole does not recommend, except in capital cases. Mont. Code Ann. § 46-23-301; see Mont. Code Ann. §§ 46-23-301 to 307, 315 to 316 (governing executive clemency process). A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>4</sup>

Prohibited from possessing or purchasing a firearm is any person who has been convicted of a felony for which he received a mandatory consecutive sentence, pursuant to Mont. Code Ann. § 46-18-221, for using a firearm or other destructive device in the commission of a crime, and any person who has been convicted of an offense under federal law or the law of another state that is equivalent to a Montana offense that would qualify for such a mandatory consecutive sentence. Mont. Code Ann. § 45-8-313. A person convicted of violating this prohibition after October 1, 1995, "shall, as part of the sentence imposed, be sentenced to life supervision by the state for the purpose of restricting the person's right to purchase and possess firearms." Mont. Code Ann. § 45-8-314(1). A person may apply to the district court in the county in which the person resides for a permit to purchase and possess one or more firearms, and the court may grant such relief if the person can "show good cause for the possession of each firearm sought to be purchased and possessed." Mont. Code Ann. § 45-8-314(2)(a).

Under Montana law, a permit is generally required to carry a concealed pistol or revolver outside one's own home, premises, or place of business. Mont. Code Ann. § 45-8-316(2).<sup>5</sup> Persons who are ineligible under Montana or federal law to possess, own, or receive a firearm are also prohibited from obtaining a permit to carry a concealed weapon. Mont. Code Ann. §§ 45-8-317(1), 45-8-321(1)(a). In addition, persons convicted of a crime punishable by more than one year in prison or convicted of certain violent or sexual crimes are also prohibited from obtaining a permit to carry a concealed weapon. Mont. Code Ann.

§ 45-8-321(1)(c).<sup>6</sup> Persons convicted in the past five years of carrying a concealed weapon in a public place without a permit or of carrying a concealed weapon while under

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<sup>4</sup> For a consideration of the applicability of the previous federal firearms disability under 18 U.S.C. App. § 1202 and Montana law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Engesser, 788 F.2d 1401 (9th Cir.), cert. denied, 479 U.S. 869 (1986).

<sup>5</sup> Among the exceptions to this requirement is carrying a concealed weapon while lawfully engaged in hunting, fishing, farming, or other outdoor activity in which weapons are often carried. Mont. Code Ann. § 45-8-317(9).

<sup>6</sup> Included in the prohibition are persons convicted of "a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent." Mont. Code Ann. § 45-8-321(1)(c).

the influence may not obtain a permit unless they have been pardoned. Mont. Code Ann. § 45-8-321(1)(d).<sup>7</sup>

For all other persons, the right to possess firearms may be lost upon conviction of an offense if the sentencing judge specifically enumerates it as a necessary condition of the sentence "directed toward the objectives of rehabilitation and the protection of society." Mont. Code Ann. § 46-18-801(1). If lost, firearms privileges are automatically restored upon completion of sentence, or may be restored earlier by pardon. Mont. Const. art. II, § 28; Mont. Code Ann. § 46-18-801(1).

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<sup>7</sup> Persons "adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance" who are under a sentence or supervision are likewise prohibited from obtaining a permit to carry a concealed weapon. Mont. Code Ann. § 45-8-321(1)(f).

## NEBRASKA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person sentenced to be punished for any felony loses the rights to vote, to serve on a jury, and to hold any office of honor, trust, or profit. Neb. Rev. Stat. § 29-112. A person who has been imprisoned in the penitentiary of another state for an offense that would be punishable in Nebraska by imprisonment is also ineligible to vote, to serve on a jury, or to hold an office of honor, trust, or profit. Neb. Rev. Stat. § 29-113.

Certain convictions may be grounds for denial, suspension, or revocation of a professional or occupational license. *E.g.*: pharmacy (Neb. Rev. Stat. § 71-1,147.10(1)(a),(e)); real estate (§ 81-885.24(28)); employment agency (§ 48-503).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

When a committed prisoner has completed his sentence, he is issued a "certificate of discharge" by the Director of Correctional Services, which "shall restore the civil rights of the offender." Neb. Rev. Stat. § 83-1,118(5).<sup>1</sup> When a person sentenced to probation for a felony satisfactorily completes probation or is discharged early from probation, the sentencing court issues an order releasing the offender from probation "and such order shall in all felony cases restore the offender's civil rights." Neb. Rev. Stat. § 29-2264(1). Furthermore, an offender sentenced to probation or to pay a fine only may petition the court to set aside the conviction, which has the effect of nullifying the conviction and removing "all civil disabilities and disqualifications imposed as a result of the conviction." Neb. Rev. Stat. § 29-2264(4)(a), (b).<sup>2</sup>

The authority to grant pardons is vested in the Board of Pardons, of which the Governor is a member. Neb. Const. art. IV, § 13; Neb. Rev. Stat. §§ 83-170, 83-1,126 to 83-1,135. Many individuals who seek a pardon do so because it is a sign of forgiveness, since civil rights can be restored through other procedures.

Persons convicted under federal law or the laws of another state are ineligible for a gubernatorial pardon or a discharge, and thus may not regain their civil rights unless pardoned in the jurisdiction of conviction. Neb. Rev. Stat. § 29-113.

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<sup>1</sup> Upon release from prison or satisfaction of sentence when the sentence is other than confinement, a person convicted under Nebraska law may obtain from the Nebraska Board of Pardons a "warrant of discharge," which restores his civil rights and privileges. Neb. Rev. Stat. §§ 29-112, 29-112.01. According to the Board of Pardons, a warrant of discharge is equivalent to a certificate of discharge, and is provided only when a certificate of discharge is not otherwise available (*e.g.*, for persons incarcerated at a jail, rather than a correctional facility). A person convicted under federal law or the law of another state is ineligible for a warrant of discharge.

<sup>2</sup> Despite the nullification of the conviction, it nonetheless may be relied upon in a number of contexts, such as to enhance a sentence upon a subsequent conviction. Neb. Rev. Stat. § 29-2264(5).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A person convicted of a felony in any state or federal court may not possess a firearm.<sup>4</sup> Neb. Rev. Stat. § 28-1206(1), (2). A state felon may regain state firearms privileges by a state pardon only if the Board of Pardons empowers the Governor to expressly authorize the individual to receive, possess, or transport in commerce a firearm. Neb. Rev. Stat. § 83-1,130(2). It is not clear whether a felon convicted in another state regains state firearms privileges in Nebraska if he receives a pardon from the state of conviction.

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<sup>3</sup> For a consideration of the interaction between the current and previous federal firearms disabilities and Nebraska law concerning the loss and restoration of civil rights and firearms privileges, see Davis v. United States, 972 F.2d 227 (8th Cir. 1992), cert. denied, 507 U.S. 950 (1993).

<sup>4</sup> "Firearm" is defined to include both long guns and handguns. Neb. Rev. Stat. § 28-1201(1).

## NEVADA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of "treason or felony in any state" may not vote in Nevada unless restored to civil rights. Nev. Const. art. 2, § 1. Since no person is eligible for public office unless he is a qualified elector, Nev. Const. art. 15, § 3, a person who is disqualified from voting because of a conviction is also ineligible for office. If a public officer is convicted of any felony or malfeasance in office, he forfeits his office and is disqualified from ever holding public office. Nev. Rev. Stat. § 197.230. No person convicted of treason, felony, or other infamous crime is qualified to serve on a jury. Nev. Rev. Stat. § 6.010.

A professional or occupational license may be denied, suspended, or revoked because of a conviction. E.g.: gaming employee (Nev. Rev. Stat. § 463.335(8)(c), (d)); nurse (§ 632.320(2)); employment agent (§ 611.045(1)(a)); contractor (§ 624.265(3)); physician (§ 630.301(1)). Nevada has a registration requirement for sex offenders. Nev. Rev. Stat. §§ 207.151 to 207.157.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Except in cases of treason or impeachment, the pardon power is vested in the Board of Pardons Commissioners, which consists of the Governor, the Justices of the State Supreme Court, and the State Attorney General; a majority of the Board can grant a pardon, but the Governor must be among the majority. Nev. Const. art. 5, § 14. A pardon may or may not restore civil rights, as the pardon document specifies. Nev. Rev. Stat. § 213.090(1). A pardon may not restore the right to hold public office lost by reason of Nev. Rev. Stat. § 197.230 to a person convicted of a felony or malfeasance in office. 1965 Op. Att'y Gen. 67 (No. 65-274) (1965).

There are other procedures for obtaining restoration of civil rights, depending upon the sentence imposed. Generally, the person must apply to a specified agency (the Board of Parole Commissioners, the Board of Pardons Commissioners, or the Division of Parole and Probation of the Department of Motor Vehicles and Public Safety) for restoration of his civil rights and release from penalties and disabilities resulting from conviction. In some cases, the agency may restore rights directly, in others it must petition the court of conviction. If the agency declines to do so, the person may petition the court in which he was convicted. Nev. Rev. Stat. §§ 176.227, 213.090(2), 213.155, 213.157. A person who has been honorably discharged from probation may apply to the court for restoration of civil rights. Nev. Rev. Stat. § 176.225(3). Restoration of civil rights does not absolve a felon of professional licensing restrictions. 1983 Op. Att'y Gen. 46 (No. 83-13) (1983). The Board of Pardons Commissioners has been advised by the state's Attorney General that it cannot restore the civil rights of persons convicted of federal offenses.

There is also a procedure for sealing the records of a Nevada conviction. Nev. Rev. Stat. § 179.245. Fifteen years after the date of conviction or release from actual custody (whichever is later), a felon may petition the court in which he was convicted to seal all records relating to the conviction. Nev. Rev. Stat. § 179.245(1)(a). This relief is available only if the person has not been arrested during that 15-year period. Nev. Rev. Stat. § 179.245(3).<sup>1</sup> If the court seals the records, "all proceedings recounted in the record are deemed never to have occurred" (with certain exceptions), and the person "may properly answer accordingly to any inquiry concerning the arrest, conviction or acquittal and the events and proceedings relating to the arrest, conviction or acquittal." Nev. Rev. Stat. § 179.285.<sup>2</sup>

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of a felony under federal law or the law of any state may not own, possess, or have in his custody or control any firearm.<sup>3</sup> Nev. Rev. Stat. § 202.360(1). This disability is removed by a pardon in which the right to bear arms is specifically restored. Nev. Rev. Stat. § 202.360(1). It is not removed by obtaining a restoration of civil rights. See Op. Att'y Gen. 83-13 (1983) (interpreting predecessor of Nev. Rev. Stat. § 202.360); Nev. Rev. Stat. § 176.225(5). Nor is it removed by an honorable discharge from probation followed by setting aside of a guilty plea, under the procedure formerly available under the predecessor to Nev. Rev. Stat. § 176.225. Hand v. State, 107 Nev. 577, 816 P.2d 468 (1991); Baker v. Elko County, 825 F. Supp. 798 (D. Nev. 1993). In addition, a person who has had the records of his conviction sealed is free from state firearms disabilities. 1983 Op. Att'y Gen. 46 (No. 83-13) (1983).

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<sup>1</sup> This method is the exclusive statutory procedure for sealing records of a person who has been convicted, even if he has been honorably discharged from probation and had the verdict set aside pursuant to the procedure formerly available under the predecessor to Nev. Rev. Stat. § 176.225. State v. Hayes, 94 Nev. 366, 580 P.2d 122 (1978).

<sup>2</sup> Nev. Rev. Stat. § 179.301 nonetheless authorizes access to sealed records relating to gaming for the purpose of determining suitability for gaming licenses and work permits, and to sealed records pertaining to sexual offenses.

<sup>3</sup> "Firearm" is defined to include both handguns and long guns. Nev. Rev. Stat. §§ 202.253, 202.360(2).

## NEW HAMPSHIRE

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person sentenced for a state or federal felony loses the right to seek or hold public office from the time of sentencing until final discharge, and loses the right to vote while actually incarcerated. N.H. Rev. Stat. Ann. § 607-A:2(I)(a), (b). No disqualification from jury service is imposed upon conviction.

A professional or occupational license may be denied, suspended, or revoked because of a conviction of certain crimes. *E.g.*: nursing (N.H. Rev. Stat. Ann. § 326-B:12(II)(b)); pharmacy (§ 318:29(V)(d)); real estate appraisal (§ 310-B:18(IV)); land surveying (§ 310-A:70(II)(h)); accounting (§ 309-B:6(I)(h)). A license may be summarily suspended, limited, or revoked for conviction of a state drug offense. N.H. Rev. Stat. Ann. § 318-B:18. New Hampshire has registration requirement for sexual offenders, which expressly applies to federal convictions. N.H. Rev. Stat. Ann. §§ 651-B:1 to 651-B:9.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is automatically restored upon release from incarceration. N.H. Rev. Stat. Ann. § 607-A:2(I)(a). The right to seek and hold public office is automatically restored upon final discharge. N.H. Rev. Stat. Ann. § 607-A:2(I)(b).

The pardon power (except in cases of impeachment) is vested in the Governor, by and with the advice of the Council for Pardon. N.H. Const. pt. 2, art. 52. Persons convicted under federal law or the law of another state are ineligible for gubernatorial pardons.

With certain exceptions, persons convicted under New Hampshire law may seek annulment of their convictions. N.H. Rev. Stat. Ann. § 651:5.<sup>1</sup> Upon entry of an order of annulment, the person "shall be treated in all respects as if he had never been arrested, convicted, or sentenced," except that, upon conviction of any later crime, the annulled conviction may be taken into account for sentencing purposes and may be counted toward habitual offender status. N.H. Rev. Stat. Ann. § 651:5(X)(a).

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

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<sup>1</sup> With certain exceptions, "any person convicted of an offense may petition for annulment of the record of arrest, conviction and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime" for a specified period of time ranging from one to 10 years depending on the severity and nature of the offense. N.H. Rev. Stat. Ann. § 651:5(III). A person convicted of any violent crime, obstruction of justice, or an offense for which he was sentenced to an extended term of imprisonment under N.H. Rev. Stat. Ann. § 651:6 is barred from seeking or receiving an annulment. N.H. Rev. Stat. Ann. § 651:5(V).



A person convicted under federal law or the law of any state of a "felony against the person or property of another" or a felony drug offense<sup>2</sup> may not own or have in his possession or under his control a pistol, revolver, or any other firearm<sup>3</sup> or dangerous weapon. N.H. Rev. Stat. Ann. § 159:3.<sup>4</sup> According to the United States Attorney, an annulment of a state conviction would operate to restore state firearms privileges, but it is not settled whether a state pardon restores state firearms privileges.

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<sup>2</sup> Under N.H. Rev. Stat. Ann § 159:3(III), it is "an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed."

<sup>3</sup> Although "firearm" is not defined in the statute, the New Hampshire Supreme Court has held that it is to be given its dictionary meaning of a weapon from which a shot is discharged by gunpowder. State v. Beaudette, 124 N.H. 579, 474 A.2d 1012 (N.H. 1984).

<sup>4</sup> While firearms disabilities attach upon the conviction of drug offenses and felonies against the person or property of another, an individual convicted of any felony may not possess an electronic defense weapon (commonly known as a stun gun or taser) outside of his home. N.H. Rev. Stat. Ann. §§ 159:20, 159:21. In addition, it is illegal to sell, deliver, or otherwise transfer a pistol, revolver, or any other firearm to any person who has been convicted in any jurisdiction of a felony. N.H. Rev. Stat. Ann. § 159:7.

