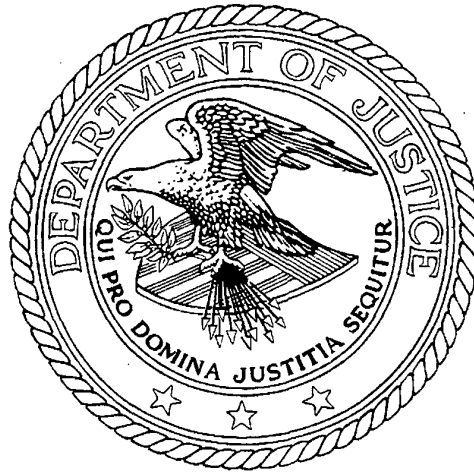


U.S. Department of Justice  
Office of the Pardon Attorney

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# Civil Disabilities of Convicted Felons: A State-by-State Survey



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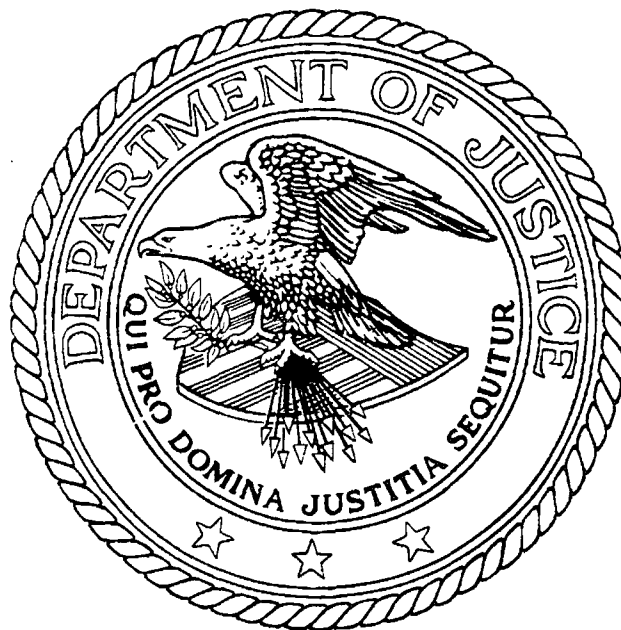


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# Civil Disabilities of Convicted Felons: A State-by-State Survey

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*October 1992*



*Prepared by*  
**Office of the Pardon Attorney**

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## FOREWORD

The charts and summaries contained in this manual survey the principal state and federal laws that impose disabilities as a result of a criminal conviction, and the means provided for removal of these disabilities in each jurisdiction. These laws affect, inter alia, the exercise of civil and political rights, eligibility for professional licenses and other employment, and the legal entitlement to possess firearms.

This survey was originally undertaken to assist the Office of the Pardon Attorney in evaluating pardon applications from federal offenders seeking restoration of civil rights and/or relief from other legal disabilities imposed as a result of a criminal conviction. As we researched the law and talked with state and federal officials, it quickly became apparent that the information we were collecting had a broader usefulness.

It is obviously important for government officials at all levels to be able to determine the legal rights and responsibilities of criminal offenders, both to ensure compliance with the law and to provide accurate and consistent advice to individuals seeking their guidance. Our research revealed that the laws governing the same rights and privileges vary widely from state to state. And, even within a single jurisdiction there is often no general agreement as to how the law should be interpreted and applied. The area of firearms disabilities presents special problems, and the uncertain state of the law has had adverse consequences for the government's ability to effectively enforce the law, as well as for the individuals whose rights are at issue.

It is our hope that the information we have gathered and summarized here will be of assistance to state and federal authorities with operational and policy responsibilities in the fields of law enforcement, corrections and clemency. We expect to update the survey on a regular basis, and we encourage all interested parties to notify us when new laws are enacted or existing laws are given new interpretation.

Margaret C. Love  
Pardon Attorney

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## DISCLAIMER

This survey was compiled in consultation with state and federal law enforcement and correctional officials, and purports to reflect the state of the law as of October 1992. In the course of our work we found that in a number of jurisdictions there was no general agreement as to how the law should be interpreted and applied, and that the law in any event was continually being amended and/or reinterpreted. Accordingly, the reader is cautioned that the information contained in the survey may not be current, and that our interpretation of it may not always command a consensus. Finally, the views expressed in the survey do not necessarily represent the official position of the Department of Justice. Comments are welcome and should be sent to the Office of the Pardon Attorney, U.S. Department of Justice, 500 First Street, N.W., Washington, D.C. 20530.

**Civil Disabilities of Convicted Felons: A State-by-State Survey** has been published in a loose-leaf format for ease of duplication. The manual's research is current through October 1992. Updated revisions to the manual will be prepared and distributed as the need arises.

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## INTRODUCTION

Under the laws of many states, and under federal law, conviction of a felony has consequences that linger long after a sentence has been served. Convicted felons may lose essential rights of citizenship, such as the right to vote and hold public office, and may be restricted in their ability to practice a profession and earn a livelihood. In almost all states, and under the federal gun control laws, conviction of a felony results in loss or restriction of the right to possess or carry firearms. These and other "collateral" consequences of a felony conviction are burdens that follow from commission of a crime, in addition to any penalty imposed by the courts. Most jurisdictions provide for eventual relief, either automatically with the passage of time, or through some affirmative executive or judicial act based on evidence of rehabilitation.

The charts and summaries of state law that follow survey the principal laws of the 50 states (as well as District of Columbia and federal statutes) that impose disabilities as a result of a felony conviction, and that provide the means for their removal.<sup>1</sup> They are not intended to be definitive, since new legislative enactments and judicial interpretations make the law in this area something of a moving target. Accordingly, the text of relevant federal and state statutes, current case law, and the policies 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 is often no general agreement as to how the law in a particular jurisdiction should be interpreted and applied. In a number of states it is by no means clear which rights are lost as a consequence of a criminal conviction, or what it takes to have those rights restored. For this reason, our interpretations may not always command a consensus. More importantly, the uncertain state of the law in many jurisdictions raises questions about a convicted felon's ability to determine his legal rights and responsibilities, which can obviously have serious consequences for the individuals involved. This is particularly true in connection with a felon's legal entitlement to possess firearms.

While our survey emphasizes the consequences of a federal felony conviction, 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 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, it is not always clear whether and how rights lost to a federal felon under state law may be regained. This is particularly true if state law disabilities may be removed only by

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<sup>1</sup> We have not attempted to document all the adverse legal consequences of a criminal conviction, or to determine the extent to which the common law concept of civil death still applies in any particular state. For example, in some states a felony conviction is grounds for divorce or a bar to adoption of a child. In others a convict may not serve as executor of an estate. Nor have we attempted to include consequences imposed under corporate charters, or by other private organizations.

a pardon.<sup>2</sup> The uncertain availability of state remedies to federal felons underscores the absence of any federal statutory procedure for restoring rights or expunging a criminal record. Aside from firearms privileges, the only restoration method prescribed by federal law is presidential pardon.

Despite the uncertainty and variety in the law, a few patterns can be detected from the information collected. The states roughly divide into five groups. First, there is a group of states in which few if any rights are lost as a result of a conviction or, if lost, are automatically restored upon release from incarceration. In a second, larger group are states in which rights are automatically restored either upon completion of sentence, or by obtaining a certificate of discharge from the sentence. In a third group are states in which rights may be restored through some court or administrative procedure, which may require a demonstration of law-abidingness and rehabilitation. In a fourth group are states in which rights may be regained only by a pardon. And finally, there is a small number of states in which one or more rights are permanently lost. The right most likely not to be lost, or to be lost only while under sentence, is the right to vote. 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 pardon. Many states forbid automatic deprivation of employment because of a conviction, but most states provide at least for consideration of criminal conduct as grounds for denying occupational or professional licensure.

More than half of the states condition restoration of one or more of the basic civil rights upon a pardon. In all but a handful of these states, federal offenders are ineligible for a state pardon. Thus in about 20 states a presidential pardon appears to be the exclusive means by which federal offenders may regain rights and privileges lost to them under state law as a consequence of their conviction.

The area of firearms disabilities is a specialized and complex one, in which state and federal laws interact to produce almost as many different results as there are jurisdictions. Firearms disabilities are therefore treated separately in each state summary. The reader should be aware that only federal and state laws governing firearms disabilities are included; municipal or county rules may also exist in various jurisdictions (*e.g.*, the City of Boston), and are not covered either in the summaries or in the accompanying chart. 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

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<sup>2</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 inconsistent with 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 (1941).

imposed.<sup>3</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 variation and uncertainty in state law governing the loss and restoration of civil rights impacts greatly on the administration of federal firearms laws, whose applicability to convicted felons depends on the extent to which a felon's civil rights have been restored under state law. (The reader should consult the firearms section of the summary of federal law for a brief 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 wide variety of law and practice documented in our survey. There is uncertainty about whether and to what extent federal firearms laws apply to persons who lost no civil rights as a result of their conviction, to persons who lost civil rights upon conviction but who had them automatically restored by operation of state law, and to persons who have had their civil rights restored but are still prohibited by state law from possessing firearms. Numerous federal courts have been grappling with these and related issues with widely varying results. Again, these uncertainties 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 enforce the law.

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<sup>3</sup> For example, a disability may apply only to handguns, not to long guns. In some jurisdictions only persons convicted of "violent" crimes are barred from possession of firearms. A restoration procedure may apply only to long guns; the right to possess a gun may be restored, but not the right to carry one. A felon may lose the right to possess and carry a gun only outside his home or place of business. And, while the summaries use the terms "handgun" and "violent" for convenience sake, there is considerable variation from jurisdiction to jurisdiction in the content of these disabilities.



**CHART A**

| <b>RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br/>OF A FELONY CONVICTION</b> |                    |  |
|--|--------------------|--|
| <i>State</i>   | <i>Rights Lost</i> | <i>How Rights Are Restored</i>   |
| Alabama  | vote, jury, office | Rights restored by pardon only. Federal felons eligible for state pardon.  |
| Alaska   | vote, jury         | Rights restored automatically upon unconditional discharge or by pardon. Federal felons ineligible for state pardon. Set-aside procedure available for certain state convictions.  |
| Arizona  | vote, jury, office | Rights automatically restored upon completion of sentence for first offenders; recidivists must apply to court or obtain pardon. Set-aside procedure available for certain state offenders. Federal offenders ineligible for state pardon and set-aside, but may obtain automatic restoration or court relief. |
| Arkansas   | vote, jury, office | Right to vote automatically restored upon completion of sentence; right to serve on jury restored by pardon; right to hold office not restored even by a pardon. Federal felons eligible for state pardon.   |
| California   | vote, jury, office | Right to vote lost only if imprisoned, and restored automatically upon completion of sentence. Other rights restored by pardon only. Federal offenders ineligible for state pardon. Set-aside procedure available for state offenders sentenced to probation.  |
| Colorado   | vote, office       | Right to vote lost only if incarcerated, and automatically restored upon completion of sentence. For certain offenses, right to hold office lost only if incarcerated and restored upon completion of sentence; for other offenses, right restored by pardon. Federal felons ineligible for state pardon.      |
| Connecticut  | vote, jury, office | Rights to vote and hold office restored administratively upon discharge from sentence. Right to serve on jury automatically restored seven years after conviction. Federal felons ineligible for state pardon.   |
| Delaware   | vote, jury, office | All rights restored upon receipt of certificate of discharge, for state felons only. Pardon restores rights to vote and to serve on jury only. Federal felons eligible for state pardon. Expungement available for state offenders sentenced to probation.   |

| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br>OF A FELONY CONVICTION |  |   |
|--|--|---|
| <i>State</i>   | <i>Rights Lost</i>   | <i>How Rights Are Restored</i>  |
| District of Columbia   | vote, jury, office   | Right to vote and generally to hold office lost only during incarceration, and restored automatically upon release from incarceration. Right to serve on jury restored automatically one year after completion of sentence upon certification under jury plan. Presidential pardon available for D.C. and federal offenders.  |
| Florida  | vote, jury, office   | Rights restored by administrative procedure or pardon. Federal felon may obtain administrative relief, but not state pardon.  |
| Georgia  | vote, jury, office   | Right to vote automatically restored upon completion of sentence. Right to hold office for person convicted of crime involving moral turpitude may be restored administratively 10 years after completion of sentence, provided no further conviction. Administrative relief available to federal offenders, but not state pardon. Sentence without adjudication available for certain state first offenders. |
| Hawaii   | vote, jury, office   | Right to vote lost only if incarcerated; and automatically restored upon release from confinement. Right to hold office restored upon final discharge. Right to serve on jury restored by pardon. Federal offenders not eligible for state pardon.  |
| Idaho  | vote, jury, office   | Rights lost only if imprisoned, and restored automatically upon final discharge (except for life sentence). Federal felons not eligible for state pardon. Set-aside and charge-reduction procedures available to state offenders.   |
| Illinois   | vote, office   | Right to vote lost only if imprisoned, and automatically restored upon release from incarceration. Right to hold public office automatically restored upon completion of sentence. Federal offenders ineligible for state pardon.   |
| Indiana  | vote, jury, office<br>(disqualification for certain federal offenses; otherwise, forfeiture) | Right to vote lost only if imprisoned, and automatically restored upon release from incarceration. Right to serve on jury restored upon completion of sentence. Right to hold office apparently restored only by pardon. Federal offenders ineligible for state pardon.   |
| Iowa   | vote, office   | Rights restored by pardon or restoration of rights, both by Governor. Federal offenders eligible for restoration of rights, but ineligible for state pardon. Probation without adjudication procedure for state offenders.  |



| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br>OF A FELONY CONVICTION |  |   |
|--|--|---|
| <i>State</i>   | <i>Rights Lost</i>   | <i>How Rights Are Restored</i>  |
| Kansas   | vote, jury, office   | Rights lost only if imprisoned, and automatically restored upon completion of sentence or final discharge. Federal offenders ineligible for state pardon. Expungement procedure available for state convictions.  |
| Kentucky   | vote, jury, office   | Rights restored by gubernatorial pardon or restoration of rights. Federal offenders eligible for restoration of rights, but not state pardon.   |
| Louisiana  | vote, jury, forfeiture of office   | Rights automatically restored upon completion of sentence. First offenders, both state and federal, eligible for "first-offender pardon." Federal offenders also eligible for regular state pardon.   |
| Maine  | court may order forfeiture of office   | Pardon presumably does not restore forfeited office. Federal felons ineligible for state pardon.  |
| Maryland   | vote, jury, office   | For first offenders, rights automatically restored upon completion of sentence (except, as to right to hold office and right to serve on jury, for certain offenses). Otherwise by pardon. Federal offenders ineligible for state pardon. Probation without adjudication procedure available to certain state offenders.                              |
| Massachusetts  | jury, forfeiture of office   | Right to serve on jury automatically restored seven years after completion of sentence. Federal felons eligible for state pardon. Sealing of records procedure available to certain state offenders.  |
| Michigan   | vote, jury, forfeiture of office and disqualification for certain offenses                   | Right to vote lost only if incarcerated, and automatically restored upon release from confinement. Rights to serve on jury and hold public office restored upon completion of sentence. Federal offenders ineligible for state pardon. Certain state offenders eligible for set-aside procedure.  |
| Minnesota  | vote, jury, office   | Rights automatically restored upon discharge from sentence. Federal offenders ineligible for state pardon. Set-aside procedure available for certain state offenders.   |
| Mississippi  | vote, jury, office (disqualification from elective office inapplicable to federal offenders) | Right to vote may be restored by legislature, by administrative procedure for certain veterans, by pardon, or by executive order for certain probationers. Right to serve on jury automatically restored five years after conviction. Right to hold office restored only by pardon. Federal offenders ineligible for executive order or state pardon. |

| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT OF A FELONY CONVICTION |   |   |
|---|---|---|
| <i>State</i>  | <i>Rights Lost</i>  | <i>How Rights Are Restored</i>  |
| Missouri  | vote, jury, office  | Right to vote automatically restored upon final discharge (except election crimes); right to hold office restored upon completion of sentence. Right to serve on jury restored by pardon. Federal offenders ineligible for state pardon.  |
| Montana   | vote, jury, office  | Right to vote lost only if imprisoned, and automatically restored upon release from incarceration. Right to hold office restored upon completion of sentence. Right to serve on jury restored by pardon. Federal offenders ineligible for state pardon.   |
| Nebraska  | vote, jury, office  | Rights to vote and to serve on jury restored by certificate of discharge, for state offenders only; unclear whether right to hold office is restored by certificate of discharge. Federal offenders ineligible for certificate of discharge or state pardon. Set-aside procedure available for state offenders.   |
| Nevada  | vote, jury, office  | Rights restored by court or administrative procedure, or by pardon. Administrative relief apparently available to federal offenders, but not state pardon. Sealing procedure available to state offenders.  |
| New Hampshire   | vote, office  | Right to vote lost only if incarcerated, and automatically restored upon release from confinement. Right to hold office restored upon final discharge from sentence. Federal offenders ineligible for state pardon. Annulment procedure available to state offenders.   |
| New Jersey  | vote, jury, forfeiture of office and disqualification for certain offenses. | Right to vote automatically restored upon completion of sentence. Right to serve on jury restored by pardon. Right to hold office apparently never restored. Federal offenders ineligible for state pardon. Expungement procedure available to certain state offenders. Certificate of good conduct available to federal and state offenders to preclude licensing authority from disqualifying them in licensing decision due to conviction. |
| New Mexico  | vote, jury, office  | Rights restored by gubernatorial restoration of rights, or by pardon. Federal offenders ineligible for state pardon, but may regain rights to vote and to hold office by gubernatorial restoration of rights.   |
| New York  | vote, jury, forfeiture of office and disqualification for certain offenses  | Right to vote lost only if incarcerated, and automatically restored upon expiration of sentence, or restored by pardon or administrative or court restoration of rights. Administrative relief available to federal offenders, but not state pardon.  |

| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br>OF A FELONY CONVICTION |  |   |
|--|--|---|
| <i>State</i>   | <i>Rights Lost</i>   | <i>How Rights Are Restored</i>  |
| North Carolina   | vote, jury, office   | All rights automatically restored upon unconditional discharge from sentence. Federal offenders ineligible for state pardon.  |
| North Dakota   | vote, jury, office   | Rights lost only if imprisoned, and automatically restored upon release from incarceration. Federal offenders ineligible for state pardon.  |
| Ohio   | vote, jury, office   | Right to vote lost only if incarcerated (for federal offenses, only convictions after 1973), and automatically restored upon release from incarceration. Rights to hold office and to serve on jury (only lost for federal convictions after 1973) restored by court or final release by parole authority. Not clear whether court or administrative restoration procedure available to federal offenders. Federal offenders ineligible for state pardon. Sealing procedure available to state and federal offenders. |
| Oklahoma   | vote, jury, forfeiture of office and disqualification for certain offenses | Right to vote automatically restored after period of time equal to sentence. Right to hold office restored after 15 years for some offenses. Right to serve on jury restored by pardon. Federal offenders ineligible for state pardon. Probation before judgment and expungement procedures available to state offenders.   |
| Oregon   | vote, jury, office   | Rights lost only if incarcerated, and automatically restored upon release from confinement. Not clear whether federal offenders eligible for state pardon.  |
| Pennsylvania   | vote, jury, office   | Right to vote lost only if incarcerated, and automatically restored upon release from confinement. Rights to hold public office and to serve on a jury restored through pardon. Federal offenders ineligible for state pardon.  |
| Rhode Island   | vote, jury, office   | Rights to vote and to serve on jury automatically restored upon completion of sentence. Right to hold office (at least for some offenses) restored three years after completion of sentence. Not settled whether federal offenders eligible for state pardon.   |
| South Carolina   | vote, jury, office   | Rights to vote and to hold public office restored upon completion of sentence. Right to serve on jury restored only by pardon. Federal offenders ineligible for state pardon.   |

| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br>OF A FELONY CONVICTION |  |   |
|--|--|---|
| <i>State</i>   | <i>Rights Lost</i>   | <i>How Rights Are Restored</i>  |
| South Dakota   | vote, jury, office   | Rights lost only if sentenced to imprisonment, and automatically restored upon release from confinement (or, when execution of sentence suspended, upon termination of sentence). Not clear whether federal offenders eligible for state pardon.  |
| Tennessee  | vote, jury, office   | Right automatically restored upon pardon, completion of sentence, or final release from incarceration for convictions after July 1, 1986, or by court action for earlier convictions. Certain felons may not regain right to vote. Federal felons eligible for automatic and court restoration, but not for state pardon.   |
| Texas  | vote, jury, office   | Right to vote restored two years after receiving certificate of discharge, two years after completing probation, or by pardon. Rights to serve on jury and to hold office (lost only for certain offenses) restored by pardon. Federal offenders ineligible for certificate of discharge or state pardon. Deferred adjudication and set-aside procedures available for state offenders. |
| Utah   | vote (for treason and election crimes), jury, forfeiture of certain offices and disqualification for treason and election crimes | Rights restored by pardon. State pardon unavailable to federal offenders. Expungement procedure available for certain state offenses.   |
| Vermont  | jury   | Right lost only if sentenced to imprisonment, and restored only by pardon. Not settled whether federal offenders are eligible for state pardon.   |
| Virginia   | vote, jury, office   | Rights restored by removal of political disabilities, or pardon, both by Governor. Federal offenders eligible for removal of political disabilities, but not for state pardon.  |
| Washington   | vote, jury, office   | Rights restored by pardon or by restoration of civil rights from court, administrative agency, or governor. Federal offenders eligible for restoration of right to vote and to hold office, but ineligible for state pardon.  |
| West Virginia  | vote, jury, office   | Right to vote, to hold office (except for bribery of state officer), and to serve on a jury automatically restored upon completion of sentence. Federal felons ineligible for state pardon.   |

| RESTORATION OF CIVIL RIGHTS LOST AS A RESULT<br>OF A FELONY CONVICTION |                    |  |
|--|--------------------|--|
| <i>State</i>   | <i>Rights Lost</i> | <i>How Rights Are Restored</i>   |
| Wisconsin  | vote, jury, office | Rights to vote and to serve on a jury automatically restored upon completion of sentence. Right to hold office restored only by pardon. Federal offenders ineligible for state pardon. |
| Wyoming  | vote, jury, office | Rights restored by pardon or by restoration of rights, both by Governor. Federal offenders eligible for restoration of rights, but ineligible for state pardon.                        |

**CHART B**

| <b>BRIEF DESCRIPTION OF STATE FIREARMS DISABILITIES AND RESTORATION PROCEDURES FOR FEDERAL FELONS</b> |  |
|---|--|
| Alabama   | bans handguns for violent felonies; restoration through state pardon available to federal offenders.   |
| Alaska  | bans concealable firearms for all felonies; automatic restoration 10 years after completion of sentence for nonassaultive felonies, otherwise through presidential pardon.   |
| Arizona   | bans all firearms for violent felonies; restoration through state court.   |
| Arkansas  | bans all firearms for all felonies; restoration through state pardon available to federal offenders.   |
| California  | bans all firearms for all felonies; restoration only through presidential pardon.  |
| Colorado  | bans all firearms for violent felonies; automatic restoration 10 years after completion of sentence, except for certain recidivists.   |
| Connecticut   | bans carrying all firearms for all felonies; no restoration procedure under state law.   |
| Delaware  | bans all firearms for all felonies and violent or drug-related offenses; probably no restoration procedure under state law.  |
| District of Columbia  | bans all firearms for all felonies; restoration only through presidential pardon. Some limitations apply to violent misdemeanor offenses.  |
| Florida   | bans all firearms for all felonies; restoration through state administrative procedure.  |
| Georgia   | bans all firearms for all felonies; restoration through alternative state administrative procedures, but BATF relief required for certain offenses if firearms privileges not restored by restoration of civil rights. |
| Hawaii  | bans all firearms for all felonies and violent or drug-related offenses; probably no restoration procedure under state law.  |
| Idaho   | bans all firearms for all felons during incarceration and thereafter for violent and drug-related felonies; restoration through state administrative procedure.  |
| Illinois  | bans all firearms for all felonies; restoration through state administrative procedure.  |
| Indiana   | bans carrying handguns (except in home) for all felonies and certain weapons offenses; no restoration procedure under state law.   |
| Iowa  | bans all firearms for all felonies; restoration for non-violent and drug felonies through express grant in pardon; no state restoration procedure available for violent felonies.                                      |