## NEW JERSEY

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person serving a sentence for, or on parole or probation as a result of, a conviction of any indictable offense under the laws of any state or the United States forfeits the right to vote, N.J. Stat. Ann. §§ 2C:51-3(a), 19:4-1(8),<sup>1</sup> and to sit on a jury. N.J. Stat. Ann. § 2B:20-1(e). A person holding public office or employment at the time of conviction of an offense involving dishonesty or a third or higher degree crime under New Jersey law (or its equivalent under federal law or the law of another state) forfeits his position. N.J. Stat. Ann. § 2C:51-2(a). A person holding public office or employment forfeits his office or position if convicted of an "offense involving or touching on his public office, position, or employment," and is "forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions." N.J. Stat. Ann. § 2C:51-2(d). The state appellate court has determined that this disqualification applies to all government employment. *Pastore v. County of Essex*, 237 N.J. Super. 371, 568 A.2d 81 (N.J. App. Div. 1989), cert. denied, 122 N.J. 129, 584 A.2d 205 (1990).

A state licensing authority may not disqualify an applicant solely because he has been convicted of a crime, unless the crime relates adversely to the profession or occupation for which licensure is sought. N.J. Stat. Ann. § 2A:168A-2. Anyone convicted of a specified offense (generally involving public corruption) and any business in which he has at least five percent controlling interest are ineligible to conduct business with any board, agency, authority, department, commission, public corporation, or other body of the state for 10 years if convicted of a second-degree crime or for five years if convicted of a third-degree crime. N.J. Stat. Ann. § 2C:51-2(f).<sup>2</sup> A person convicted of an offense involving dishonesty or a crime of the second or higher degree may not serve as a notary public; however, this limitation does not supersede § 2A:168A-2. N.J. Stat. Ann. § 52:7-20.

New Jersey has a registration requirement for persons convicted of or adjudicated delinquent for a sex offense, which expressly applies to federal convictions. N.J. Stat. Ann. § 2C:7-2.

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<sup>1</sup> Persons convicted of election-law crimes for which disenfranchisement was imposed as part of the sentence are also ineligible to vote unless "pardoned or restored by law to the right of suffrage." N.J. Stat. Ann. § 19:4-1(6), (7).

<sup>2</sup> The Attorney General may order otherwise "as the public need may require." N.J. Stat. Ann. § 2C:51-2(f).

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to register to vote is automatically restored upon completion of the service of sentence, probation, or parole, whichever last occurs. N.J. Stat. Ann. §§ 2C:51-3, 19:4-1(8). See also N.J. Const. art. 2, § 7. Other rights (except in cases of impeachment) are restored by pardon, or by order of the Governor under N.J. Stat. Ann. § 2A:167-5.<sup>3</sup> The power to pardon, except in cases of impeachment or treason, is vested in the Governor, N.J. Const. art. 5, § 2, cl. 1, who is assisted by the New Jersey State Parole Board. Federal offenders are not eligible for a gubernatorial pardon.

A person convicted of certain offenses under New Jersey law<sup>4</sup> may seek expungement of his criminal record 10 years after conviction, payment of fine, or satisfactory completion of probation or parole, whichever is later, provided he has no prior or subsequent criminal conviction, N.J. Stat. Ann. § 2C:52-2(a), and has not previously had a criminal conviction expunged, or has ever been granted dismissal of criminal charges following completion of a supervisory treatment or diversion program. N.J. Stat. Ann. § 2C:52-14(e), (f). If expungement is granted, the conviction and related proceedings are "deemed not to have occurred, and the [person] may answer any questions relating to their occurrence accordingly," with certain exceptions, such as when applying for a job in the judicial branch or in law enforcement. N.J. Stat. Ann. § 2C:52-27. A special expungement procedure is provided for youthful drug offenders. N.J. Stat. Ann. § 2C:52-5.

A convicted state felon may also obtain a certificate from the New Jersey Parole Board "that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society." N.J. Stat. Ann. § 2A:168A-3. This "certificate of good conduct" precludes a licensing authority from disqualifying or discriminating against an applicant because of conviction. N.J. Stat. Ann. § 2A:168A-3.<sup>5</sup> However, it does not operate to restore civil rights or firearms privileges. See United States v. Breckenridge, 899 F.2d 540 (6th Cir.), cert. denied, 498 U.S. 891 (1990).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>6</sup>

<sup>3</sup> See Brezizecki v. Gregorio, 246 N.J. Super. 634, 588 A.2d 453 (1990) (gubernatorial pardon restores right to hold public office even for one "forever disqualified" under § 2C:51-2; however, pardon is different from "executive clemency" under § 2A:167-5).

<sup>4</sup> Among the many examples of offenses for which expungement may not be ordered are many violent and sexual offenses, most drug offenses, and offenses committed by an office holder that relate to the office. N.J. Stat. Ann. § 2C:52-2(b), (c). Persons who have more than two disorderly or petty disorderly persons offenses may also be denied relief "if they or either of them constitute a continuation of the type of unlawful activity embodied in the criminal conviction for which expungement is sought." N.J. Stat. Ann. § 2C:52-2(a).

<sup>5</sup> A federal felon may obtain a similar "certificate of good conduct" from a federal parole board, or the chief probation officer of a federal court who has supervised the applicant's probation. N.J. Stat. Ann. § 2A:168A-3.

<sup>6</sup> For a consideration of the interaction between the federal firearms disability and New Jersey law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Breckenridge, 899 F.2d 540 (6th Cir. 1990).

Anyone convicted in New Jersey or elsewhere of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, endangering the welfare of a child, certain gun offenses,<sup>7</sup> or "of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale"<sup>8</sup> of drugs may not own, purchase, possess, or control a "weapon" (defined to include a handgun, rifle, and shotgun, N.J. Stat. Ann. § 2C:39-1(r)). N.J. Stat. Ann. § 2C:39-7(a). No person convicted of a crime may obtain a permit to receive or purchase a handgun, nor may such a person obtain a firearms purchaser identification card to receive, acquire, purchase, or sell a rifle or shotgun. N.J. Stat. Ann. §§ 2C:39-5(b), (c); 2C:58-3(a), (b), (c).<sup>9</sup>

A Governor's pardon restores state firearms privileges, but a certificate of good conduct issued by the New Jersey Parole Commission does not. United States v. Breckenridge, *supra*.

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<sup>7</sup> Those offenses are: possession of a prohibited weapon (such as a sawed-off shotgun) under N.J. Stat. Ann. § 2C:39-3; possession of a weapon for an unlawful purpose under N.J. Stat. Ann. § 2C:39-4; and the unlawful manufacture or defacement of weapons under N.J. Stat. Ann. § 2C:39-9.

<sup>8</sup> A "disorderly persons offense" and a "petty disorderly persons offense" are not "crimes" under New Jersey law. N.J. Stat. Ann. § 2C:1-4(b).

<sup>9</sup> Under state law a permit is necessary to purchase a handgun, and a firearms purchaser identification card is necessary to purchase a rifle or shotgun. N.J. Stat. Ann. § 2C:58-3.

## NEW MEXICO

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony or infamous crime forfeits the rights to vote and to hold public office. N.M. Const. art. VII; §§ 1, 2; N.M. Stat. Ann. §§ 10-1-2, 31-13-1(A). The disqualifications from voting and holding office have been held to arise from federal offenses as well as state crimes. State ex rel. Chavez v. Evans, 79 N.M. 578, 446 P.2d 445 (1968). A convicted felon is ineligible for jury service. N.M. Stat. Ann. § 38-5-1.

Conviction of a felony or a misdemeanor involving moral turpitude may be considered by a state agency or licensing authority, but a conviction generally may not be an automatic or permanent bar to obtaining public employment or a professional or occupational license if the person has become "rehabilitated." N.M. Stat. Ann. §§ 28-2-1 to 28-2-4. See Garcia v. State Bd. of Educ., 102 N.M. 306, 694 P.2d 1371 (Ct. App. 1984), cert. denied, 102 N.M. 293, 694 P.2d 1358 (1985). This limitation, however, does not apply to employment with law enforcement agencies, N.M. Stat. Ann. § 28-2-5, or when a person convicted of a drug-trafficking offense or certain sexual offenses is seeking issuance of a teaching certificate. N.M. Stat. Ann. § 28-2-4(A)(3). New Mexico has a registration requirement for sex offenders. N.M. Stat. Ann. §§ 29-11A-1 to 29-11-8.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

A person convicted under New Mexico law may regain his civil rights by presenting the certificate of discharge he receives upon completion of sentence to the Governor, who has the power to pardon (except in cases involving treason or impeachment) or to issue a certificate restoring the person to full rights of citizenship. N.M. Const. art. V, § 6; N.M. Stat. Ann. § 31-13-1(C). The Governor may issue a partial pardon, which restores some rights, such as the right to vote, but restricts others, such as firearms privileges. See Op. Att'y Gen. No. 92-09 (1992).

The Governor may restore to federal felons "political rights," including the rights to vote and to hold public office, by issuing a certificate of restoration of civil rights. See Op. Att'y Gen. No. 70-85 (1970). A person convicted in another state is ineligible for gubernatorial relief.

New Mexico law also permits a state court to defer the imposition of sentence for certain crimes and to place the defendant on probation. N.M. Stat. Ann. §§ 31-20-3; 31-20-5. When the period of deferment is concluded, the court dismisses the charges against the defendant. N.M. Stat. Ann. § 31-20-9. The defendant's rights to vote and to hold office are automatically restored upon dismissal of the charges. See Op. Att'y Gen. No. 88-03 (1988); 1983-86 Op. Att'y Gen. 483 (Advisory Letter No. 85-29) (1985).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

Unless "pardoned of the conviction by the appropriate authority," a state or federal "felon" may not receive, transport, or possess any firearm<sup>1</sup> or destructive device for 10 years following conviction. N.M. Stat. Ann. § 30-7-16(A). Because "felon" is defined as a person "convicted in the preceding 10 years" in a federal or state court "to a sentence of death or one or more years' imprisonment," N.M. Stat. Ann. § 30-7-16(B)(2), persons who received a deferred sentence are not subject to the firearms disability under § 30-7-16(A). Op. Att'y Gen. No. 88-03 (1988); 1983-86 Op. Att'y Gen. 483 (Advisory Letter No. 85-29) (1985). When a pardon is intended to restore firearms privileges, the Governor so informs the applicant.<sup>2</sup>

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<sup>1</sup> "Firearm" is defined to include both handguns and long guns. N.M. Stat. Ann § 30-7-16(C)(3).

<sup>2</sup> A partial pardon that does not restore firearms privileges may be granted to state felons. Op. Att'y Gen. No. 92-09 (1992). The Governor's authority with respect to federal offenders is limited to restoration of the rights to vote and to hold public office. Op. Att'y Gen. No. 70-85 (1970).

## NEW YORK

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony under federal law or the law of any state loses the right to vote if he is sentenced to imprisonment and execution of the sentence is not suspended. N.Y. Elec. Law § 5-106. A person convicted of a felony may not serve on a jury. N.Y. Jud. Law § 510(3). A person convicted of a felony (including a federal offense that would constitute a felony under New York law) or a crime that involves a violation of the oath of office, forfeits his office. N.Y. Pub. Off. Law § 30(1)(e). New York does not generally disqualify felons from holding future office, *see* Op. Att'y Gen. 83-60 (1983), although an office holder who forfeits his office is ineligible for the remainder of the term of his office. *See In re Alamo v. Strohm*, 74 N.Y.2d 801, 544 N.E.2d 608 (1989). Specific disqualifications, however, are imposed in certain circumstances. *E.g.*: persons convicted of Selective Service violations ineligible for civil office (N.Y. Pub. Off. Law § 3(1)); judges removed from office disqualified from future judicial office (N.Y. Const. art. VI, § 22(h)).

A professional or occupational license may be denied, revoked, or suspended because of a conviction. *E.g.*: trafficking in alcoholic beverages (N.Y. Alco. Bev. Cont. Law § 126(1), (1-a)); attorney (N.Y. Jud. Law § 90(4)). New York has a registration requirement for sex offenders. N.Y. Correct. Law §§ 168 to 168-t.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

For all state and federal felons, the right to vote is automatically restored upon expiration of the maximum period of imprisonment or upon discharge from parole. N.Y. Elec. Law § 5-106. The right to vote may also be restored if the person is pardoned or "restored to rights of citizenship." N.Y. Elec. Law § 5-106.

A Certificate of Relief from Disabilities (N.Y. Correct. Law §§ 700 - 705), or a Certificate of Good Conduct (N.Y. Correct. Law §§ 703-a, 703-b) may be obtained to restore certain rights, and may be limited to one or more specific rights. A Certificate of Relief from Disabilities may be obtained from the Board of Parole (for persons sentenced to imprisonment under New York law or who reside in New York but were convicted in another jurisdiction), N.Y. Correct. Law § 703(1), or from the sentencing court (for non-prison state sentences), N.Y. Correct. Law § 702(1), provided in either case the applicant has not been convicted more than once of a felony. N.Y. Correct. Law § 700(1)(a). This relief is available to federal felons who reside in New York.

In addition, a Certificate of Good Conduct may be obtained from the Board of Parole after one to five years of good conduct, depending upon the seriousness of the

offense. N.Y. Correct. Law § 703-b(3).<sup>1</sup> A Certificate of Good Conduct is available to persons convicted either in or outside New York. N.Y. Correct. Law § 703-b(2). It is granted only if the person has demonstrated good conduct for the requisite period and if granting relief would be consistent with the person's rehabilitation and the public interest. N.Y. Correct. Law § 703-b(1). Persons convicted outside New York must also demonstrate a specific disability resulting from New York law that would warrant granting relief in New York. N.Y. Correct. Law § 703-b(2).

The certificates, with certain exceptions, preclude reliance on the conviction as an automatic bar or disability, but do not preclude agencies from considering the conviction as a factor in licensing or other decisions. N.Y. Correct. Law §§ 701, 703-a; Op. Att'y Gen. 91-F10 (1991) (concerning right to serve on a jury). A Certificate of Relief from Disabilities shall not "apply, or be construed so as to apply, to the right . . . to retain or to be eligible for public office."<sup>2</sup> N.Y. Correct. Law § 701(1).

The pardon power is vested in the Governor (except in cases of treason or impeachment). N.Y. Const. art. 4, § 4. A pardon addresses unusual circumstances when adequate relief cannot be obtained by issuance of a Certificate of Relief from Disabilities or a Certificate of Good Conduct. In addition to relieving disabilities imposed by the conviction, a gubernatorial pardon operates to set aside a state judgment of conviction when given on the basis of innocence.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A person convicted of a felony or "serious offense" may not possess a rifle or shotgun. N.Y. Penal Law § 265.01(4).<sup>4</sup> A person who has been "convicted anywhere of a felony or a serious offense" may not obtain or keep a license to possess or carry concealed a pistol or revolver. N.Y. Penal Law § 400.00(1)(b), (11).

State offenders may obtain a Certificate of Relief from Disabilities from a court or the New York State Board of Parole that specifically and expressly restores state

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<sup>1</sup> The period of good conduct is measured "either from the date of the payment of any fine imposed . . . or the suspension of sentence, or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence." N.Y. Penal Law § 703-b(3).

<sup>2</sup> Because a conviction does not generally result in disqualification from future office holding, this provision apparently is designed to prevent a former office holder who was removed upon conviction of a felony from regaining that office on the basis of having received a Certificate of Relief from Disabilities.

<sup>3</sup> Although the word "firearm" in New York has a technical meaning that includes only concealable guns, the word is used in section headings here and elsewhere in its colloquial, non-technical sense to mean any gun.

<sup>4</sup> "Felony" is defined in N.Y. Penal Law § 10.00(5) to mean an offense for which a sentence to a term of imprisonment in excess of one year may be imposed. "Serious offense" is defined in N.Y. Penal Law § 265.00(17) to include a wide variety of offenses, such as: illegally using, carrying, or possessing a pistol or other dangerous weapon; possession of burglar's tools; criminal possession of stolen property in the third degree; escape in the third degree; and endangering the welfare of a child.



privileges regarding the possession of long guns and handguns, but a person convicted more than once of a felony is not eligible for this relief. N.Y. Correct. Law §§ 700(1)(a), 702, 703(1)(a).<sup>5</sup> An offender who resides in New York but was convicted in "any other jurisdiction" may also receive a certificate from the Board of Parole, but not if convicted more than once of a felony. N.Y. Correct. Law §§ 700(1)(a), 703(1)(b). A gubernatorial pardon will also restore state gun privileges. The right to possess handguns, however, is reportedly rarely restored to felons.