| <b>BRIEF DESCRIPTION OF STATE FIREARMS DISABILITIES AND RESTORATION PROCEDURES FOR FEDERAL FELONS</b> |   |
|---|---|
| Kansas  | bans handguns for all felonies and all firearms for certain violent and drug offenders; automatic restoration 10 years after completion of sentence for violent and drug offenders, 5 years for others.       |
| Kentucky  | bans handguns for all felonies; restoration through BATF or presidential pardon.  |
| Louisiana   | bans all firearms for violent and drug-related felonies; restoration automatic after 10 years if no subsequent felony conviction, or through state administrative procedure or gubernatorial pardon.          |
| Maine   | bans all firearms for all felonies; restoration through state administrative procedure.   |
| Maryland  | bans handguns for violent felonies, and all guns for drug felonies; no restoration procedure under state law.   |
| Massachusetts   | bans all firearms for all felonies and drug offenses; eligible to apply for restoration of long gun privileges 5 years after completion of sentence, otherwise through state pardon.                          |
| Michigan  | bans purchasing, carrying, or transporting handguns for all felonies; restoration only through presidential pardon.   |
| Minnesota   | bans all firearms for violent and drug felonies and handguns for drug offenses; automatic restoration 10 years after completion of sentence if no further conviction of crime of violence, or by BATF relief. |
| Mississippi   | bans carrying concealed handguns for all felonies; no restoration procedure under state law.  |
| Missouri  | bans possession of handguns for dangerous felonies for 5 years and acquisition of handguns for all felonies; restoration of right to possess automatic after 5 years.   |
| Montana   | no disability imposed by state law, except that sentencing judge may impose firearms disabilities until completion of sentence.   |
| Nebraska  | bans handguns for all felonies; restoration only through presidential pardon.   |
| Nevada  | bans all firearms for all felonies; restoration through state pardon available to federal offenders.  |
| New Hampshire   | bans all firearms for violent felonies and drug offenses; no restoration procedure under state law.   |
| New Jersey  | bans all firearms for violent felonies and drug offenses, and purchase for all felonies; no restoration procedure under state law.  |
| New Mexico  | bans all firearms for all felonies; automatic restoration 10 years after completion of sentence.  |

| <b>BRIEF DESCRIPTION OF STATE FIREARMS DISABILITIES AND RESTORATION PROCEDURES FOR FEDERAL FELONS</b> |   |
|---|---|
| New York  | bans all firearms for all felonies; restoration for first offenders available through state administrative procedure. No other restoration procedure under state law.   |
| North Carolina  | generally bans handguns (outside home or business) for violent felonies and drug offenses; automatic restoration 5 years after completion of sentence.  |
| North Dakota  | bans all firearms for all felonies; automatic restoration for non-violent offenders 5 years after completion of sentence, 10 years for violent offenders.   |
| Ohio  | bans all firearms for violent felonies and drug offenses; restoration through state administrative procedure.   |
| Oklahoma  | bans handguns for all felonies; no restoration procedure under state law.   |
| Oregon  | bans all firearms for all felonies; automatic restoration 15 years after completion of sentence, except for certain weapons offenses and recidivists, or earlier through state court procedure.   |
| Pennsylvania  | bans handguns and carrying any gun for violent felonies, and carrying concealed handgun for all felons, violent offenders, and drug offenders; disability for carrying guns removable by BATF relief; no other restoration procedure under state law. |
| Rhode Island  | bans all firearms for violent felonies; probably no restoration procedure under state law.  |
| South Carolina  | bans handguns for violent felonies and drug offenses; no restoration procedure under state law.   |
| South Dakota  | bans all firearms for violent felonies; automatic restoration 15 years after discharge from sentence.   |
| Tennessee   | bans handguns for violent and drug-related felonies; no restoration procedure under state law.  |
| Texas   | bans all firearms for violent offenders (except in home); no restoration procedure under state law.   |
| Utah  | bans all firearms for violent felonies, carrying concealed weapons for drug and certain other offenses; no restoration procedure under state law.   |
| Vermont   | no firearms disabilities imposed by statute, although sentencing judge may impose firearms disabilities as a condition of probation.  |
| Virginia  | bans all firearms for all felonies; restoration through state administrative procedure.   |
| Washington  | bans handguns for violent and drug-related felonies; restoration of state firearms disabilities automatic if granted BATF relief.   |



| <b>BRIEF DESCRIPTION OF STATE FIREARMS DISABILITIES AND RESTORATION<br/>PROCEDURES FOR FEDERAL FELONS</b> |   |
|---|---|
| West Virginia   | bans all firearms for all felonies; restoration (except for license to carry concealed deadly weapon other than on one's premises) through state court. |
| Wisconsin   | bans all firearms for all felonies; restoration through BATF or presidential pardon.  |
| Wyoming   | bans all firearms for violent felonies; no restoration procedure under state law.   |



**CHART C**

| <b>STATE FIREARMS PRIVILEGES LOST UPON CONVICTION OF A FELONY</b>   |          |   |               |
|---|----------|---|---------------|
| <i>Bans All Firearms For All Felons</i>   |          |   |               |
| Arkansas  | Delaware | Iowa  | New Mexico    |
| California  | Florida  | Maine   | North Dakota  |
| Connecticut*  | Georgia  | Massachusetts                                   | Oregon        |
| District of Columbia  | Hawaii   | Nevada  | Virginia      |
|   | Illinois | New York  | West Virginia |
|   |          |   | Wisconsin     |
| <i>Bans Handguns Only For All Felons</i>  |          |   |               |
| Alaska  |          | Michigan*                                       |               |
| Indiana   |          | Mississippi*                                    |               |
| Kansas  |          | Missouri**                                      |               |
| Kentucky  |          | Nebraska  |               |
| Maryland  |          | Oklahoma  |               |
| <i>Bans All Firearms For Violent Felons</i>   |          |   |               |
| Arizona   |          | New Jersey (includes drug offenses)             |               |
| Colorado  |          | Ohio (includes drug offenses)                   |               |
| Idaho (includes drug offenses)  |          | Rhode Island                                    |               |
| Kansas  |          | South Dakota                                    |               |
| Louisiana (includes drug offenses)  |          | Texas   |               |
| Maryland (drug offenses only)   |          | Utah (and carrying concealed for drug offenses) |               |
| Minnesota (includes drug felonies)  |          |   |               |
| New Hampshire (includes drug offenses)  |          |   |               |
| <i>Bans Handguns Only For Violent Felons</i>  |          |   |               |
| Alabama   |          | South Carolina (includes drug offenses)         |               |
| North Carolina (outside home or work; includes drug offenses)   |          | Tennessee (includes drug felonies)              |               |
| Pennsylvania (also carrying long guns)  |          | Washington (includes drug felonies)             |               |
| <i>No Statutory Firearms Disabilities Imposed</i>   |          |   |               |
| Montana   |          | Vermont   |               |
| *Prohibition not on possession but on carrying, carrying concealed, acquiring, transporting, or purchasing. |          |   |               |
| **All felons prohibited from acquiring; only violent felons prohibited from possessing.                     |          |   |               |