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<sup>5</sup> A Certificate of Good Conduct, issued by the state Board of Parole, also is an avenue by which firearms privileges may be restored. N.Y. Correct. Law §§ 703-a, 703-b; N.Y. Penal Law § 265.20(a)(5). As a matter of practice, however, such certificates typically are limited to the restoration of rights and privileges other than those involving the possession of guns.

## NORTH CAROLINA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person “adjudged guilty”<sup>1</sup> of a state or federal felony or of a felony in another state that would be a felony in North Carolina forfeits the rights to vote and to hold public office. N.C. Const. art. VI, §§ 2(3), 8. A person “convicted of a felony” is disqualified from jury service. N.C. Gen. Stat. § 9-3.

A professional or occupational license may be denied, suspended, or revoked because of certain convictions. E.g.: architect (N.C. Gen. Stat. § 83A-15(a)(3)(d)); attorney (§ 84-28(b)(1)); physician (§ 90-14(a)(7), (c)); nurse (§ 90-171.37(2)); public accountant (§ 93-12(9)(a)); real estate broker (§ 93A-6(b)(2)); alcohol permit (§ 18B-900(a)(3)). North Carolina has a registration requirement for sex offenders. N.C. Gen. Stat. §§ 14-208.5 to 14-208.12.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Civil rights (other than firearms privileges) are automatically restored to state and federal felons upon receipt of a pardon or an unconditional discharge of sentence. N.C. Gen. Stat. § 13-1. A certificate evidencing unconditional discharge and restoration of the rights of citizenship must be filed with the court in the county of conviction (for North Carolina state offenses) or the county of residence (for offenses under federal law or the law of another state). N.C. Gen. Stat. § 13-2.

The pardon power (except in cases of impeachment) is vested in the Governor. N.C. Const. art. III, § 5(6). Persons convicted under federal law or the law of another state are not eligible to apply for a gubernatorial pardon.

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<sup>1</sup> A person who pleads nolo contendere to a North Carolina felony is not considered to have been “adjudged guilty” within the meaning of Article VI, § 2 of the North Carolina constitution, and therefore is not subject to these disabilities. 49 Op. Att’y Gen. 134 (1980).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of a felony in North Carolina, or of an offense under federal law or the law of another state that is substantially similar to a felony under North Carolina law and that is punishable where committed by imprisonment for a term exceeding one year, may not purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, or a "weapon of mass death or destruction."<sup>3</sup> N.C. Gen. Stat. § 14-415.1(a).<sup>4</sup> This provision does not prohibit possession of a firearm within one's home or on one's lawful place of business. N.C. Gen. Stat. § 14-415.1(a).

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<sup>2</sup> For a consideration of the interaction between the federal firearms disability and North Carolina law concerning the loss and restoration of civil rights and firearms privileges, see, e.g., United States v. Tomlinson, 67 F.3d 508 (4th Cir. 1995); United States v. Thomas, 52 F.3d 82 (4th Cir. 1995); United States v. Shoemaker, 2 F.3d 53 (4th Cir. 1993); United States v. Clark, 993 F.2d 402 (4th Cir. 1993).

<sup>3</sup> This term is defined in N.C. Gen. Stat. § 14-288.8(c) to include such things as bombs, sawed-off shotguns, and fully automatic weapons. It does not include a rifle or shotgun suitable for sporting purposes. Id.

<sup>4</sup> In addition, N.C. Gen. Stat. § 14-404 prohibits anyone convicted of a state or federal felony (excluding an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade) from obtaining a permit to purchase or receive a pistol. It further provides, however, that anyone who has been pardoned may obtain a permit if the purchase or receipt does not violate a condition of the pardon.

## NORTH DAKOTA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person sentenced to imprisonment for a state or federal felony loses the rights to vote and to hold or seek public office while incarcerated. N.D. Cent. Code §§ 12.1-33-01, 12.1-33-03. A person may not serve on a jury while he is disqualified from voting due to a conviction or if has been convicted of a criminal offense that by special provision of law disqualifies him from jury service. N.D. Cent. Code § 27-09.1-08(2)(e).

A professional or occupational license may not be denied solely because of a conviction; however, a person may be denied a license if it is determined that he has not been sufficiently rehabilitated, or that the offense has a direct bearing upon his ability to serve the public in that job. N.D. Cent. Code § 12.1-33-02.1. North Dakota has a registration requirement for sexual offenders and persons convicted of a "crime against a child," which expressly applies to federal convictions. N.D. Cent. Code § 12.1-32-15.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to hold public office are automatically restored to state and federal offenders upon release from incarceration. N.D. Cent. Code §§ 12.1-33-01; 12.1-33-03<sup>1</sup>; 27-09.1-08(2)(e). Presumably, release from incarceration also restores the right to sit on a jury at least to the extent a person is ineligible to be a juror because he is disqualified from voting. The state constitution vests the pardon power (except in cases of treason or impeachment) in the Governor, "in conjunction with" the North Dakota Board of Pardons, of which the Governor is an ex officio member. N.D. Const. art. 5, § 6.<sup>2</sup> Persons convicted under federal law or the laws of another state are ineligible for a state pardon.

North Dakota law also provides procedures for reducing a state felony conviction to a misdemeanor or for vacating a state felony conviction after service of sentence. Under N.D. Cent. Code § 12.1-32-02(9), a person convicted of a felony (other than certain drug offenses) and sentenced to imprisonment for not more than one year "is deemed to have been convicted of a misdemeanor upon successful completion of the term of probation imposed as part of the sentence." Under N.D. Cent. Code § 12.1-32-07.1, a person placed on probation when imposition of sentence is deferred may, in the court's discretion, be permitted to withdraw his guilty plea after completion of probation or

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<sup>1</sup> This statute provides: "Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored."

<sup>2</sup> Despite this language and the further provision that the legislative assembly "may regulate the manner in which [clemency] is applied for," N.D. Cent. Code § 12-55-05 states that the Board of Pardons has "sole and exclusive" power to grant pardons.

discharge from probation, and the court may set aside the verdict of guilty and dismiss the information or indictment. Before dismissing the charge, the court may also reduce a felony conviction to a misdemeanor, which has the effect of releasing the defendant from all penalties and disabilities resulting from the offense, except for firearms disabilities.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>3</sup>

A person "convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25,"<sup>4</sup> may not own, possess, or have under his control a firearm<sup>5</sup> for 10 years from the date of conviction or release from incarceration or probation, whichever is later. N.D. Cent. Code § 62.1-02-01(1). A person convicted of any other felony or of a Class A misdemeanor involving violence or intimidation while using or possessing a firearm or dangerous weapon may not own or have in his possession or control a firearm for five years from the date of conviction or release from incarceration or probation, whichever is later. N.D. Cent. Code § 62.1-02-01(2).

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<sup>3</sup> For a consideration of the interaction between the federal firearms disability and North Dakota law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Decoteau, 932 F.2d 1205 (7th Cir. 1991). NB: Decoteau involved a previous version of state law regarding restoration of rights different from that discussed in this summary. See also United States v. Eaton, 31 F.3d 789 (9th Cir. 1994).

<sup>4</sup> The designated chapters cover such offenses as homicide, assault, offenses against unborn children, kidnapping, sex offenses, damaging property, robbery, breaking and entering, theft, forgery, and riot.

<sup>5</sup> "Firearm" is defined to include both long guns and handguns. N.D. Cent. Code § 62.1-01-01(3).

## OHIO

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS UPON FELONY CONVICTION

A state or federal felon loses the rights to hold an office of honor, trust, or profit, and to serve on a jury. Ohio Rev. Code Ann. § 2961.01. During any period of incarceration, he also loses the right to vote. Ohio Rev. Code Ann. § 2961.01. These disqualifications do not apply to persons convicted of federal felonies before January 1, 1974 (the effective date of the statute imposing the disability). State ex rel. Corrigan v. Barnes, 3 Ohio App. 3d 40, 443 N.E.2d 1034 (1982). Public servants convicted of bribery or theft in office are prohibited from ever holding any public office, employment, or position of trust. Ohio Rev. Code Ann. §§ 2921.02(F), 2921.41(C)(1). A public servant convicted of soliciting or receiving improper compensation is disqualified from holding any public office, employment, or position of trust in the State of Ohio for seven years from the date of conviction. Ohio Rev. Code Ann. § 2921.43(E).

In general, a felony conviction may be a bar to obtaining or maintaining a professional or occupational license. E.g.: insurance agent (Ohio Rev. Code Ann. § 3905.49(A)(7)); physician (§ 4731.22(B)(9)); pharmacist (§ 4729.16(A)(1)). If a person who holds a professional or occupational license is convicted of certain drug offenses, his conviction must be reported to the licensing agency. Ohio Rev. Code Ann. § 2925.38. A pawnbroker or junk dealer loses his license upon conviction of receiving stolen property, and regains his right to engage in such a business only if "pardoned by the governor." Ohio Rev. Code § 2961.03. Conviction of a drug-trafficking offense results in revocation or suspension of a driver's license for a period of six months to five years. Ohio Rev. Code § 2925.03(D)(2), (G).

Ohio adopted a registration requirement for persons who are convicted of sexually oriented offenses. Ohio Rev. Code §§ 2950.01 to 2950.14; 2950.99 (effective July 1, 1997). Certain sexual offenders must submit to a DNA specimen collection procedure. Ohio Rev. Code § 2901.07.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

Because a felon's right to vote is only suspended during incarceration, he is qualified to vote during any period of probation or parole and thereafter. Ohio Rev. Code Ann. § 2961.01. The disqualification from office or employment for persons convicted of soliciting or receiving improper compensation terminates seven years after the date of conviction. Ohio Rev. Code Ann. § 2921.43(E).

Effective July 1, 1996, under Ohio Rev. Code Ann. § 2967.16, a person sentenced to incarceration may obtain a restoration of other rights by serving his sentence of confinement not followed by post-release control, or by obtaining a final release from

parole or post-release control from the adult parole authority.<sup>1</sup> Ohio Rev. Code Ann. § 2967.16(C)(1), (2). A final release is not available earlier than one year after release on parole or post-release control, and in the case of a person serving a minimum sentence of life, not earlier than five years after release on parole or post-release control. Ohio Rev. Code Ann. § 2929.16(A). A person sentenced to a “community control sanction”<sup>2</sup> (including probation or a fine) regains his or her rights upon completion of the sanction. Ohio Rev. Code Ann. § 2967.16(C)(3).<sup>3</sup>

For first offenders,<sup>4</sup> a state procedure for sealing the records of certain convictions also results in the restoration of rights. Ohio Rev. Code Ann. §§ 2953.31 to 2953.53.<sup>5</sup> Certain first offenders, three years after final discharge for a felony, may petition a state court for an order sealing the records of a conviction. Ohio Rev. Code Ann. §§ 2953.32(A)(1); 2953.36. The court shall order the records sealed if it determines that: (1) the applicant is a first offender; (2) the applicant has no charges pending against him or her; (3) "the interests of the applicant in having the records pertaining to his conviction . . . sealed are not outweighed by any legitimate governmental needs to maintain such records"; and (4) "the rehabilitation of an applicant . . . has been attained to the satisfaction of the court." Ohio Rev. Code Ann. § 2953.32(C)(2).

Although sealing results in restoration of most rights lost under state law as a result of conviction,<sup>6</sup> it does not restore the right to hold public office to a public servant convicted of bribery in office. *State v. Bissantz*, 40 Ohio St. 3d 112, 532 N.E.2d 126 (1988). Sealed records may nonetheless be used to charge a person with an offense when the nature and character of the offense would be affected by the sealed information, Ohio Rev. Code Ann. § 2953.32(D), in sentencing for another offense, and in determining whether to seal records of a conviction. Ohio Rev. Code Ann. § 2953.32(C)(2).

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<sup>1</sup> Because this and other language in the statute appears to contemplate incarceration in a state facility, it is not clear whether this statute applies to federal convicts. The version of the statute in effect until July 1, 1996, is similarly worded.

<sup>2</sup> This term is defined in Ohio Rev. Code Ann. § 2929.01(F) to mean the non-prison sanctions available under Ohio Rev. Code Ann. §§ 2929.16-2929.18, which include residential sanctions, nonresidential sanctions, and financial sanctions.

<sup>3</sup> This provision is effective July 1, 1996, and replaces the former Ohio Rev. Code Ann. § 2951.09, which restored rights to persons sentenced to probation upon completion of probation.

<sup>4</sup> First offender is defined in Ohio Rev. Code Ann. § 2953.31.

<sup>5</sup> There are numerous exceptions to the sealing provision, both as to the type of conviction for which sealing may be granted, Ohio Rev. Code § 2953.36, and as to the purposes for which subsequent access to sealed records may be granted. Ohio Rev. Code § 2953.32(D), (E). For example, a person convicted of an offense for which the offender is ineligible for probation may not be granted the remedy of sealing, and sealing may not be ordered for many sexual offenses. Ohio Rev. Code Ann. § 2953.36.

<sup>6</sup> "[A]n order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of sentence or probation or by final release on parole." Ohio Rev. Code Ann. § 2953.33.

Notwithstanding a sealing order, proof of an otherwise admissible prior conviction may nonetheless be offered in a criminal proceeding. Ohio Rev. Code Ann. § 2953.32(E).

The sealing statute, by its terms, applies to federal and out-of-state convictions as well as Ohio convictions. See, e.g., Ohio Rev. Code Ann. § 2953.32(A)(1). The statute, however, requires only expungement of Ohio state records containing information about a federal or out-of-state conviction.<sup>7</sup> Presumably, that limited action would be sufficient to restore the right to hold office and to sit on a jury to the same extent that it would for an Ohio offender whose record is expunged pursuant to § 2953.32.

Rights may also be restored by a pardon. Ohio Rev. Code Ann. § 2961.01. The pardon power, except for treason and cases of impeachment, is vested in the Governor, “subject . . . to such regulations as to the manner of applying for commutations and pardons, as may be prescribed by law.” Ohio Const. art. III, § 11. Accord, Ohio Rev. Code Ann. § 2967.04. According to the United States Attorney for the Northern District of Ohio, gubernatorial pardons are not available for federal felons.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>8</sup>

A person "convicted of any felony offense of violence" or a person "convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse" may not "knowingly acquire, have, carry, or use any firearm or dangerous ordnance." Ohio Rev. Code Ann. § 2923.13(A)(2), (3).<sup>9</sup> Enhanced penalties are provided for persons who have been convicted of a felony of the first or second degree when the violation of this prohibition occurs within five years after release

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<sup>7</sup>The statute does not create a right to seek expungement of records of a federal conviction held by federal agencies. Schwab v. Gallas, 724 F. Supp. 509 (N.D. Ohio 1989). The court in Schwab, however, remanded the case to state court, from which the application for expungement had been removed to federal court in the first place, for further proceedings, noting “the lack of a substantial federal interest in the records held by the State of Ohio or its agencies.” 724 F. Supp. at 511. In Barker v. State, 62 Ohio St. 2d 35, 35, 402 N.E.2d 550, 551 (1980), the Supreme Court of Ohio affirmed a holding that, “notwithstanding the inability of Ohio courts to order extraterritorial authorities to physically expunge such records of conviction located without this state, Ohio sentencing courts have jurisdiction to ‘expunge convictions from other states as they apply to their use in Ohio.’”

<sup>8</sup>For a consideration of the interaction between the federal firearms disability and Ohio law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Cassidy, 899 F.2d 543 (6th Cir. 1990).

<sup>9</sup>The terms "firearm" includes both long guns and handguns. Ohio Rev. Code Ann. § 2923.11(B). The term “dangerous ordnance” includes such items as automatic weapons, sawed-off firearms, explosive and incendiary devices, and military artillery. Ohio Rev. Code Ann. § 2923.11(K), (L).



from imprisonment or post-release control imposed for the commission of a felony of the first or second degree. Ohio Rev. Code Ann. § 2923.13(B), (C).<sup>10</sup> Although the statute does not expressly mention federal convictions, as does the general disability statute cited in Section I, above, it is likely that federal convictions also would trigger the application of the statute.

A procedure for removing the state disability relating to firearms (but not those relating to "dangerous ordnances") is provided under Ohio Rev. Code Ann. § 2923.14, and involves petitioning a state court for restoration of firearms privileges. The applicant must be "fully discharged from imprisonment, probation, and parole," have "led a law-abiding life since his discharge or release" and "appear[] likely to continue to do so," and not be "otherwise prohibited by law from acquiring, having, or using firearms."<sup>11</sup> Ohio Rev. Code Ann. § 2923.14(D)(1), (2), (3).<sup>12</sup> Because the statutes governing sealing of conviction records, Ohio Rev. Code Ann. § 2953.31, *et seq.*, permit use of a sealed conviction in charging a person with an offense and in any criminal proceeding, Ohio Rev. Code Ann. § 2953.32 (D), (E), it would appear that a person whose conviction records are sealed is not on that account relieved from firearms disabilities under Ohio Rev. Code Ann. § 2923.13.

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<sup>10</sup> Persons convicted of a felony of the first or second degree are also subject to enhanced penalties for otherwise violating § 2923.13(A) within five years of release from imprisonment or post-release control, such as by acquiring, having, carrying, or using a firearm or dangerous ordnance while being a fugitive from justice, or after being indicted for a felony offense of violence or a drug offense, being drug dependent or a chronic alcoholic, or being adjudicated a mental incompetent. Ohio Rev. Code Ann. § 2923.13(A)(1)-(5).

<sup>11</sup> Since felons are subject to firearms disabilities arising under federal law, it would appear that this state remedy would not be fully effective unless the Bureau of Alcohol, Tobacco and Firearms granted relief from federal firearms disabilities. It is possible, however, that this provision simply means that a person must not be disabled from owning firearms under state law for reasons other than conviction of a crime. *See, e.g.*, Ohio Rev. Code Ann. § 2923.13(A)(1), (4), and (5) (prohibiting possession of firearms by fugitives, drug addicts, chronic alcoholics, and persons adjudicated mentally incompetent).

<sup>12</sup> This procedure is presumably available to federal felons to remove state-law firearms disabilities, but it cannot remove federal firearms disabilities, which under *United States v. Beecham*, 511 U.S. 368 (1994), must be removed by a federal procedure.

## OKLAHOMA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS UPON FELONY CONVICTION

A person "convicted of a felony" may not register to vote, Okla. Stat. tit. 26, § 4-101(1), and a voter's registration may be canceled upon "conviction of a felony." Okla. Stat. tit. 26, § 4-120. The right to hold public office is forfeited upon conviction of a state or federal misdemeanor involving embezzlement or felony, or of a crime in another state that would have been a misdemeanor involving embezzlement or a felony under Oklahoma law. Okla. Stat. tit. 26, § 5-105a. A state office is declared vacant upon the office holder's conviction of a state or federal felony, or of any offense involving a violation of his official oath, and any elected or appointed state or county officer or employee is automatically suspended from employment upon a state or federal felony conviction. Okla. Const. art. VIII, § 1; Okla. Stat. tit. 51, §§ 8, 24.1(A). In addition, a member of the legislature who is convicted of certain offenses forfeits his office and is forever disqualified from serving in the state legislature. Okla. Const. art. V, § 18; Okla. Stat. tit. 21, § 312. The right to serve on a jury is denied to anyone who has been "convicted of any felony or served a term of imprisonment in any penitentiary, state or federal, for the commission of a felony." Okla. Stat. tit. 38, § 28(B)(6).

A professional or occupational license may be denied, revoked, or suspended because of certain convictions. *E.g.*: accounting (Okla. Stat. tit. 59, § 15.14B(3)); architecture (tit. 59, § 46.14(1)); pharmacy (tit. 59, § 353.26(A)(1)(c)); medicine (tit. 59, §§ 509(6), 513); podiatry medicine (tit. 59, § 148(A)(2)); psychology (tit. 59, § 1370(A)(4)); insurance (tit. 36, § 1428(A)(7)); law enforcement (tit. 70, § 3311(D)(2)(a)); liquor license (tit. 37, § 527(3)). While conviction of a crime is not an absolute bar to employment in a child care facility (unless the person is required to register as a sex offender), it "shall be considered in relation to specific employment duties and responsibilities." Okla. Stat. tit. 10, § 404.1(C).

Oklahoma has a registration requirement for sex offenders. Okla. Stat. tit. 57, § 581, *et seq.* It is unlawful for any person required to register as a sex offender to work with or provide services to children or to reside in a child care facility, and for any employer who offers or provides services to children to employ or continue to employ such a person. Okla. Stat. tit. 10, § 404(E)(2).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

A felon may not vote for a period of time equal to his sentence. (For example, an individual given a two-year sentence on January 1, 1992, may not vote until January 1, 1994.) Okla. Stat. tit. 26, § 4-101. Disqualification from office lasts for 15 years after completion of sentence, or until the person is pardoned. Okla. Stat. tit. 26, § 5-105a. (Presumably, this 15-year limitation on disqualification does not override the specific, permanent disqualification relating to legislative office.) The right to serve on a jury is

restored upon being "fully restored to his civil rights," Okla. Stat. tit. 38, § 28(B)(6), which for Oklahoma felons would be by a pardon.

Except in cases of impeachment, the Governor may grant a pardon after favorable recommendation by a majority vote of the Pardon and Parole Board. Okla. Const. art. VI, § 10. According to the Board, a pardon does not restore the right to vote. A person convicted under federal law or the law of another state is ineligible for a Governor's pardon.

For a person convicted of an Oklahoma crime (other than a sex offense) who has not previously been convicted of a felony, the court may without entering a judgment of guilt defer further proceedings on specific conditions. Okla. Stat. tit. 22, § 991c(F), (G). If the person successfully completes the conditions of the deferred judgment and pays all fines, fees, and monetary assessments, the court discharges him without a court judgment of guilt and dismisses the case without prejudice; the records of the verdict or plea of guilty or plea of nolo contendere are then expunged. Okla. Stat. tit. 22, § 991c(C). A person who was under 18 years old at the time his or her offense was committed and who has received a full pardon may also seek expungement. Okla. Stat. tit. 22, § 18(4).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A state or federal felon may not possess or have under his immediate control, or in any vehicle he is operating or in which he is riding as a passenger, any pistol, imitation or homemade pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm that could easily be concealed on the person, in personal effects, or in an automobile.<sup>1</sup> Okla. Stat. tit. 21, § 1283(A). It is also unlawful "to knowingly sell, trade, give, transmit or otherwise cause the transfer" of a rifle, shotgun, or pistol to any convicted felon or adjudicated delinquent. Okla. Stat. tit. 21, § 1289.12.

No procedure exists at the state level for restoring firearms privileges. Not even a Governor's pardon will restore firearms privileges.<sup>2</sup> 16 Op. Att'y Gen. 180 (No. 84-101) (1984); 13 Op. Att'y Gen. 480 (No. 81-283) (1981). A person convicted and pardoned by another state is still subject to firearms disabilities in Oklahoma. 17 Op. Att'y Gen. 60 (No. 85-26) (1985).

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<sup>1</sup> A "pistol" is defined as a firearm with a barrel of less than 16 inches, Okla. Stat. tit. 21, § 1289.3, and "sawed-off shotgun or rifle" means any shotgun or rifle that has been shortened to any length. Okla. Stat. tit. 21, § 1283(H). The prohibition on possessing sawed-off shotguns and rifles does not include ordinary rifles. Marr v. State, 513 P.2d 324 (Okla. Crim. App. 1973), overruled on other grounds, Williams v. State, 794 P.2d 759 (Okla. Crim. App. 1990). See also Price v. State, 532 P.2d. 851 (Okla. Crim. App. 1975).

<sup>2</sup> Effective September 1, 1992, however, a person who was convicted in Oklahoma of a nonviolent felony and who has received a full pardon may possess weapons specified in tit. 21, § 1283 in pursuit of the occupation of gun smithing or firearm repair. Okla. Stat. tit. 21, § 1283(B).

## OREGON

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS UPON FELONY CONVICTION

When a person is sentenced in Oregon to imprisonment for a felony, he loses the rights to vote, to hold or seek public office, and to serve on a jury while incarcerated. Or. Rev. Stat. § 137.281. An office is declared vacant upon the office holder's conviction of an infamous crime or an offense involving a violation of the oath of office. Or. Rev. Stat. § 236.010(1)(c). No person may be a state senator or representative who has been convicted of a felony after being elected to the office of senator or representative or during his term of office as senator or representative, nor is a person eligible to be elected to the office of state senator or representative if he has been convicted of a felony and has not completed his sentence, including any period of probation or post-prison supervision and payment of a monetary obligation imposed as part of the sentence, prior to entry upon office. Or. Const. art. IV, § 8.

A licensing board or agency may not deny, suspend, or revoke an occupational or professional license solely because the licensee or applicant "has been convicted of a crime." It may, however, "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. This statute, however, does not apply to all licensing decisions, e.g., *In re Gortmaker*, 308 Or. 482, 782 P.2d 421 (1989) (Or. Rev. Stat. § 670.280 does not apply in proceeding to reinstate an attorney suspended upon conviction of a felony), and may not preclude adverse licensing decisions based upon specific, designated criminal convictions. Occupations in which conviction of certain crimes may be relevant to a licensing decision include: accountant (Or. Rev. Stat. § 673.170(2)(h)); tax consultant (§ 673.700(4)(a), (b)); social worker (§ 675.540(1)(a), (b)); physician (§ 677.190(6)).

Oregon has a registration requirement for persons convicted of a sex crime. Or. Rev. Stat. § 181.594, *et seq.*

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote, to serve on a jury, and to run for state office are automatically restored upon release from imprisonment, except as to the disability relating to legislative office. Or. Rev. Stat. § 137.281(5). The right to run for state senator or representative is restored upon completion of the sentence, at least for persons who were not convicted after being elected or during their term of office as state senator or representative. Or. Const. art. IV, § 8. The pardon power is vested in the Governor, except in cases of treason. Or. Const. art. V, § 14. It is not clear whether the Governor has the power to

grant clemency to a federal convict, although Or. Rev. Stat. § 144.640 states that the Governor "may grant . . . pardons, after convictions, for all crimes."<sup>1</sup>

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of a felony under federal law or the law of any state is prohibited from owning, possessing, or having under his custody or control firearms<sup>3</sup> and certain other weapons.<sup>4</sup> Or. Rev. Stat. § 166.270(1), (2).<sup>5</sup> Firearms privileges are automatically restored 15 years after discharge from imprisonment, parole, or probation, unless the conviction involved "criminal homicide, as defined in ORS 163.005, or the possession or use of a firearm or switchblade knife," or the person was convicted of more than one state or federal felony. Or. Rev. Stat. § 166.270(4)(a).<sup>6</sup> Persons "convicted of a felony" or found guilty of a felony may not obtain a permit to carry a concealed handgun. Or. Rev. Stat. § 166.291(1)(g).<sup>7</sup> It is also unlawful to sell, deliver, or transfer a firearm to a felon. Or. Rev. Stat. § 166.470(1). These disabilities do not apply to anyone whose record has been expunged or who has had his federal firearms privileges restored under 18 U.S.C. § 925(c). Or. Rev. Stat. §§ 166.291(2); 166.470. No statutory procedure for removing these disabilities is available.<sup>8</sup>

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<sup>1</sup> Since civil rights are automatically restored upon release from prison, there would appear to be little need for a federal felon to obtain state clemency.

<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Oregon law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Huss, 7 F.3d 1444 (9th Cir. 1993); United States v. Bell, 983 F.2d 910 (9th Cir. 1993); United States v. Cardwell, 967 F.2d 1349 (9th Cir. 1992).

<sup>3</sup> "Firearm" is defined to include both long guns and handguns. Or. Rev. Stat. § 166.210(2).

<sup>4</sup> The statute prohibits possession of weapons such as switchblades and blackjacks. Or. Rev. Stat. § 166.270(2). Another prohibition on the possession of firearms by felons is also contained in Or. Rev. Stat. § 166.250(1)(c)(C), but since that statute expressly states that it applies "[e]xcept as otherwise provided in . . . § 166.270" (among other statutes), it is not clear what, if any, independent significance the disability under § 166.250 has.

<sup>5</sup> The prohibition also does not apply if the conviction was prior to January 1, 1972, for possession of marijuana. Or. Rev. Stat. § 166.270(3)(b).

<sup>6</sup> Section 166.270(4)(b) excepts anyone whose record has been expunged under Oregon law or equivalent law of another state, or who has been granted relief from federal firearms disabilities under 18 U.S.C. § 925(c).

<sup>7</sup> Misdemeanants also may not obtain a concealed handgun permit for four years following conviction. Or. Rev. Stat. § 166.291(1)(h).

<sup>8</sup> Both Or. Rev. Stat. § 166.291(2) and § 166.470(1) except anyone granted relief under Or. Rev. Stat. § 166.274, which permits a justice of the court in the county of residence to grant relief upon presentation of "clear and convincing evidence that the petitioner does not pose a threat to the safety of the public or the petitioner." Or. Rev. Stat. § 166.274(6). However, persons banned from possessing firearms

## PENNSYLVANIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS UPON FELONY CONVICTION

No person "confined in a penal institution" is eligible to be an absentee voter. 25 Pa. Cons. Stat. §§ 2602(w); 3146.1.<sup>1</sup> Because there are no other restrictions on voting related to convictions, it appears that a person is disqualified from voting only during a period of incarceration in a penal institution (presumably state or federal). See United States v. Essig, 10 F.3d 968 (3d Cir. 1993); Owens v. Barnes, 711 F.2d 25 (3d Cir.), cert. denied, 464 U.S. 963 (1983).

No person convicted of "embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit" in Pennsylvania. Pa. Const. art. 2, § 7. Civil officers shall be removed upon conviction of "misbehavior in office or of any infamous crime." Pa. Const. art. 6, §§ 6, 7. This term has been held to include federal crimes. In re Hughes, 516 Pa. 90, 532 A.2d 298 (1987). A justice, judge, or justice of the peace may be suspended, removed from office, or otherwise disciplined upon conviction of a felony. Pa. Const. art. 5, § 18(d)(1). A justice, judge, or justice of the peace so removed from office or convicted by a court of misbehavior in office "shall forfeit automatically his judicial office and thereafter be ineligible for judicial office." Pa. Const. art. 5, § 18(d)(3). A person convicted of "a crime punishable by imprisonment for more than one year" is not eligible to serve as a juror. 42 Pa. Cons. Stat. § 4502(3).

Employers may consider felony and misdemeanor convictions only to the extent they relate to the applicant's suitability for employment in that position. 18 Pa. Cons. Stat. § 9125(b). A professional or occupational license may be denied, suspended, or revoked because of conviction of a felony or misdemeanor related to the occupation. 18 Pa. Cons. Stat. § 9124(c). Occupations in which conviction of certain crimes may affect licensure include: architect (63 Pa. Cons. Stat. § 34.19(a)(8) (felony or crime of moral turpitude)); psychologist (63 Pa. Cons. Stat. § 1208(a)(6) (federal or state felony or equivalent foreign crime, or misdemeanor involving psychology)); pharmacist (63 Pa. Cons. Stat. § 390-5(a)(2) (felony, offense involving moral turpitude, or offense in connection with the practice of pharmacy)); social worker (63 Pa. Cons. Stat. § 1911(a)(1) (felony or crime of moral turpitude)). Pennsylvania has a registration requirement for sex offenders, 42 Pa. Cons. Stat. §§ 9791-9798, which expressly applies to federal convictions. 42 Pa. Cons. Stat. § 9793(d).