**CHART D**

| <b>STATE FIREARMS PRIVILEGES RESTORATION METHODS</b>                          |  |              |                |
|---|--|--------------|----------------|
| <i>Automatic Restoration After Waiting Period*</i>                            |  |              |                |
| Alaska (10 years for nonassaultive felonies)                                  | Missouri (5 years, except as to acquisition restriction)   |              |                |
| Colorado (10 years)   | New Mexico (10 years)                                      |              |                |
| Idaho (upon discharge except for violent and drug offenses)                   | North Carolina (5 years)                                   |              |                |
| Kansas (5 or 10 years)  | North Dakota (5 or 10 years)                               |              |                |
| Louisiana (10 years)  | Oregon (15 years)  |              |                |
| Minnesota (10 years; or BATF relief)  | South Dakota (15 years)                                    |              |                |
| <i>Restoration Available Through State Court Or Administrative Procedure*</i> |  |              |                |
| Arizona   | Massachusetts (eligible for long gun permit after 5 years) |              |                |
| Florida   | New York   |              |                |
| Georgia**   | Ohio   |              |                |
| Idaho (violent offenders after 5 years)                                       | Virginia   |              |                |
| Illinois  | West Virginia  |              |                |
| Louisiana   |  |              |                |
| Maine (after 5 years)   |  |              |                |
| <i>Restoration Available To State Offenders Through State Pardon</i>          |  |              |                |
| Alabama   | Indiana  | Mississippi  | South Carolina |
| Alaska  | Iowa (except violent offenders)                            | Missouri     | Texas          |
| Arkansas  | Kentucky**   | Nebraska     | Utah           |
| California  | Maryland   | New Jersey   | Washington**   |
| Connecticut   | Michigan   | Pennsylvania | Wisconsin      |
| Hawaii  |  | Rhode Island | Wyoming        |
| <i>Restoration Available To Federal Offenders Through State Pardon</i>        |  |              |                |
| Alabama   | Arkansas   | Nevada       |                |

| STATE FIREARMS PRIVILEGES RESTORATION METHODS                                      |             |   |              |
|--|-------------|---|--------------|
| <i>Restoration Available To Federal Offenders Only Through Presidential Pardon</i> |             |   |              |
| Alaska   | Iowa        | New Jersey  | Tennessee*** |
| California   | Kentucky**  | New Hampshire***  | Texas        |
| Connecticut  | Maryland    | Oklahoma***   | Utah         |
| Delaware***  | Mississippi | Pennsylvania**  | Washington** |
| District of Columbia   | Missouri    | Rhode Island  | Wisconsin**  |
| Hawaii   | Nebraska    | South Carolina  | Wyoming      |
| Indiana  |             |   |              |
| <i>No Disabilities Imposed</i>   |             |   |              |
| Montana  | Vermont     |   |              |
| *Relief may also be available through a gubernatorial or presidential pardon.      |             | ***Relief may not be available to state offenders through a gubernatorial pardon. |              |
| **BATF relief also removes state law disabilities.                                 |             |   |              |



## FEDERAL LAW

### I. COLLATERAL CONSEQUENCES UNDER FEDERAL LAW OF A CONVICTION

#### A. Right to vote

The United States Constitution does not set qualifications for voting, although it prohibits disenfranchisement on various grounds such as age, gender, and race. U.S. Const. amend. XIII, XIX, XXVI. Rather, it recognizes states' authority to determine the qualifications for voting, even in federal elections. See U.S. Const. art. I, § 4; art. II, § 1, amend. XVII. The power of the states to deny the right to vote because of conviction is expressly recognized in the Fourteenth Amendment. U.S. Const. amend. XIV, § 2. Therefore, the effect of a federal felony conviction upon the right to vote is determined by the law of the state in which the felon seeks to vote, and thus varies from state to state.

#### B. Right to serve on a federal jury

Conviction in federal or state court of a crime punishable by imprisonment for more than one year disqualifies an individual from serving on a federal grand or petit jury unless "his civil rights have [ ] been restored." 28 U.S.C. § 1865. Inasmuch as federal law provides no procedure for restoring civil rights, presumably § 1865 refers to restoration of civil rights under state law. This provision is discussed in more detail at p. 22, infra.

#### C. Right to hold federal office or employment

A conviction may result in ineligibility for federal office. For example, conviction of treason renders the defendant "incapable of holding any office under the United States." 18 U.S.C. § 2381. When an individual is convicted of bribing a public official or accepting a bribe, disqualification from office may be ordered by the sentencing court. 18 U.S.C. § 201(b).

As a general matter, a felony conviction does not disqualify a person from federal employment, but is a factor in determining suitability for it, according to the Office of Personnel Management. In some cases, however, federal employment may be lost and the right to future federal employment forfeited upon conviction. E.g., ineligibility for federal employment for five years after conviction of an offense arising from advocating the overthrow of state or federal government, interfering with the morale of the United States armed forces, or inciting riots and civil disorders (18 U.S.C. §§ 2385, 2387, 7313); dismissal from office of Internal Revenue Service officer or employee upon conviction of bribery or disclosure of any tax return or return information to any unauthorized person (26 U.S.C. §§ 7213, 7214); discharge from office or employment upon conviction of disclosure of confidential information relating to trade secrets or the financial status of any person or corporation, or conviction of using federal money to lobby a Member of Congress. 18 U.S.C. §§ 1905, 1913.

#### D. Federal licenses

A conviction may result in the loss of a federal license. E.g., a customs broker's license (may be suspended or revoked if the licensee has been convicted of a felony or misdemeanor

involving the customs business or of other specified offenses, 19 U.S.C. § 1641(d)(1)(B)); an export license (50 U.S.C. App. § 2410(h)(1)); a license to export defense articles and services (22 U.S.C. §§ 2778(g)(3)(A),(B)); a merchant mariner's document, license, or certificate of registry (46 U.S.C. §§ 7101, 7109, 7302, 7503)); a locomotive engineer's license (45 U.S.C. § 431(i)(D)(iii)). See also 21 U.S.C. § 862(d) (relating to licenses held by persons convicted of drug offenses), discussed in section E, infra.

### **E. Federal benefits**

Certain federal benefits may be revoked or modified upon conviction of a crime. Drug offenders convicted after September 1, 1989 may have restrictions placed upon their receipt of grants, licenses, contracts, and other federal benefits, excluding retirement, welfare, Social Security, health, disability, public housing, and benefits based on military service. 21 U.S.C. § 862. Individuals residing in federally funded public housing may be evicted upon "criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises." 42 U.S.C. § 1437f(d)(1)(B)(iii). This prohibition applies to the tenant, any member of the tenant's household, or any guest or other person under the tenant's control. 42 U.S.C. § 1437(d)(1)(B)(iii). Expedited eviction procedures apply in cases of criminal or drug-related activity. 42 U.S.C. § 1437d(k). For three years from the date of eviction, tenants evicted because of drug-related activity are ineligible for certain preferences to enable them to reenter public housing. 42 U.S.C. § 1437f(d)(1)(A)(iii).

Upon conviction of certain national security offenses, an individual may not receive an annuity or retirement pay from the United States or District of Columbia government and may be subject to additional penalties regarding his collection of old-age or disability insurance benefits. 5 U.S.C. § 8312; 42 U.S.C. § 402(u)(1). Felons in any prison may not receive old-age or disability insurance payments unless they are participating in an approved rehabilitation program. 42 U.S.C. § 402(x).

### **F. Occupational restrictions**

Under the federal Sentencing Guidelines, the sentencing court may impose certain occupational restrictions as a condition of probation or supervised release if a "reasonably direct relationship" exists between the defendant's occupation and the offense, and the conditions are "reasonably necessary to protect the public." U.S.S.G. § 5F1.5.

### **G. Banking, commodities, and securities**

A person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not become, or continue as, an institution-affiliated party<sup>4</sup> with respect to a federally insured depository institution; own or control an insured depository institution; or otherwise participate in the conduct of the affairs of such an institution. 12 U.S.C. § 1829. This prohibition may be waived upon the written consent of the Federal Deposit Insurance Corporation, but consent may not be given until 10 years following the date of conviction in the

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<sup>4</sup> This term refers primarily to any director, officer, employee, or controlling stockholder.



case of certain banking and financial offenses. 12 U.S.C. § 1829. The Comptroller of the Currency has the discretion to suspend an institution-affiliated party from participating in the affairs of a federally insured depository institution if he has been charged with the commission of a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year. 12 U.S.C. § 1818(g). Suspension is permitted only if it is determined that "continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution." 12 U.S.C. § 1818(g).

The Commodity Futures Trading Commission may refuse to register a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or floor broker, or may suspend him or place restrictions upon his registration, if he has been convicted of a felony or if he has been convicted within 10 years of certain violations related to the financial industry. 7 U.S.C. § 12a.

The Securities and Exchange Commission may suspend or revoke the registration of any investment adviser, broker, or dealer if he was convicted within the previous 10 years of a felony or misdemeanor related to the securities industry. 15 U.S.C. §§ 80b-3(e), 78o(b)(4)(B).