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under Or. Rev. Stat. § 166.270(1)(c)(C) or under § 166.250(1)(c)(C) are omitted from the description of the classes of persons who may seek relief under § 166.274. Or. Rev. Stat. § 166.274(1). The procedure therefore applies only to disabilities imposed for reasons other than conviction of a felony.

<sup>1</sup> This phrase has been interpreted to refer only to persons serving a sentence for a felony conviction, not convicted misdemeanants or pretrial detainees. 1974 Op. Att'y Gen. 186 (No. 47) (1974).

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is regained upon release from prison. 25 Pa. Cons. Stat. §§ 2602(w); 3146.1. The rights to hold public office and to serve on a jury may be restored to state felons only through a pardon. 42 Pa. Cons. Stat. § 4502(3). The power to pardon (except in cases of impeachment) rests in the Governor, and he may grant a pardon only if a majority of the Board of Pardons recommends it.<sup>2</sup> Pa. Const. art. 4, § 9(a); 71 Pa. Cons. Stat. § 299. A gubernatorial pardon entitles the recipient to judicial expungement of his conviction. *Commonwealth v. C.S.*, 534 A.2d 1053 (Pa. 1987).<sup>3</sup> Pardoned or expunged convictions may not be used in a licensing decision. 18 Pa. Cons. Stat. § 9124(b). According to state authorities, a person convicted under federal law is ineligible for a gubernatorial pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>4</sup>

A person who has been convicted in Pennsylvania or elsewhere of an enumerated offense, generally involving violence,<sup>5</sup> or an offense under the Pennsylvania drug laws punishable by more than two years' imprisonment,<sup>6</sup> may not possess, use, control, sell, transfer, manufacture, or obtain a license to possess, use, control, sell, transfer, or manufacture a firearm. 18 Pa. Cons. Stat. § 6105(a).<sup>7</sup> Exempted from this disability is

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<sup>2</sup> A unanimous recommendation is required in the case of a sentence of death or life imprisonment.

<sup>3</sup> Expungement is also available to a person who has reached 70 years old and has not been arrested or prosecuted for 10 years following final release from confinement or supervision. 18 Pa. Cons. Stat. § 9122(b)(1).

<sup>4</sup> For a consideration of the interaction between the federal firearms disability and Pennsylvania law concerning the loss and restoration of civil rights and firearms privileges, see *United States v. Essig*, 10 F.3d 968 (3d Cir. 1993).

<sup>5</sup> The enumerated offenses are described by section number of the Pennsylvania criminal statute, or "[a]ny offense equivalent to any of the . . . enumerated offenses under the prior laws of [Pennsylvania] or any offense equivalent to any of the . . . enumerated offenses under the statutes of any other state or of the United States." 18 Pa. Cons. Stat. § 6105(b). The subject matter of the listed crimes is described as follows: prohibited offensive weapons; corrupt organizations; possession of a weapon on school property; murder; voluntary manslaughter; involuntary manslaughter when based on the reckless use of a firearm; aggravated assault; assault by a prisoner; assault by a life prisoner; stalking; kidnapping; unlawful restraint; luring a child into a motor vehicle; rape; involuntary deviate sexual intercourse; aggravated indecent assault; arson; causing or risking catastrophe; burglary; criminal trespass if a second-degree or higher felony; robbery; robbery of a motor vehicle; theft by unlawful taking or disposition if convicted of the second felony offense; theft by extortion when accompanied by threats of violence; receiving stolen property if convicted of the second felony offense; impersonating a law enforcement officer; intimidation of witnesses or victims; retaliation against a witness or victim; escape; weapons or implements for escape; riot; prohibited paramilitary training; possession of a firearm by a minor; corruption of minors; and sale or lease of weapons or explosives. 18 Pa. Cons. Stat. § 6105(b).

<sup>6</sup> 18 Pa. Cons. Stat. § 6105(c)(2). This provision, unlike the prohibition relating to enumerated offenses, does not expressly refer to equivalent convictions under federal law or the law of another state.

<sup>7</sup> For the purposes of 18 Pa. Cons. Stat. § 6105, "firearm" is defined to include both long guns and handguns. Pa. Cons. Stat. § 6105(i).

anyone who has obtained relief from the court of common pleas of the county where he lives. 18 Pa. Cons. Stat. § 6105(d). Relief may be granted if: the conviction has been vacated and appellate relief has been exhausted or the time for appeal is expired; the person has obtained "a full pardon by the Governor"; or the person has obtained relief from federal firearms disabilities from the Secretary of the Treasury<sup>8</sup> and 10 years has elapsed since the conviction, excluding any time spent in incarceration. 18 Pa. Cons. Stat. § 6105(d).

A person convicted of an offense enumerated under § 6105 also cannot obtain a license to carry a concealed "firearm," which for this purpose is defined as essentially a handgun, sawed-off shotgun, or short-barreled rifle.<sup>9</sup> 18 Pa. Cons. Stat. § 6109(e)(1)(iii). Without such a license a person may not carry a "firearm" in a vehicle or concealed on or about his person, except in his place of abode or fixed place of business, 18 Pa. Cons. Stat. § 6106(a), nor may he "carry a firearm, rifle, or shotgun at any time upon the public streets or upon public property in a city of the first class." 18 Pa. Cons. Stat. § 6108.<sup>10</sup> Persons convicted of an offense under the state drug laws, and persons "convicted of a crime punishable by imprisonment for a term exceeding one year"<sup>11</sup> are also prohibited from obtaining a license to carry a concealed "firearm." 18 Pa. Cons. Stat. § 6109(e)(1)(ii), (viii). In contrast to the disabilities imposed upon possession of all guns by persons convicted of an offense enumerated under § 6105, licensing disabilities are removed by a full gubernatorial pardon, by relief from federal firearms disabilities, or by overturning of the conviction. 18 Pa. Cons. Stat. § 6123.<sup>12</sup>

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<sup>8</sup> This requirement may be waived "if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief." 18 Pa. Cons. Stat. § 6105(d)(3)(i). See note 12, *infra*.

<sup>9</sup> 18 Pa. Cons. Stat. § 6102.

<sup>10</sup> The statute is entitled, "Carrying firearms on public streets or public property in Philadelphia." "City of the first class" is defined as a city with a population of one million or more. 53 Pa. Cons. Stat. § 101. Among the exceptions to the license requirement are exceptions for "[p]ersons licensed to hunt, take furbearers or fish" in Pennsylvania "if such persons are actually hunting, taking furbearers or fishing or are going to the places where they desire to hunt, take furbearers or fish or returning from such places," and for persons engaged in dog training. 18 Pa. Cons. Stat. § 6106(b)(9), (10). The exceptions, however, are contingent upon the person's obtaining a sportsman's firearms permit, which is valid for five years and revocable upon written notice. 18 Pa. Cons. Stat. § 6106(c), (d).

<sup>11</sup> The term "crime punishable by imprisonment for a term exceeding one year" excludes "[f]ederal . . . offenses pertaining to antitrust, unfair trade practices, restraints of trade or regulation of business," and misdemeanors under state law punishable by no more than two years' imprisonment. 18 Pa. Cons. Stat. § 6102.

<sup>12</sup> Although § 6123 allows for restoration of firearms licensing privileges to anyone who has been granted relief from federal firearms disabilities under 18 U.S.C. § 925(c), Congress has not appropriated funding for this restoration process since fiscal year 1992, making this means of restoring licensing privileges under Pennsylvania law currently unavailable.



## RHODE ISLAND

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

"No felon shall be permitted to vote until completion of such felon's sentence, served or suspended, and of parole or probation." R.I. Const. art. 2, § 1. A prior disqualification provision has been interpreted to embrace federal felonies. Bailey v. Baronian, 394 A.2d 1338 (R.I. 1978) (dicta; interpreting R.I. Const. amend. 38); Violet v. Voccola, 497 A.2d 709 (R.I. 1985) (interpreting R.I. Const. amend. 38 and amend. 39). No person "convicted of a felony" is permitted to serve as a juror until he has completed his sentence, including parole or probation. R.I. Gen. Laws § 9-9-1.1.

A person is disqualified from seeking or holding elective or appointive state or local office if he is not a qualified elector, R.I. Const. art. 3, § 1, or if he has been convicted of or pleaded nolo contendere to a felony or to a misdemeanor resulting in a jail sentence of six months or more, either suspended or to be served. R.I. Const. art. 3, § 2. A person may not become eligible to hold public office until three years have passed following completion of sentence, including probation or parole. R.I. Const. art. 3, § 2.

Conviction of a felony may be grounds for revoking or refusing to issue a professional license. E.g.: private investigator (R.I. Gen. Laws § 5-5-3(2)); private security guard business (§ 5-5.1-8(a)(3)); pharmacist (§ 5-19-18); veterinarian (§ 5-25-14(1)). Rhode Island has a registration requirement for sex offenders. R.I. Gen. Laws § 11-37-16.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to serve on a jury are restored upon completion of the sentence, including any period of probation or parole. R.I. Const. art. 2, § 1; R.I. Gen. Laws § 9-9-1.1. The right to hold office is restored after three years have passed following completion of the sentence, including probation or parole. R.I. Const. art. 3, § 2; State ex rel. Webb v. Cianci, 591 A.2d 1193 (R.I. 1993). The power to pardon (except in cases of impeachment) is vested in the Governor, "by and with the advice and consent of the senate." R.I. Const. art. 9, § 13. Whether federal felons are eligible for a gubernatorial pardon has not been settled in Rhode Island.

Rhode Island has an expungement procedure that is available to first offenders 10 years after completion of sentence for a state felony and five years for a state misdemeanor. R.I. Gen. Laws § 12-1.3-2. Expungement is unavailable for a conviction of a "crime of violence."<sup>1</sup> R.I. Gen. Laws § 12-1.3-2(a). Expungement releases the

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<sup>1</sup> "Crime of violence" is defined to include: murder; manslaughter; first-degree arson; kidnapping with intent to extort; robbery; larceny from the person; first- and second-degree sexual assault; first- and second-degree child molestation; assault with intent to murder, to rob, or to commit first-degree sexual

person "from all penalties and disabilities resulting from the crime," except that the conviction may be considered in determining sentence "upon conviction of any subsequent crime." R.I. Gen. Laws § 12-1.3-4(a). In addition, the expunged conviction may be disclosed for the purposes of certain licensing decisions, such as bar admission, or when the nature and character of the offense with which a person is to be charged would be affected by the prior conviction. R.I. Gen. Laws § 12-1.3-4(c). Although generally expungement allows the person to state that he or she has not been convicted of the expunged crime, the person is required to disclose the conviction when applying for certain jobs, such as teaching or law enforcement. R.I. Gen. Laws § 12-1.3-4(b).

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

No person "convicted in this state or elsewhere of a crime of violence"<sup>2</sup> may "purchase, own, carry, transport or have in his or her possession any firearm."<sup>3</sup> R.I. Gen. Laws § 11-47-5(2). No provision for restoration of firearms privileges, other than pardon, is made under state law.

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assault; burglary; and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny. R.I. Gen. Laws § 12-1.3-1(1).

<sup>2</sup> For the purpose of the firearms disability, a "crime of violence" is defined to include any of the following crimes or an attempt to commit any of them: murder; manslaughter; rape; first or second degree sexual assault; first or second degree child molestation; kidnapping; first or second degree arson; mayhem; robbery; burglary; breaking and entering; any felony violation involving the illegal manufacture, sale, or delivery of, or possession with intent to manufacture, sell, or deliver, a controlled substance classified under schedules I or II of Rhode Island laws; a violation of R.I. Gen. Laws § 21-28-4.01.1 or 21-28-4.01.2 (involving drug trafficking), or a conspiracy to violate those statutes; assault with a dangerous weapon; assault or battery involving grave bodily injury; and assault with intent to commit any offense punishable as a felony. R.I. Gen. Laws § 11-47-2(2).

<sup>3</sup> A "firearm" includes both long guns and handguns. R.I. Gen. Laws § 11-47-2(3).

## SOUTH CAROLINA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

The right to vote is lost upon conviction of a felony or an election crime until completion of sentence, including probation and parole. S.C. Code Ann. § 7-5-120(B)(3). It is the opinion of the State Attorney General that the disqualification from voting extends to those convicted of federal offenses. See 1984 Op. Att'y Gen. 222 (No. 84-94) (1984). Because eligibility for public office is contingent upon being a qualified voter, S.C. Const. art. XVII, § 1, a person who is disqualified from voting by reason of a conviction is also disqualified from public office. A person convicted of felony embezzlement of public funds is also disqualified from holding any office of honor or emolument in the state; this disability may be removed by a two-thirds vote of the General Assembly upon payment in full of the principal and interest of the sum embezzled. S.C. Code Ann. § 16-13-210. A state or federal felon loses the right to serve on a jury. S.C. Code Ann. § 14-7-810(1).

Persons convicted of certain crimes may be disqualified from obtaining or maintaining a professional or occupational license. E.g.: bail bondsman (S.C. Code Ann. § 38-53-150(a)(6)); optometrist (§ 40-37-220(2)); physician (§ 40-47-200(F)(2)); social worker (§ 40-63-110(2)); bingo promoter (§ 12-21-3350(A)(4)); law enforcement officer (§ 23-6-440(B)(4)).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and, derivatively, to hold public office are restored after completion of sentence, including probation and parole. S.C. Code Ann. § 7-5-120(B)(3). The right to hold public office after conviction of felony embezzlement of public funds may be restored by two-thirds vote of the General Assembly upon payment in full of the principal and interest of the sum embezzled. S.C. Code Ann. § 16-13-210. The right to serve on a jury may be restored only by pardon. S.C. Code Ann. § 24-21-990. The power to grant a pardon is vested in the Probation, Parole and Pardon Board. S.C. Code Ann. § 24-21-920. Federal felons are not eligible for a state pardon.

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

No person who has been convicted of a crime of violence<sup>1</sup> in a court of any state or in federal court may "knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale" into South Carolina a pistol, or possess or acquire pistols within the

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<sup>1</sup> "Crime of violence" is defined to include: murder; manslaughter (except negligent manslaughter arising from traffic accidents); rape; mayhem; kidnapping; burglary; robbery; housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon; and assault with intent to commit any offense punishable by imprisonment for more than one year. S.C. Code Ann. § 16-23-10(C).

state. S.C. Code Ann. § 16-23-30(a), (e). No procedure other than pardon exists under state law to restore firearms privileges.

## SOUTH DAKOTA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

"A sentence of imprisonment in the state penitentiary for any term suspends the right of the person so sentenced to vote, to hold public office, to become a candidate for public office and to serve on a jury, and forfeits all public offices and private trusts, authority or power during the term of such imprisonment." S.D. Codified Laws Ann. § 23A-27-35. A person serving a suspended sentence is prohibited from voting, holding public office, and sitting on a jury during the period of the original sentence or the time extended by order of the court. S.D. Codified Laws Ann. § 23A-27-35. See also S.D. Const. art. III, § 3 (disqualifying from legislative office a person who is disqualified from voting); art. VII, § 2 (prescribing qualifications for votes and excluding those "disqualified by law for . . . conviction of a felony"); S.D. Codified Laws Ann. § 16-13-10 (convicted felons are not qualified to be jurors "unless restored to their civil rights"). The office of the State Attorney General has advised that the disabilities imposed by § 23A-27-35 extend to federal felons.

Certain convictions may result in the denial, suspension, or revocation of a professional license, including: nurse (S.D. Codified Laws Ann. § 36-9-49(2)); pharmacist (§ 36-11-20); bail bondsman (§ 58-22-21(5)); hearing aid dispenser (§ 36-24-40(1)). South Dakota has a registration requirement for sex offenders. S.D. Codified Laws Ann. §§ 22-22-30 to 22-22-39.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The period of disqualification from voting, serving on a jury, or holding public office lasts only during the period of imprisonment "in the state penitentiary." S.D. Codified Laws Ann. § 23A-27-35. At the time of discharge, the convicted person is to be "considered as restored to the full rights of citizenship" at the time of discharge. S.D. Codified Laws Ann. §§ 24-5-2; 24-15A-7.<sup>1</sup> The convicted person receives from the Secretary of Corrections a certificate stating that he has been restored to the full rights of a citizen, and the Secretary files a copy of the certificate with the sentencing court. S.D. Codified Laws Ann. §§ 24-5-2; 24-15A-7. When execution of the sentence is suspended, the defendant's rights are restored "upon the termination of the time of the original sentence or the time extended by order of the court." S.D. Codified Laws Ann. § 23A-27-35. A federal court has held that the restoration procedure applies only to convictions under South Dakota law and does not apply to convictions under the law of another state. United States v. Capito, 992 F.2d 218 (8th Cir. 1993); Thompson v. United States, 989 F.2d 269 (8th Cir. 1993).

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<sup>1</sup> Section 24-5-2 does not apply to persons sentenced to prison for a crime committed after the effective date of S.D. Codified Laws Ann. § 24-15A-7, July 1, 1996. Persons convicted of crimes committed after July 1, 1996, are subject to S.D. Codified Laws Ann. § 24-15A-7 instead, but that law contains a similarly worded restoration provision.

South Dakota law also permits a court to suspend imposition of sentence for a person who has no prior felony conviction and place him on probation. S.D. Codified Laws Ann. § 23A-27-13. Upon successful completion of probation, the defendant is discharged by the court without an adjudication of guilt if he has not previously received a discharge without adjudication. S.D. Codified Laws Ann. § 23A-27-14. The proceeding "shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime," S.D. Codified Laws Ann. § 23A-27-14, except that persons who receive probation without adjudication for certain sexual offenses involving minors and who are licensed or who seek to be licensed as a certified teacher may have their applications refused or licenses revoked. S.D. Codified Laws Ann. § 23A-27-14.1. The proceeding may also be considered in determining whether a person qualifies for treatment under § 23A-27-14 or in imposing sentence for a subsequent offense. S.D. Codified Laws Ann. § 23A-27-16. After a discharge is granted, the court seals the court records concerning the offense. S.D. Codified Laws Ann. § 23A-27-17.

The pardon power (except in cases of impeachment) is vested in the Governor. S.D. Const. art. IV, § 3. A pardon removes any additional disabilities for a state felon, and seals the record of conviction. S.D. Codified Laws Ann. § 24-14-11. It is not clear whether federal felons are eligible for a state pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person "convicted in [South Dakota] or elsewhere of a crime of violence"<sup>2</sup> may not possess a firearm<sup>3</sup> for 15 years after final discharge. S.D. Codified Laws Ann. § 22-14-15. A gubernatorial pardon will not remove the disability imposed by § 22-14-15 unless the Governor so specifies in the order granting pardon. S.D. Codified Laws Ann. § 24-14-12. It therefore appears that a restoration of civil rights will not restore firearms privileges lost under § 22-14-15. In addition, persons who have been convicted of a felony or a crime of violence, or who have had a violation of the state firearms, weapons, or drug laws in the past two years, are also prohibited from obtaining a permit to carry a concealed pistol. S.D. Codified Laws Ann. § 23-7-7.1.<sup>4</sup>

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<sup>2</sup> "Crime of violence" is defined as any of the following crimes, or an attempt or conspiracy to commit any of them: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary, arson, kidnapping, felony sexual contact, and any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device. S.D. Codified Laws Ann. § 22-1-2(9).

<sup>3</sup> "Firearm" is defined in S.D. Codified Laws Ann. § 22-1-2(16) to include both long guns and handguns.

<sup>4</sup> It is a crime under South Dakota law for a person to carry a pistol concealed on or about his person, or concealed in a vehicle operated by him, without a permit, S.D. Codified Laws § 22-14-9, except in his own dwelling house or place of business or on land owned or rented by him or a member of his household. S.D. Codified Laws § 22-14-11.

## TENNESSEE

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of "an infamous crime"<sup>1</sup> or "convicted in federal or another state court of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed," may not register to vote or vote. Tenn. Const. art. I, § 5; Tenn. Code Ann. §§ 2-19-143, 40-20-112.<sup>2</sup> Certain felons<sup>3</sup> are precluded from acting as a juror, Tenn. Code Ann. § 22-1-102, and a sentence of "imprisonment in the penitentiary" disqualifies a person from serving as an executor, administrator, or guardian. Tenn. Code Ann. § 40-20-115.

A person convicted of "a felony or an infamous crime and sentenced to the penitentiary, either on the state or federal level" loses the right to seek or hold public office. Tenn. Code Ann. § 40-20-114. Also disqualified from holding office until their rights are restored are persons convicted of bribery, larceny, or any infamous offense. Tenn. Code Ann. § 8-18-101(1).

A felony conviction may be an impediment to receiving or maintaining various professional or occupational licenses. *E.g.* real estate broker (Tenn. Code Ann. § 62-13-312(b)(12)); attorney (§ 23-3-201(1)); private investigator (§ 62-26-217(a)(4)). Tennessee has a registration requirement for sex offenders. Tenn. Code Ann. §§ 40-39-101 to 40-39-109.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The power to pardon (except in cases of impeachment) is vested in the Governor. Tenn. Const. art. III, § 6; Tenn. Code Ann. § 40-27-101. A gubernatorial pardon relieves an individual of punishment for the crime, but not collateral disabilities expressly imposed by statute that serve a purpose apart from punishment, such as ineligibility for employment as a police officer. *Op. Att'y Gen. No. 84-063 (1984)*.

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<sup>1</sup> The law provides that "[u]pon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage." Tenn. Code Ann. § 40-20-112.

<sup>2</sup> This statute, by its terms, applies to persons convicted of crimes declared infamous either before or after the effective date of the law, May 18, 1981. Tenn. Code Ann. § 2-19-143(4). The statute, however, was held to violate the state constitution to the extent that it purports to disenfranchise anyone convicted of an offense that was not declared infamous until after the conviction. *Gaskin v. Collins*, 661 S.W.2d 865 (Tenn. 1983).

<sup>3</sup> The disqualification from jury service applies to persons "convicted of certain infamous offenses, specially designated in this code," persons "convicted of any offense involving the theft of property or services or any offense punishable as theft as graded by § 39-14-105," and persons "convicted of perjury or subornation of perjury." Tenn. Code Ann. § 22-1-102(a)(1), (2), (3).

A person convicted of an infamous crime prior to July 1, 1986, may petition a circuit court for restoration of rights upon the expiration of the maximum sentence imposed by law for the crime. Tenn. Code Ann. §§ 40-29-101(a), (c); 40-29-105(a). Restoration of civil rights requires "satisfactory proof that ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability and veracity, and that he is generally esteemed as such by his neighbors." Tenn. Code Ann. § 40-29-102. Immediately after pardon for a conviction prior to July 1, 1986, a pardoned person may petition the circuit court in the county of his residence or conviction for restoration of full rights of citizenship if not already restored by the pardon; however, this relief may not supersede any restriction on suffrage placed in the pardon. Tenn. Code Ann. §§ 40-29-101(b), 40-29-102, 40-29-105.<sup>4</sup> "Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court" after July 1, 1986, are restored to their civil rights upon pardon, service or expiration of the maximum sentence, or final release from incarceration. Tenn. Code Ann. § 40-29-105(b)(1). Persons convicted after July 1, 1986, of first-degree murder, aggravated rape, treason, or voter fraud are forever disqualified from voting. Tenn. Code Ann. § 40-29-105(b)(2).

Federal felons are ineligible for a gubernatorial pardon, but they may seek restoration of their civil rights.

Tennessee law also provides for "exoneration," a form of relief granted by the Governor when he finds that the person "did not commit the crime for which the person was convicted." Tenn. Code Ann. § 40-27-109(a). An exoneration expunges all records of arrest, indictment, and conviction, and automatically restores all rights of citizenship. Tenn. Code Ann. § 40-27-109(b). Because of the nature of the remedy, it would appear that federal felons are not eligible for this relief.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person "convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon," or a person "convicted of a felony drug offense" may not possess a handgun. Tenn. Code Ann. § 39-17-1307(b)(1).<sup>5</sup> No specific state procedure exists for restoring the rights lost as a result of this provision.<sup>6</sup>

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<sup>4</sup> A pardon for manslaughter operates to restore rights of citizenship. Tenn. Code Ann. § 40-27-108.

<sup>5</sup> Although the term "felony involving the use or attempted use of force [or] violence" is not defined under state law, "crime of violence" is defined to include murder, voluntary manslaughter, aggravated rape, rape, especially aggravated robbery, aggravated robbery, burglary, aggravated assault, or aggravated kidnapping. Tenn. Code Ann. § 39-17-1301(2).

<sup>6</sup> Because a gubernatorial pardon does not relieve collateral disabilities, it would appear that a pardon does not remove the firearms disability of § 39-17-1307. Op. Att'y Gen. No. 84-063 (1984). An exoneration, however, may have that effect. Responses to our survey indicate that some state judges believe they have the authority to restore firearms privileges by means of a certificate of restoration of citizenship.



## TEXAS

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Persons convicted of "any felony" are ineligible to vote, subject to exceptions imposed by the legislature. Texas Const. art. 6, § 1. This disqualification applies to federal and state felons. Shepherd v. Trevino, 575 F.2d 1110 (5th Cir. 1978), cert. denied, 439 U.S. 1129 (1979); Hayes v. Williams, 341 F. Supp. 182 (S.D. Tex. 1972).<sup>1</sup> A person convicted of a felony is disqualified from sitting on petit and grand juries. Tex. Gov't Code § 62.102(7); Tex. Crim. Proc. Code art. 19.08(4). A prospective petit juror may be challenged for cause if convicted of "theft or any felony." Tex. Crim. Proc. Code art. 35.16(a)(2).

Any person who has been convicted of paying or offering a bribe to procure his election or appointment to office is disqualified from holding any office of profit or trust. Texas Const. art. 16, § 5. Individuals convicted of certain other crimes may be required to forfeit public office or may be ineligible for public office. See, e.g., Tex. Local Gov't Code §§ 87.031 (removal of county officer), 252.063 (removal and ineligibility of municipal officers and employees); Tex. Gov't Code § 406.018 (removal of notary public upon conviction of willful neglect of duty or official misconduct).

Persons convicted of a felony or misdemeanor that "directly relates to the duties and responsibilities of the licensed occupation" are subject to license revocation, suspension, or denial. Texas Rev. Civ. Stat. art. 6252-13c, § 4(a). A person convicted of a felony or "crime involving moral turpitude" may not receive a Texas tuition assistance grant (unless he has received a pardon or two years have passed since discharge, as described below, or completion of probation). Tex. Educ. Code § 56.103(b)(2). A convicted federal or state felon may not serve as the executor or administrator of an estate, unless he is pardoned or has had his civil rights restored. Tex. Prob. Code § 78(b). An individual is not eligible for a license to operate a currency exchange business, or must surrender an existing license, if he has been convicted under federal or state law within the previous 10 years of a felony, a crime involving moral turpitude, an offense relating to currency exchange or transmission or monetary reporting requirements, a drug offense, or an offense involving money laundering, immigration, or a reporting requirement under the Bank Secrecy Act. Tex. Rev. Civ. Stat. art. 350, § 8(c)(1)(A), (C), (c)(2).

Texas has a registration requirement for persons convicted of or adjudicated delinquent based on the commission of a sex offense. Tex. Rev. Civ. Stat. art. 6252-13c.1.

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<sup>1</sup> The Texas Constitution further mandates that laws be made "to exclude from office, serving on juries, and the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes." Texas Const. art. 16, § 2.

## B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

A convicted felon's right to vote is restored two years after completion of probation ordered by any court or two years after discharge papers have been issued either by the Texas Department of Criminal Justice "or by a federal or other state correctional institution or parole board," Tex. Elec. Code § 11.002(4)(a), or by pardon. The power to grant a pardon (except in cases of treason or impeachment) is vested in the Governor, on the written signed recommendation and advice of a majority of the Board of Pardons and Paroles. Tex. Const. art. 4, § 11(b). It appears that gubernatorial pardons are not available to federal felons, *see Shepherd v. Trevino*, *supra*, but statutes provide for administrative procedures to restore federal felons' rights.

The Governor is empowered to restore to certain federal felons "any civil rights forfeited under the laws of this state as a result of conviction." Tex. Crim. Proc. Code art. 48.05(a). Federal felons who were convicted of a drug or firearm offense or an offense involving violence or the threat of violence, who have any other state or federal convictions, who have not completed serving their sentence, or who were convicted less than three years before the date of the application are ineligible for this relief. Tex. Crim. Proc. Code art. 48.05(b). An eligible felon must submit an application either to a sheriff or to the Board of Pardons and Paroles. Tex. Crim. Proc. Code art. 48.05(c). According to the Board of Pardons and Paroles, this provision supplements other state statutes relating to restoration of rights for federal felons (such as Tex. Elec. Code § 11.002).

Certain state offenders, after pleading or being found guilty, may have adjudication of guilt deferred and be placed on community supervision. Tex. Crim. Proc. Code art. 42.12, § 5(a). After successful completion of supervision, the charges are dismissed and the offender is discharged. A dismissal and discharge may generally not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense. Tex. Crim. Proc. Code art. 42.12, § 5(c). Similarly, a person who has been discharged from probation for certain state offenses may be permitted to withdraw a plea of guilty or have a verdict of guilt set aside, and have the charges dismissed. The offender is then generally free from all penalties and disabilities resulting from the offense. Tex. Crim. Proc. Code art. 42.12, § 20(a). Texas law also provides for expungement of certain convictions. *See* Tex. Crim. Proc. art. 55.01; Tex. Alcoholic Beverage Code §§ 101.73; 106.12.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of a felony may not possess a firearm<sup>3</sup> for five years following his release from confinement or from supervision under community

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<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Texas law concerning the loss and restoration of civil rights and firearms privileges, see *United States v. Maines*, 20 F.3d 1102 (10th Cir. 1994); *United States v. Thomas*, 991 F.2d 206 (5th Cir. 1993). **NB:** These cases involved an earlier version of Texas law concerning firearms privileges, different from that discussed in this section.

<sup>3</sup> "Firearm" is defined in Tex. Penal Code Ann. § 46.01(3) to include both long guns and handguns.

supervision, parole, or mandatory supervision, whichever is later. Tex. Penal Code Ann. § 46.04(a)(1). Following the five-year period, a convicted felon may not possess a firearm "at any location other than the premises at which the person lives." Tex. Penal Code Ann. § 46.04(a)(2). In Runo v. Texas, 556 S.W.2d 808 (Tex. Crim. App. 1977), it was held that unless the pardon was based upon a finding of innocence, a person convicted of a violent felony but subsequently pardoned for it could be prosecuted under the predecessor of § 46.04. See also 1980 Op. Att'y Gen. 24 (No.MW-270) (1980).

## UTAH

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Persons convicted of treason or election crimes are ineligible to vote or to hold office unless restored to civil rights. Utah Const. art. IV, § 6. See Utah Code Ann. § 20A-1-705. Otherwise, felons are permitted to vote in their county of residence before incarceration. Utah Code Ann. § 20A-2-101. See also *Dodge v. Evans*, 716 P.2d 270 (Utah 1985). Certain public office holders who are not liable to impeachment are subject to removal for high crimes and misdemeanors or malfeasance in office. Utah Code Ann. § 77-6-1. "A person who has been convicted of a felony that has not been expunged is not competent to serve as a juror." Utah Code Ann. § 78-46-7(2).