#### **H. Labor organizations**

Conviction of certain offenses (including robbery, bribery, extortion, embezzlement, narcotics violations, murder, assault with intent to kill, and rape) disqualifies an individual from serving in several capacities relating to labor organizations and employee benefit plans, including consultant, adviser, officer, and director of a labor organization's governing board. 29 U.S.C. §§ 504, 1111. The disability lasts for 13 years after conviction or "the end of imprisonment," whichever is later, unless the sentencing court sets a shorter period of at least three years. 29 U.S.C. § 504. The disability may be removed earlier if the individual's "citizenship rights, having been revoked as a result of such conviction, have been fully restored;" or, if a federal offense, by the United States Parole Commission or sentencing court. For state or local offenses, the United States district court where the offense was committed may remove the disability upon motion of the Department of Justice. 29 U.S.C. §§ 504, 1111. See also U.S.S.G. § 5J1.1 (policy statement implementing §§ 504, 1111).

#### **I. Immigration**

Conviction of "any felony or of three or more misdemeanors committed in the United States" disqualifies an alien from temporary and permanent resident status and temporary residence status as a special agricultural worker. 8 U.S.C. §§ 1255a(a)(4)(B), 1255a(b)(1)(C)(ii); 8 C.F.R. § 210.3. An alien may be excluded from the United States upon conviction of certain offenses, including: crimes involving moral turpitude, multiple offenses for which the aggregate sentences to confinement actually imposed were five years or more; drug violations (except misdemeanors for which a prison sentence of six months or less was imposed); and any serious criminal offense for which the alien asserted immunity from criminal prosecution, departed the United States, and never submitted to the jurisdiction of the appropriate United States court. 8 U.S.C. § 1182(a)(2). An alien may be deported from the United States if he was excludable at the time of entry, or upon conviction of: a crime involving moral

turpitude committed within five years after the date of entry if he was sentenced to confinement or confined for one year or longer; two or more crimes of moral turpitude; an aggravated felony<sup>5</sup>; any firearms offense; certain offenses related to national security, such as treason and espionage, and certain immigration offenses. 8 U.S.C. § 1251(a)(2). An individual convicted of a crime involving moral turpitude, of two or more offenses for which the aggregate sentences actually imposed were five years or more, or of an aggravated felony is precluded from establishing "good moral character" and is therefore prohibited from qualifying for naturalization. 8 U.S.C. §§ 1101(f)(3),(8), 1427(a), (d), (e).

### **J. Armed forces**

An individual convicted of a felony is ineligible for enlistment in any service of the armed forces. 10 U.S.C. § 504. Any person guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies forfeits all accrued or future "gratuitous" veterans benefits. 38 U.S.C. § 6104(a). Anyone convicted of certain offenses related to subversive activities forfeits "gratuitous" veterans benefits based on periods of military, naval or air service.<sup>6</sup> 38 U.S.C. § 6105(a). Pensions, disability, dependency, and indemnity compensation may not be paid to or for an individual who is in a federal, state, or local penal institution. 38 U.S.C. §§ 1505(a), 5312(a)(1). (The spouse or children of an imprisoned veteran may receive the portion of the pension the veteran would have received during the period of confinement. 38 U.S.C. § 1505(b).) Any person guilty of mutiny, treason, spying, or desertion forfeits all rights to National Service Life Insurance and Servicemen's Group Life Insurance. 38 U.S.C. §§ 1911, 1973. National Service Life Insurance, Servicemen's Group Life Insurance, and United States Government Life Insurance are not payable for death inflicted as lawful punishment for a crime or for military or naval offenses, except when inflicted by an enemy of the United States. 38 U.S.C. §§ 1911, 1954, 1973.

## **II. RESTORATION OF RIGHTS AND REMOVAL OF DISABILITIES UNDER FEDERAL LAW**

A presidential pardon restores civil rights lost as a result of conviction, including the rights to vote, to serve on a jury, and to hold public office, and generally relieves other disabilities imposed in consequence of a conviction. See Ex parte Garland, 71 U.S. 333 (1866). See also Carlesi v. New York, 233 U.S. 51 (1914). There is no general federal statutory procedure whereby civil rights may be restored after conviction or a federal criminal record expunged. As noted above, see p. 18, supra, the right to vote generally depends on the law of each state, and thus may be restored by state action as well as by a presidential pardon.

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<sup>5</sup> "Aggravated felony" is defined to include murder, any illicit trafficking in any controlled substance or in any firearms or destructive devices, any offense relating to the laundering of monetary instruments, or any crime of violence for which the term of imprisonment imposed is at least five years. 8 U.S.C. § 1101(a)(43).

<sup>6</sup> According to the Veterans' Administration, all veterans' benefits are considered gratuitous; therefore, the benefits forfeited under §§ 6104(a) and 6105(a) include pension, disability, hospitalization, loan guarantees, and burial in a national cemetery.

Certain statutes also specifically provide that a presidential pardon will remove a particular disqualification. For example, deportation may not be based on certain criminal convictions if they have been the subject of a presidential pardon. 8 U.S.C. § 1251(a)(2)(A)(iv). A pardon will remit additional penalties that may be imposed on certain individuals' receipt of old-age or disability insurance benefits because of a conviction. 42 U.S.C. § 402(u)(3). Certain veterans' benefits forfeited by virtue of a conviction for subversive activities are restored by a presidential pardon. 38 U.S.C. § 6105(a); 38 C.F.R. §§ 3.903, 3.904.

The right to serve on a federal jury is reinstated if the individual's "civil rights have [ ] been restored." 28 U.S.C. § 1865(b)(5). This provision relating to jury service has generally been interpreted by federal courts and the Administrative Office of the United States Courts to require an affirmative act by the state (such as pardon or amnesty) before the right to serve on a federal jury will be deemed to be reinstated. Thus, the automatic restoration of civil rights that occurs in many states upon completion of sentence will not operate to restore the right to serve on a federal jury. *See, e.g., United States v. Hefner*, 842 F.2d 731, 732 (4th Cir. 1988) (relying on the legislative history of § 1865 to hold that "some affirmative act recognized in law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865 (b)(5)").

As noted earlier in section I, loss of a federal benefit or license because of a conviction may only last a limited period of time, or eligibility for the benefit or license may be restored by administrative or judicial action. For example, under the immigration laws the Attorney General may waive the application of certain grounds for exclusion or deportation. *E.g.*, 8 U.S.C. § 1182(h) (waiver authorized if exclusion based on single offense involving a small amount of marijuana). Exceptions to the prohibition on military enlistment of convicted felons may be authorized by the Secretary of the Service in "meritorious cases." 10 U.S.C. § 504. The Federal Deposit Insurance Corporation may waive a conviction-related prohibition to permit individuals to participate in the affairs of a federally insured depository institution. 12 U.S.C. § 1829. Certain prohibitions relating to involvement in the industries regulated by the Securities and Exchange Commission and the Commodity Futures Trading Commission expire after 10 years. 7 U.S.C. § 12a; 15 U.S.C. §§ 80b-3(e), 78o(b)(4)(B). The prohibitions relating to labor organizations and employee benefit plans last up to 13 years, but may be removed earlier if civil rights have been "fully restored," or if a federal court so directs. 29 U.S.C. §§ 504, 1111.

### III. FIREARMS

Under the Gun Control Act of 1968, as amended, 18 U.S.C. §§ 921, *et seq.*, a person convicted in any court of a crime punishable by imprisonment for a term exceeding one year may not ship, transport, possess, or receive any firearm or ammunition. 18 U.S.C. § 922(g)(1). The definition of firearm includes both long guns and handguns. 18 U.S.C. § 921(a)(3). This prohibition is inapplicable to

[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20). Considerable litigation has resulted over what it means to have one's "civil rights restored" and the extent to which felons who have received a partial or automatic restoration of civil rights by operation of state law or pursuant to a state administrative procedure are subject to the penalties of § 922(g). Except in the First Circuit, *see United States v. Ramos*, 961 F.2d 1003 (1st Cir. 1992), a person whose basic political rights have been restored (whether by affirmative state action or by operation of law) is not subject to federal firearms disabilities with respect to possession of a firearm, as long as it is not unlawful under state law for him to possess it. *See, e.g., United States v. Edwards*, 946 F.2d 1347 (8th Cir. 1991); *United States v. Dahms*, 938 F.2d 131 (9th Cir. 1991).<sup>7</sup>

Firearms privileges forfeited as a result of a federal felony conviction may be restored by a presidential pardon. BATF is also authorized to restore federal firearms privileges to convicted felons under 18 U.S.C. § 925. However, relief will not be granted by BATF to an applicant who is "prohibited from possessing all types of firearms by the law of the State where such applicant resides." 27 C.F.R. § 178.144(d). For example, if a state bans possession of both long guns and handguns for a convicted felon, BATF will not grant relief. On the other hand, if a state bans possession only of handguns, BATF will grant relief from federal firearms disabilities in cases that otherwise meet its criteria. BATF will also accept applications in cases where an individual's ability to possess firearms under state law depends upon removal of his federal firearms disabilities.