A professional or occupational license may be denied, suspended, revoked, or restricted because the applicant or license holder has engaged in "unprofessional conduct," Utah Code Ann. § 58-1-401(2)(a), which is defined to include conviction of a "crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession." Utah Code Ann. § 58-1-501(2)(c). A person whose license has been suspended, revoked, or restricted may apply for reinstatement upon compliance with the conditions imposed upon him by statute, rule, or the terms of the license suspension, revocation, or restriction, but no license may be reinstated before 90 days unless other conditions are imposed. Utah Code Ann. §§ 58-1-401(3); 58-1-403.

Utah has a registration requirement for sex offenders, Utah Code Ann. § 77-27-21.5, which expressly applies to federal convictions. Utah Code Ann. § 77-27-21.5(1)(e).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The only methods of restoring civil rights in Utah are pardon and expungement. The power to grant a pardon (except in cases of treason or impeachment) is vested in a majority of the Board of Pardons. Utah Const. art. VII, § 12; Utah Code Ann. § 77-27-5(1)(a).

Persons convicted of certain Utah offenses may seek expungement of their record of conviction by petitioning the court of conviction after the passage of seven years for a felony, or five years for a Class A misdemeanor. Utah Code Ann. §§ 77-18-11(1), (11); 77-18-12(2)(a), (c). A certificate of eligibility for expungement must be obtained before a court may order expungement. Utah Code Ann. § 77-18-11(3). Among the persons ineligible for expungement are: anyone convicted of a capital felony, a first-degree felony, a second-degree forcible felony, or an offense involving a sexual act against a minor; anyone convicted more than once of a crime that would be classified as a felony under Utah law; anyone whose record has previously been expunged for an offense that

would be a felony under Utah law, or for two or more offenses that would be misdemeanors under Utah law; and anyone with a pending criminal charge.<sup>1</sup> Utah Code Ann. § 77-18-12(1)(a), (b), (c), (d), (g). Any person who is prohibited from applying for expungement because he has been convicted more than once of a felony, or because he has previously had his criminal record expunged, is still eligible for expungement 20 years after completion of his sentence for his most recent conviction. Utah Code Ann. § 77-18-12(3).

If the applicant is found eligible for expungement, 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." Utah Code Ann. § 77-18-13(2). Once the expungement is granted, the recipient "may respond to any inquiry as though the conviction did not occur," "[e]xcept as otherwise provided by law." Utah Code Ann. § 77-18-13(3). However, expunged records may nonetheless be used for various purposes, including in sentencing and in determining whether to issue a permit to carry a concealed firearm. Utah Code Ann. § 77-18-15(4), (7). See Utah Code Ann. § 77-18-14(7).

Neither a state pardon nor expungement is available to a federal felon or a person convicted under the laws of another state. Accordingly, civil rights may be restored to such persons only by a pardon from the jurisdiction of conviction.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

A person convicted of "any crime of violence"<sup>3</sup> under federal law or the law of any state may not own, possess, or have under his custody or control any dangerous weapon.<sup>4</sup>

Utah Code Ann. § 76-10-503(1)(a).<sup>5</sup> A person on parole or probation for a felony may not possess or have under his custody or control any dangerous weapon. Utah Code

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<sup>1</sup> Also ineligible are persons with a total of three or more convictions if one of them is for a felony or a class A or B misdemeanor, and persons with a subsequent conviction within seven years if seeking expungement of a felony, six years if seeking expungement of a traffic offense involving the use of alcohol, five years if seeking expungement of a misdemeanor, and four years if seeking expungement of any other offense. Utah Code Ann. § 77-18-12(e), (f).

<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Utah law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Flower, 29 F.3d 530 (10th Cir. 1994).

<sup>3</sup> "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of these offenses." Utah Code Ann. § 76-10-501(2)(b).

<sup>4</sup> "Dangerous weapon" is defined to include any item capable of causing death or serious bodily injury. Utah Code Ann. § 76-10-501(2)(d).

Ann. § 76-10-503(2)(a). A person who has been convicted of a felony under federal law or the law of any state may not purchase, possess, or transfer any handgun. Utah Code Ann. § 76-10-503(3)(a)(i). Persons convicted of a felony, a crime of violence, an offense involving the use of alcohol, an offense involving the unlawful use of drugs, an offense involving moral turpitude, or an offense involving domestic violence may not obtain a permit to carry a concealed weapon. Utah Code Ann. § 53-5-704(2). Although it is unsettled whether expungement removes all state weapons disabilities, it appears that most, if not all, "crimes of violence" would be excluded from the remedy of expungement in any event, and, as noted, records of an expunged conviction may be used in determining whether to issue a permit to carry a concealed firearm. Utah Code Ann. §§ 77-18-15(4); 53-5-704(3)(b)(i). The practice of the Utah Board of Pardons is to state specifically whether a pardon restores firearms privileges.

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<sup>5</sup> This provision does not apply to "[a]ny resident or nonresident hunters with a valid hunting license or other persons who are lawfully engaged in hunting." Utah Code Ann. § 76-10-512(6). State law does not appear to prohibit a felon from obtaining a hunting license.

## VERMONT

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

Felons are permitted to vote by absentee ballot even during the period of incarceration. Vt. Stat. Ann. tit. 28, § 807. "A person who has served a term of imprisonment in this state after conviction of a felony" is disqualified from serving as a grand or petit juror. Vt. Stat. Ann. tit. 4, § 962(a)(5); tit. 12, § 64. A felony conviction may be grounds for revoking, suspending, or refusing to issue a professional or business license. *E.g.*: insurance agent or broker (Vt. Stat. Ann. tit. 8, § 4804(a)(7)); nurse (tit. 26, § 1582(a)(2)); license to sell lottery tickets (tit. 31, § 661(1)).<sup>1</sup>

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The pardon power (except in cases of treason or impeachment) is vested in the Governor. Vt. Const. chap. II, § 20. The question whether federal felons are eligible to apply for a gubernatorial pardon has not been settled in Vermont.

Upon the filing of a written agreement between the state's attorney and the defendant, the court may defer sentencing of a person adjudged guilty of a state offense and place him on probation. Vt. Stat. Ann. tit. 13, § 7041(a). If the person successfully completes the terms of probation and the agreement, the court strikes the adjudication of guilt, discharges the defendant, and expunges the record. Vt. Stat. Ann. tit. 13, 7041(b).

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>2</sup>

Vermont law does not prohibit felons from possessing firearms.<sup>3</sup>

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<sup>1</sup> There is a state registry for persons who engage in child sex abuse, although conviction is not a prerequisite for its application. Vt. Stat. Ann. tit. 33, § 4916. The statute is discussed in *In re Selivonik*, 670 A.2d 831 (Vt. 1995).

<sup>2</sup> For a consideration of the interaction between the federal firearms disability and Vermont law concerning the loss and restoration of civil rights and firearms privileges, see *McGrath v. United States*, 60 F.3d 1005 (2d Cir. 1995).

<sup>3</sup> A person may, however, be prohibited by a court from possessing firearms as a condition of probation. See *State v. Kasper*, 152 Vt. 435, 566 A.2d 982 (1989).

## VIRGINIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony loses the rights to vote and to serve on a jury. Va. Const. art. II, §§ 1, 2; Va. Code Ann. § 8.01-338. Because the right to hold office is contingent upon being qualified to vote, a person convicted of a felony also loses the right to hold public office. Va. Const. art. II, § 5. A public office holder forfeits his office upon conviction of a felony and the office is not restored by a grant of pardon. Va. Code Ann. § 24.2-231.

A professional or occupational license may not be denied solely because of a prior criminal conviction unless it directly relates to the occupation. A licensing board may, however, deny a license if it finds, in light of all information available, that the applicant is unfit or unsuited to engage in that occupation. Va. Code Ann. § 54.1-204. E.g.: optometry (§ 54.1-3215(2)); nursing (§ 54.1-3007(4)); dentistry (§ 54.1-2706(2)); accounting (§ 54.1-2006(2)); funeral director (§ 54.1-2806(1)); pharmacy (§ 54.1-3316(9)). State driver's licenses are revoked or suspended upon conviction of certain state or federal offenses relating to motor vehicles, or state or federal drug offenses. E.g., Va. Code Ann. §§ 46.2-389 to 46.2-390.1.

Virginia has a registration requirement for sex offenders. Va. Code Ann. § 19.2-298.1.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The power to grant pardons (except in cases of impeachment) and "to remove political disabilities consequent upon conviction" is vested in the Governor. Va. Const. art. V, § 12. According to the office of the Secretary of the Commonwealth of Virginia, a person may apply for "removal of political disabilities" five years after completion of sentence, if all court costs and restitution have been satisfied. After a felon's civil rights have been restored through this procedure, he may apply for a "simple pardon," which constitutes official forgiveness, but does not erase the conviction. An "absolute pardon" is granted only in cases of innocence. A person convicted under federal law or the law of another state is eligible to apply for removal of political disabilities, but ineligible for a gubernatorial pardon.



## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

A person convicted of a felony under the laws of Virginia or any other state or under federal law may not possess or transport any firearm,<sup>2</sup> or carry a concealed "weapon" (defined to include both handguns and long guns, Va. Code Ann. § 18.2-308(A)). Va. Code Ann. § 18.2-308.2(A).<sup>3</sup> To regain state firearms privileges, a convicted felon may apply to the circuit court of his residence for a permit to possess or carry a firearm. Va. Code Ann. § 18.2-308.2(C). The court "in its discretion and for good cause shown" may grant the petition. This restoration procedure is available to federal and out-of-state felons. While the Governor has the authority to restore state firearms privileges expressly by a pardon or through restoration of political rights, he does not customarily do so.

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<sup>1</sup> For a consideration of the interaction of federal firearms laws and Virginia law regarding the loss and restoration of civil rights and firearms privileges, see United States v. Etheridge, 932 F.2d 318 (4th Cir.), cert. denied, 502 U.S. 917 (1991). The Office of the United States Attorney for the Eastern District of Virginia advises that obtaining a state firearms permit, as described in this section, does not constitute a restoration of civil rights sufficient to remove the federal firearms disability for state felons.

<sup>2</sup> "Firearm" is defined to include both long guns and handguns. Va. Code Ann. § 18.2-308.2:2(G).

<sup>3</sup> Also prohibited from possessing a firearm is any person less than 29 years old who was found guilty as a juvenile of an offense that was committed when the person was aged 14 or older and that would be a felony if committed by an adult. Va. Code Ann. § 18.2-302(A).

## WASHINGTON

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of an "infamous crime"<sup>4</sup> is ineligible to vote, Wash. Const. art. VI, §§ 1, 3, and his voter's registration is canceled upon notice of conviction. Wash. Rev. Code § 29.01.080. Because the right to seek and hold elective public office is contingent upon being a qualified elector, a person convicted of an infamous crime also loses the right to hold such an office. Wash. Const. art. III, § 25, art. II, § 7; Wash. Rev. Code § 42.04.020. A person convicted of a felony cannot serve on a jury. Wash. Rev. Code § 2.36.070(5). Convicted felons also are prohibited from serving as a personal representative in a probate matter, Wash. Rev. Code § 11.36.010, or from serving as a trustee. Wash. Rev. Code § 11.36.021(2)(a).

Except for certain sexual offenses involving children, neither public employment nor a professional or occupational license may be denied solely because of a felony conviction unless the offense is directly related to the position sought and less than 10 years has elapsed since conviction, although the fact of a prior conviction of a crime may be considered. Wash. Rev. Code § 9.96A.020(1), (2). This limitation on considering a felony conviction in hiring does not apply to law enforcement agencies. Wash. Rev. Code § 9.96A.030.

Persons who have been convicted of certain sexual offenses are disqualified from receiving an educational certificate and from employment by school districts, educational service districts, and contractors hiring employees who will have regularly scheduled unsupervised access to children. Wash. Rev. Code § 9.96A.020(3), (4). Persons convicted of certain offenses may be disqualified from certain occupations: E.g.: driver training school instructor (Wash. Rev. Code § 48.102.015(1)(d)). Furthermore, employers and prospective employers may obtain information about an applicant's convictions under certain circumstances, such as when a bond is required for employment. Wash. Rev. Code § 43.43.815(1).

Washington has a registration requirement for sex offenders, Wash. Rev. Code §§ 9A.44.130 to 9A.44.140, which expressly applies to federal convictions. Wash. Rev. Code §§ 9A.44.130(3)(a)(iii), 9.94A.030(33)(c).

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

A state offender may regain his rights to vote, to hold public office, and to sit on a jury by a pardon or by having his civil rights restored. The pardon power is vested in the Governor, Wash. Const. art. III, § 9; Wash. Rev. Code § 10.01.120; who is aided by the recommendations of the Clemency and Pardons Board. Wash. Rev. Code §§ 9.94A.250,

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<sup>1</sup> See Wash. Rev. Code § 29.01.080 (infamous crime is a "crime punishable by death in the state penitentiary or imprisonment in a state correctional facility").

9.94A.260. A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon; but the Clemency and Pardons Board has authority to restore the rights to vote and to seek political office to anyone convicted under federal law or the law of another state. Wash. Rev. Code § 9.94A.260. Such certificates of restoration must be filed with the Secretary of State to be effective. Wash. Rev. Code § 9.94A.260.

A federal felon may regain his right to serve on a jury only by a presidential pardon; a felon convicted under the laws of another state must receive a pardon from the jurisdiction of conviction to regain this right.

For Washington offenses committed after July 1, 1984, civil rights are restored by the issuance of a final discharge by the sentencing court. Wash. Rev. Code § 9.94A.220(3). After discharge, certain offenders are eligible to have their record of conviction vacated, which permits the offender to state in an employment application that he has not been convicted of that crime. Wash. Rev. Code § 9.94A.230(1), (3).<sup>5</sup>

For state crimes committed prior to July 1, 1984, the following rules apply: (1) a person released on parole may obtain a certificate of discharge from the Indeterminate Sentence Review Board, which has the effect of restoring his civil rights (Wash. Rev. Code § 9.96.050); (2) a person given probation or a suspended sentence may have his civil rights restored by the sentencing court (Wash. Rev. Code § 9.92.066); (3) a person who has successfully completed probation may also, before the expiration of the maximum possible period of punishment for the offense, request the sentencing court to withdraw a plea or verdict of guilty and dismiss the charges, which has the effect of releasing the person from all penalties and disabilities resulting from the conviction (Wash. Rev. Code § 9.95.240).

In addition, upon application to the Clemency and Pardons Board, a state felon, whether convicted before or after July 1, 1984, may have his civil rights restored by the Governor by the express restoration of the felon's civil rights without a pardon. Wash. Rev. Code §§ 9.96.010, 9.96.020.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>6</sup>

A person may not own, possess, or control any firearm<sup>7</sup> if he has been convicted in Washington or elsewhere of a "serious offense,"<sup>8</sup> any felony, or certain offenses

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<sup>2</sup> The record of conviction may not be vacated under any of the following circumstances: (1) the offender has charges pending against him; (2) the offense is a violent offense or a crime against persons (as defined under Washington law); (3) the offender was convicted again after discharge; (4) the offense is a Class B felony and it is less than 10 years since discharge; or (5) the offense is a Class C felony and it is less than five years since discharge. Wash. Rev. Code § 9.94A.230(2).

<sup>3</sup> For a consideration of the interaction between the federal firearms disability and Washington law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Herron, 45 F.3d 340 (9th Cir. 1995). NB: This case involves an earlier version of Washington law concerning firearms privileges different from that set forth in this section.

<sup>4</sup> "Firearm" is defined to include both long guns and handguns. Wash. Rev. Code § 9.41.010(1).

involving domestic violence.<sup>9</sup> For certain offenses,<sup>10</sup> a person who has received a probationary sentence (under Wash. Rev. Code § 9.95.200) and a dismissal of the charges (under Wash. Rev. Code § 9.95.240) is not prohibited from possessing a firearm. Wash. Rev. Code § 9.41.040(4).