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<sup>7</sup> Dahms, convicted of a state felony in Michigan, was prosecuted under federal law for possessing a shotgun, although under Michigan law he was prohibited only from possessing pistols. The court dismissed the government's case, pointing out that Dahms' civil rights had been "substantially restored," and that state law did not "expressly restrict" his right to possess any firearms other than pistols. The Bureau of Alcohol, Tobacco and Firearms takes the position that federal firearms disabilities remain in effect unless state firearms privileges have been "fully restored." 27 C.F.R. § 178.142(b).

## ALABAMA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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> 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). 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). See Hogan v. Hartwell, 242 Ala. 647, 7 So. 2d 889 (1942)(disqualification from office applies to federal as well as state convictions).

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); dentist (§§ 34-9-18(a)(5), (11)).

### II. 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>3</sup> Ala. Const. Amend. No. 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). 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

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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, § 2 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> 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. No. 38.

sentence of less than three years unless the pardon is based on innocence. Ala. Code § 15-22-36.

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). 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.

### III. FIREARMS

A person convicted of committing or attempting to commit a "crime of violence"<sup>4</sup> is prohibited from owning, possessing, or controlling a "pistol" (defined as any firearm with a barrel less than 12 inches in length, Ala. Code § 13A-11-70(1)). Ala. Code § 13A-11-72. A recent 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. See State ex rel. Sokira v. Burr, 580 So. 2d 1340 (Ala. 1991). The Eleventh Circuit, relying on Sokira, concluded that a state pardon was effective to remove federal firearms disabilities, despite the existence of Ala. Code § 13A-11-72. United States v. Swanson, 947 F.2d 914 (11th Cir. 1991). The State Board of Pardon and Paroles, however, in response to Sokira, has restricted the effect of future pardons, stating that the "Board does not intend, and has never intended, to restore the right to possess firearms to individuals who lost that right under State or Federal law." Board Order of March 25, 1992. Because the state firearms disability extends only to handguns, felons residing in Alabama are eligible to apply to the Bureau of Alcohol, Tobacco and Firearms for removal of federal firearms disabilities.

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<sup>4</sup> Crime of violence is defined to include murder, manslaughter (except manslaughter arising from operation of 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.

## ALASKA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of "a crime that constitutes a felony involving moral turpitude under state law" loses the right to vote from the date of conviction through the date of unconditional discharge. Alaska Stat. §§ 15.05.030, 33.30.241. No person convicted of a felony may serve on a jury until his unconditional discharge. Alaska Stat. §§ 09.20.020, 33.30.241. 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 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)).

### II. 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. §§ 09.20.010; 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).

### III. FIREARMS

A person convicted of a state or federal felony may not possess a firearm (defined to include pistols, revolvers, rifles, and shotguns, Alaska Stat. § 11.81.900(a)(22)) 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>1</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

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<sup>1</sup> Examples of such offenses are homicide, assault, kidnapping, sexual offenses, and robbery. See Alaska Stat. tit. 11, ch. 41.

authorization from the court or the head of the law enforcement agency in his community. Alaska Stat. § 11.61.200(a)(10). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities prior to the expiration of the 10-year period.



## ARIZONA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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; 21-101. 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). Examples of such occupations are: insurance agent (§ 20-316); certified public accountant (§§ 32-721, 741); dentist (§§ 32-1263, 32-1290); nurse (§ 32-1663); pharmacist (§ 32-1927).

### II. 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 (after two years or upon discharge, 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 of Arizona law for restoring civil rights lost as a result of a felony conviction in a state other than Arizona.

Arizona law also permits certain 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>1</sup> This procedure is unavailable to anyone convicted of a criminal offense involving the infliction of serious physical injury, involving the use or exhibition of a deadly weapon or dangerous instrument, in which the victim was less than fifteen

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<sup>1</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).

years old, or in 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.

### III. FIREARMS

A person convicted within or outside Arizona of any "felony involving violence or possession and use of a deadly weapon or dangerous instrument" may not possess a deadly weapon (including pistols, revolvers, rifles, and shotguns) if his civil rights have not been restored by court action. Ariz. Rev. Stat. Ann. §§ 13-3101(6)(b), 13-3102(A)(4). 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, supra. Under § 13-906, an application may not be filed for at least two years after absolute discharge. A pardon may also operate to restore state firearms privileges, if it specifically so states. As noted, a state pardon is unavailable to federal or out-of-state offenders.

The Bureau of Alcohol, Tobacco and Firearms (BATF) will not grant relief from federal firearms disabilities to felons residing in Arizona who are prohibited under state law from possessing firearms. Persons convicted of nonviolent felonies, however, may obtain restoration of their federal firearms privileges through the BATF. Violent federal felons may regain their federal firearms privileges only through a presidential pardon.

## ARKANSAS

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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

A professional or occupational license may be revoked, suspended, or denied as a consequence of a felony conviction. See, e.g., physician (Ark. Stat. § 17-93-409); dentist (§ 17-82-316); psychologist (§ 17-96-310); public accountant (§ 17-12-601); landscape architect (§ 17-29-306).

### II. 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. Restoration of the right to serve on a jury requires a gubernatorial pardon. Ark. Stat. Ann. § 16-31-102. 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 pardon.

The pardon power is vested in the Governor, who is assisted by the investigation and recommendation of the Board of Parole. Ark. Const. art. 6, § 18; Ark. Stat. 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. An expungement procedure is available to some persons who are pardoned. Ark. Stat. Ann. § 16-90-605.<sup>2</sup>

### III. FIREARMS

No person who has been "convicted of a felony" may own or possess a firearm (defined in Ark. Stat. Ann. § 5-1-102(6) to include both long guns and handguns) unless he has received a pardon that explicitly restores this right. Ark. Stat. Ann. § 5-73-103. According to the Bureau of Alcohol, Tobacco, and Firearms (BATF), a federal felon may obtain restoration of his state and federal firearms privileges by first obtaining a "conditional pardon" from the

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<sup>1</sup> Ark. Stat. 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.

<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 expunction. Expunction 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. Stat. Ann. § 16-90-605.

Governor of Arkansas, and then applying to BATF for removal of federal firearms disabilities. BATF's removal of federal firearms disabilities satisfies the condition of the Arkansas Governor's pardon, and thereby results in removal of state firearms disabilities.

## CALIFORNIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. Code of Civil Procedure § 203(a)(5). 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).

Any person convicted of vote-buying, bribery, perjury, forgery, malfeasance in office, or other "high crimes" is disqualified from public office. Cal. Const. art. VII, § 8; Cal. Govt. Code § 1021; Cal. Penal Code §§ 74, 88, 165.<sup>1</sup> Earlier similar provisions of 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. Govt. Code § 1029.

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. and Prof. Code § 490. E.g., law (Cal. Bus. and Prof. Code § 6060(b)); real estate (§ 10177(b)); medicine (§ 1320); nursing (§ 2761(f)); physical therapy (§ 2660).