A convicted felon otherwise subject to the disability imposed by § 9.41.040 is not prohibited from possessing a firearm "if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or . . . based on a finding of innocence." Wash. Rev. Code § 9.41.040(3). Most methods of restoring civil rights under Washington law do not remove state firearms disabilities because they do not require "a finding of rehabilitation" or "of innocence" within the meaning of § 9.41.040(3). *E.g.* Wash. Rev. Code §§ 9.94A.220 ("certificate of discharge is not based on a finding of rehabilitation"); 9.96.050 (certificate of discharge issued to a parolee does not restore firearms privileges). *See also* 1988 Op. Att'y Gen. No. 10 (1988); *State v. Thomas*, 35 Wash. App. 161, 665 P.2d 914 (1983) (holding that discharge and restoration procedure under Wash. Rev. Code § 9.92.066 does not remove ban of predecessor to Wash. Rev. Code § 9.41.040).

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<sup>5</sup> "Serious offense" includes any of the following offenses or an attempt to commit any of them: any crime of violence; second-degree child molestation; controlled substance homicide; incest with a child under age 14; indecent liberties; leading organized crime; first-degree promoting prostitution; third-degree rape; sexual exploitation; vehicular assault; vehicular homicide when proximately caused by the driving of a vehicle by any person recklessly or while under the influence of intoxicating liquor or any drug; any other Class B felony with a finding of sexual motivation; any other felony with a deadly weapon verdict; or any federal or out-of-state conviction for an offense that would be a "serious offense" under Washington law. Wash. Rev. Code § 9.41.010(12). "Crime of violence" is defined to include: offenses classified as Class A felonies under Washington law; an attempt, conspiracy, or solicitation to commit a Class A felony; first- and second-degree manslaughter; indecent liberties committed by forcible compulsion; second-degree rape, second-degree kidnapping; second-degree arson; second-degree assault; second-degree assault of a child; second-degree burglary; residential burglary; second-degree robbery; and federal or out-of-state offenses comparable to a "crime of violence" under Washington law. Wash. Rev. Code § 9.41.010(11).

<sup>6</sup> The penalties differ depending on the nature of the offense that forms the basis for the firearms disability.

<sup>7</sup> That is, offenses other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or any drug offense under Wash. Rev. Code §§ 69.50.401(a) or 69.50.410 (dealing with the sale, manufacture, delivery, or possession with intent to manufacture or deliver of a controlled substance). Wash. Rev. Code § 9.41.040(4).

A person prohibited from possessing a firearm under § 9.41.040 who has no previous convictions for a sex offense that results in a firearm disability or any felony designated "under any law" as a Class A felony or having a maximum penalty of at least 20 years may petition a court of record to have his right to possess a firearm restored under Wash. Rev. Code § 9.41.047. Wash. Rev. Code § 9.41.040(4)(a). Alternatively, after five consecutive years in the community without being convicted or currently charged with another offense, such a person may petition a court of record to restore his firearms privileges, provided he has "no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score" under Wash. Rev. Code § 9.94A.360. Wash. Rev. Code § 9.41.040(4)(b).<sup>11</sup>

Felons subject to the prohibitions of § 9.41.040 are also ineligible for a concealed pistol permit. Wash. Rev. Code § 9.41.070(1)(a). No one convicted of a "serious offense" may have his or her ability to obtain a concealed pistol permit restored unless he has obtained relief from federal firearms disabilities under 18 U.S.C. § 925(c)<sup>12</sup> or unless his state firearms privileges have been restored under § 9.41.040(3) or (4), described above. Wash. Rev. Code § 9.41.070(1)(h)(iii).

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<sup>8</sup> Wash. Rev. Code § 9.41.047 sets forth no procedures, criteria, or eligibility requirements for restoring firearms privileges to a person disabled from possessing guns based on a conviction, except for persons disabled from possessing firearms based on having three convictions in five years for alcohol- or drug-related offenses. Accordingly, unless restoration under § 9.41.047 is limited to persons convicted three times in five years of alcohol- or drug-related offenses, it is not clear what, if any, differences there are between the restoration provision of § 9.41.040(4)(a) and of § 9.41.040(4)(b).

<sup>9</sup> Congress has not appropriated funding for the restoration process under § 925(c) since fiscal year 1992, making this means of restoring licensing privileges under Washington law currently unavailable.

## WEST VIRGINIA

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

No person "under conviction of treason, felony, or bribery in an election . . . shall be permitted to vote while such disability continues." W. Va. Const. art. 4, § 1; W. Va. Code § 3-1-3. No person "convicted of treason, felony, or bribery in an election, before any court in or out of this state," shall hold elected or appointed office "while such conviction remains unreversed." W. Va. Code § 6-5-5. Anyone convicted of bribery of an executive, legislative, or judicial officer is forever disqualified from holding any office or position of honor, trust, or profit. W. Va. Const. art. 6, § 45; W. Va. Code §§ 61-5-4, 61-5-5. No person "convicted of bribery, perjury, or other infamous crimes" is eligible to serve in the legislature. W. Va. Const. art. 6, § 14. This provision applies to offenses under West Virginia law, and does not include federal offenses. Isaacs v. Board of Ballot Comm'rs, 12 S.E.2d 510 (W. Va. 1940); 54 Op. Att'y Gen. W. Va. 128 (1972). A person is disqualified from serving on a jury if he "has lost the right to vote because of criminal conviction," or if he has been convicted of "perjury, false swearing or other infamous offense." W. Va. Code § 52-1-8(b)(5), (6). A felony is an "infamous offense." State v. Bongalis, 378 S.E.2d 449 (W. Va. 1989) (interpreting predecessor of § 52-1-8).

A felony conviction may be grounds for suspension or annulment of a professional license. E.g.: attorney (W. Va. Code § 30-2-6); registered professional nurse (§ 30-7-11(b)); veterinarian (§ 30-10-11(e)). A felony conviction for illegal conduct relating to public office disqualifies a public employee from receiving a pension. W. Va. Code § 5-10A-1, et seq. West Virginia has a registration requirement for sex offenders. W. Va. Code §§ 61-8F-1 to 61-8F-9.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The right to vote is restored automatically upon service of the sentence, including any period of parole, as is the right to hold public office, unless the conviction was for bribery of a state officer. Webb v. County Court of Raleigh County, 113 W. Va. 474, 168 S.E. 760 (1933); 51 Op. Att'y Gen. W. Va. 182 (1965). The right to serve on a jury is not restored upon completion of sentence, according to federal courts interpreting state law, which disagreed with the opposite conclusion reached in 51 Op. Att'y Gen. W. Va. 182 (1965). United States v. Morrell, 61 F.3d 279 (4th Cir. 1995); Berger v. United States, 867 F. Supp. 424 (S.D. W. Va. 1994).

The Governor has the power to grant pardons after conviction (except when prosecution has been carried on by the House of Delegates). W. Va. Const. art. 7, § 11. Federal felons are ineligible for a gubernatorial pardon.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES<sup>1</sup>

No person who "[h]as been convicted of a felony in this state or in any other jurisdiction . . . shall have in his or her possession any firearm or other deadly weapon." W. Va. Code § 61-7-7.<sup>2</sup> A person disqualified under this section, however, may petition the circuit court of the county of his residence for relief from the disability, and such relief may be granted if (1) clear and convincing evidence demonstrates that the person is "competent and capable of exercising the responsibility concomitant with the possession of a firearm or other deadly weapon," and (2) such possession would not violate federal law. W. Va. Code § 61-7-7. A person "convicted of a felony or of an act of violence involving the misuse of such deadly weapon" may not be issued a license to carry a concealed deadly weapon, W. Va. Code §§ 61-7-4(a)(5), other than on his own premises. W. Va. Code § 61-7-6(1). A Class A-1 small arms hunting license "shall never be issued to a person who has been convicted of a misdemeanor in any way associated with the use of firearms or dangerous weapons or who has been convicted of any felony." W. Va. Code § 20-2-40b.

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<sup>1</sup> For a consideration of the interaction between the federal firearms disability and West Virginia law concerning the loss and restoration of civil rights and firearms privileges, see United States v. Morrell, 61 F.3d 279 (4th Cir. 1995); United States v. Herron, 38 F.3d 115 (4th Cir. 1994); United States v. Haynes, 961 F.2d 50 (4th Cir. 1992); Berger v. United States, 867 F. Supp. 424 (S.D. W. Va. 1994).

<sup>2</sup> As defined in W. Va. Code § 61-7-2(11), "firearm" includes both long guns and handguns.

## WISCONSIN

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of "treason, felony or bribery" loses the right to vote. Wis. Stat. § 6.03(1)(b). Since eligibility for jury service depends on being a qualified elector, such persons also lose the right to be a juror. Wis. Stat. § 756.01(1). A person convicted of an "infamous" crime in any "court within the United States" is ineligible for any office of trust, profit, or honor. Wis. Const. art. XIII, § 3.

No state or private employer or licensing agency may deny or terminate employment or a license because of a person's conviction record unless the circumstances of the offense substantially relate to the particular position or the conviction would preclude obtaining a required bond. Wis. Stat. §§ 111.321; 111.322; 111.32(6); 111.335(c). A person engaged in the business of installing burglar alarms, however, may not employ a convicted felon as an installer of burglar alarms unless the felon has received a pardon. Wis. Stat. §§ 111.335(1)(cm); 134.59(1). Further, a person's license or permit relating to alcoholic beverages may be revoked, suspended, or not renewed based solely on his conviction for certain drug offenses under Wis. Stat. § 161.41 or under federal law or the law of another state that is substantially similar. Wis. Stat. §§ 111.335(1)(cs); 125.04(5)(1), (5)(b). Effective July 1, 1997, convicted felons who have not been pardoned are ineligible to be licensed as private detectives or private security persons, Wis. Stat. § 440.26(2)(c)(1), and the license of a private detective or private security person who has been convicted of a felony in Wisconsin or elsewhere but has not been pardoned is to be revoked. Wis. Stat. § 440.26(6)(b). Examples of other fields in which a conviction may be relevant in the licensing decision include medical practices (Wis. Stat. § 448.05(1)(a)), and optometry (§ 449.07(1)(d)).

Wisconsin has a registration requirement for persons convicted of or adjudicated delinquent based on the commission of a sex offense. Wis. Stat. § 175.45 (renumbered 301.45, effective June 1, 1997). Persons convicted of a sex offense may be required to submit a biological specimen for DNA testing. Wis. Stat. § 973.047(1)(b). A person convicted under federal or state law of a serious child sex offense may not be employed or volunteer in a position that requires work or interaction primarily or directly with children under 16. Wis. Stat. § 948.13(1).<sup>1</sup>

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote and to serve on a jury are automatically restored upon completion of sentence. Wis. Stat. § 304.078. In order to regain the right to hold public office, a felon must be granted a pardon. The pardon power (except in the cases of treason or impeachment) is vested in the Governor. Wis. Const. art. V, § 6. State

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<sup>1</sup> Indeed, it is a felony for the convicted person to do so. Wis. Stat. § 948.13(2).



authorities advise that the Governor can pardon a person convicted under federal law or the law of another state.

## II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of a felony in Wisconsin, or of a crime elsewhere that would be a felony if committed in Wisconsin, loses the right to possess a firearm or pepperspray.<sup>2</sup> Wis. Stat. §§ 941.29(1)(a), (b); 941.29(2). This prohibition does not apply to anyone who has received a pardon and has been expressly authorized to possess a firearm under 18 U.S.C. App. § 1203 (now repealed),<sup>3</sup> or has obtained relief from federal firearms disabilities under 18 U.S.C. § 925(c).<sup>4</sup> Wis. Stat. § 941.29(5)(a), (b).

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<sup>2</sup> Although the term "firearm" is not specifically defined in this section, from the context and the wording of related statutes, it would appear to include both long guns and handguns. See also Wis. Stat. § 167.31(1)(c) (so defining "firearm" for purposes of certain prohibitions on transporting guns in vehicles).

<sup>3</sup> This section exempted from the scope of 18 U.S.C. App. § 1202, which criminalized possession, receipt, or transportation of a firearm by a convicted felon, any person who had been pardoned or expressly authorized by the President or chief executive of a state to receive, possess, or transport firearms. These statutes were repealed in 1986, part of their substance being incorporated in 18 U.S.C. §§ 921 - 925. The Attorney General of Wisconsin concluded that under 18 U.S.C. § 921(a)(20), a state offender who receives a state pardon is not subject to the federal felon-in-possession statute, 18 U.S.C. § 922, unless the pardon expressly restricts firearms privileges. 78 Op. Att'y Gen. 22 (No. 6-89) (1989).

<sup>4</sup> Since Congress has not appropriated funding for the restoration process under § 925(c) since fiscal year 1992, this method of restoring state firearms privileges under Wisconsin law is not currently available.

## WYOMING

### I. RIGHTS TO VOTE, HOLD STATE OFFICE, AND SERVE ON A STATE JURY; SELECTED OCCUPATIONAL DISABILITIES

#### A. LOSS OF RIGHTS

A person convicted of a felony forfeits the rights to vote, to serve on a jury, and to hold "any office of honor, trust or profit within this state." Wyo. Stat. §§ 6-10-106(a), 1-11-102.

An occupational or professional license may be denied, revoked, or suspended because of certain convictions. E.g.: barber school operator (Wyo. Stat. § 33-7-311(a)(iii)); insurance agent (§ 26-9-136(a)(vi)); outfitter (§§ 23-2-411(c)(ii), 412(e)(ii), 416(a)(iii)); dental hygienist (§ 33-15-121(a)(i)); radiologic technologist (§ 33-37-111(a)(i)); title agent (§ 26-23-321(b)); cosmetologist (§ 33-12-135(b)). Wyoming has a registration requirement for sex offenders. Wyo. Stat. §§ 7-19-301 to 7-9-306.

#### B. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES

The rights to vote, to serve on a jury, and to hold public office may be regained either by a pardon or by a restoration of civil rights. Wyo. Stat. § 6-10-106(a). The Governor has the power both to pardon (except in cases of treason or impeachment), Wyo. Const. art. 4, § 5, and to restore rights upon satisfactory completion of probation or expiration of the term of the sentence. Wyo. Stat. § 7-13-105(a). A person convicted under federal law or the law of another state is ineligible for a state pardon, but is eligible for a certificate of restoration of rights. Wyo. Stat. § 7-13-105(a).

### II. LOSS AND RESTORATION OF STATE FIREARMS PRIVILEGES

A person convicted of a "violent felony,"<sup>1</sup> or an attempt to commit a violent felony or a felony under Wyo. Stat. § 6-5-204(b) (which prohibits causing or attempting to cause bodily injury to a peace officer) who has not been pardoned, may not use or knowingly possess a firearm (including both handguns and long guns). Wyo. Stat. § 6-8-102. Persons disabled from possessing firearms under § 6-8-102 and persons disabled from possessing firearms under federal law, 18 U.S.C. § 922(g), are also prohibited from obtaining a permit to carry a concealed firearm (defined for these purposes as a handgun, Wyo. Stat. § 6-8-104(y)(ii)). Wyo. Stat. § 6-8-104(b)(iv). A permit may also be denied if the applicant has been found guilty or pleaded nolo contendere to one or more crimes of violence constituting a misdemeanor offense within three years before submitting the application. Wyo. Stat. § 6-8-104(c). A permit must be revoked if the permit holder becomes ineligible by reason of conviction or if the holder is convicted of or pleads nolo contendere to any crime of violence, or any offense involving a controlled substance or alcohol abuse while carrying a concealed weapon. Wyo. Stat. § 6-8-104(q).

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<sup>1</sup> Violent felonies include murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree, and aggravated burglary. Wyo. Stat. § 6-1-104(xii).