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

The right to vote is automatically restored upon completion of a sentence to confinement. Other civil rights may be regained only through a pardon. Under the California Constitution, the pardon power 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; however, the 10-year rule may be waived in exceptional circumstances if the applicant can demonstrate a specific need for pardon. A pardon

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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. Govt. 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 §§ 74, 88, and 165 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).

may not be granted to a recidivist unless a majority of judges of the State Supreme Court so recommend. 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 in California (other than the right to vote) only through a pardon or "action analogous to a pardon" in the jurisdiction of their conviction. Therefore, federal felons residing in California may regain their civil rights 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 § 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 residency 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 § 4852.14. When issued, the certificate is forwarded to the Governor and treated as an application for full 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 under another sentence) 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. 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 fact of conviction

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<sup>3</sup> The felon must have lived in California for at least three years immediately prior to the filing of the application. Cal. Penal Code § 4852.01. The period of rehabilitation is measured from the date of discharge from custody due to completion of sentence or upon release on parole or probation, whichever is sooner, and is tacked on to the residency requirement. Cal. Penal Code § 4852.03(a). In most cases, the period of rehabilitation is an additional two or four years, depending on the severity of the offense. Cal. Penal Code §§ 4852.03 (a)(1), (2). State felons 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.

in any application for public office or licensure by a state or local agency, and the conviction may be used in a subsequent prosecution.<sup>4</sup> Cal. Penal Code § 1203.4.

### III. FIREARMS

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, defined to include both long guns and handguns, Cal. Penal Code § 12001(b), 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).

A full and unconditional pardon based on a certificate of rehabilitation restores the right to own and possess any type of weapon that may lawfully be possessed and owned by other citizens, except for persons convicted of an offense "involving the use of a dangerous weapon." Cal. Penal Code § 4852.17. In any other pardon the Governor may restore firearms privileges, except to persons convicted of an offense "involving the use of a dangerous weapon." Cal. Penal Code § 4854. State firearms privileges are also restored to a federal felon who has received a presidential pardon. Harbert v. Deukmejian, 173 Cal. Rptr. 89 (1981). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons in California while they remain under a state law disability.

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<sup>4</sup> The latter qualification appears to indicate that this relief does not remove state firearms disabilities.

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





## COLORADO

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

No person confined after conviction is eligible to vote while confined or while serving any part of his sentence under mandate. Colo. Rev. Stat. § 1-2-103(4). Eligibility for jury service is not lost by conviction, as a previous 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. § 18-105(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(b)); physician (§ 12-36-117(h)); realtor (§ 12-61-113)). No person convicted of a felony or crime involving moral turpitude, however, may ever be certified as a peace officer unless he has received a pardon. Colo. Rev. Stat. § 24-31-305.

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

Except as to the disqualification from public office for certain felons, civil rights are automatically restored upon discharge after completion of sentence or probation. Colo. Rev. Stat. §§ 1-2-103(4), 18-1-105(3). The pardon power is vested in the Governor, Colo. Const. art. IV, § 7; Colo. Rev. Stat. § 16-17-102, who generally does not grant pardons until at least 10 years after completion of sentence. Persons convicted under federal law or the law of another state are ineligible for gubernatorial pardon.

### III. FIREARMS

Any person convicted, under the law of any state or of the United States, of burglary, arson, or a felony involving the use of force or violence or the use of a deadly weapon, or an attempt or conspiracy to commit one of these offenses, within the past 10 years, or within 10 years of release or escape from confinement (whichever is greater), may not possess, use, or

carry on his person a firearm or other weapon mentioned in the state's firearms laws.<sup>1</sup> Colo. Rev. Stat. § 18-12-108.<sup>2</sup>

Colorado felons may have firearms privileges restored before the 10-year period has elapsed by receiving a gubernatorial pardon. A person convicted of an enumerated felony under federal law or the law of another state may obtain restoration of firearms privileges before the 10-year period has expired only by receiving a pardon from the jurisdiction of conviction. The Bureau of Alcohol, Tobacco and Firearms will not grant relief to a person subject to state firearms disabilities.

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<sup>1</sup> Although "firearm" is defined in Colo. Rev. Stat. § 12-26-101(a)(1) (pertaining to firearms dealers) to mean only handguns with a barrel length of 12 inches or less, the definition section for Title 18 (the Colorado Criminal Code) defines "firearm" to include both handguns and long guns. Colo. Rev. Stat. § 18-901(3)(h). Furthermore, the other weapons mentioned in the state's firearm's laws include "deadly weapons," which would include long guns and handguns. Colo. Rev. Stat. § 18-1-901(3)(e).

<sup>2</sup> The Colorado Supreme Court has also 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. COLLATERAL CONSEQUENCES OF A CONVICTION

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(c)(1)(B). 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.<sup>1</sup> Such employment or license may, however, 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 is relevant to the licensing process are: day care center operator or worker (Conn. Gen. Stat. § 19a-87a); psychologist (§ 20-192); public accountant (§ 20-286).

### II. 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(c)(1)(B).

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").

### III. FIREARMS

While Connecticut law does not forbid mere ownership of firearms by a felon, all felons lose the right to carry pistols and revolvers and any other "dangerous and deadly" weapon (which includes long guns). Conn. Gen. Stat. §§ 29-29, 53-206. No procedure other than pardon exists at the state level for restoring this right. However, since state law forbids only carrying firearms, and not their ownership or possession, the Bureau of Alcohol, Tobacco and Firearms will consider applications from federal felons for restoration of federal firearms privileges.

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



## DELAWARE

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of a felony forfeits the right to vote. Del. Const. art. V, § 2; 15 Del. Code Ann. § 1701. Offenders convicted of certain election law violations are prohibited from voting for 10 years following completion of sentence. Del. Const. art. V, § 7; 15 Del. Code Ann. § 1701. Convicted felons who have not had their civil rights restored may not serve on juries. 10 Del. Code Ann. § 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 an "infamous" crime. Del. Const. art. XV, § 6. See Slawik v. Folsom, 410 A.2d 512 (Del. 1979) (power to remove from office includes federal convictions).

A professional or occupational license may be revoked or suspended for conviction of certain crimes. E.g., medicine (24 Del. Code Ann. § 1731(b)(2)); dentistry (24 Del. Code Ann. § 1131(2)); accounting (24 Del. Code Ann. §§ 117(4), (5)); real estate (24 Del. Code Ann. § 2912(c)).

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

The power to pardon is vested in the Governor, after recommendation by the Board of Pardons. 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). The Attorney General also states that felons convicted under federal law or the law of another state are eligible for a gubernatorial pardon.<sup>1</sup> Probationers may have their supervision terminated pursuant to 11 Del. Code § 4333.<sup>2</sup>

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<sup>1</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." 11 Del. Code § 4347(i). However, the office of the Delaware Attorney General advises that these "civil rights" are limited to those "commonly exercised in everyday life," and exclude the rights to vote, serve on a jury and hold public office, and firearms privileges.

<sup>2</sup> The Supreme Court of Delaware held in Fonville v. McLaughlin, 270 A.2d 529 (Del. 1970), that a procedure for striking a guilty plea after successful completion of probation did not remove the disqualification from office under Del. Const. art. II, § 21. The court noted, however, that this procedure did not expunge the conviction.

### III. FIREARMS

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; or a person convicted of the unlawful use, possession, or sale of drugs. 11 Del. Code Ann. § 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. The Bureau of Alcohol, Tobacco and Firearms will not grant relief to felons residing in Delaware who are under a firearms disability imposed by state law.

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<sup>3</sup> This term is defined in 11 Del. Code Ann. § 222(5) to include all firearms.

## DISTRICT OF COLUMBIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of a felony loses the right to serve on a jury (unless he seeks certification, described *infra*). D.C. Code § 11-1906. A felon's right to vote is suspended only during imprisonment. D.C. Code § 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 §§ 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 in the District of Columbia). D.C. Code § 1-1304(b)(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 § 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 § 11-1526(a)(1).

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 § 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 § 2-3305.3(a)(1)); veterinarian (§ 2-2729(2)); attorney (§ 11-2503); liquor license (§ 25-115(g)(1)).

### II. 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 §§ 1-225; 1-241(c); 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 § 11-1906(b)(2).

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, despite the provisions of D.C. Code § 1-311.

### III. FIREARMS

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, defined as any firearm with a barrel

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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 § 1-1302(7)(B).

length of less than 12 inches. D.C. Code §§ 22-3201(a), 22-3203.<sup>2</sup> Nor may such persons obtain a registration certificate for any firearm (including both long guns and handguns) or ammunition. D.C. Code §§ 6-2313(a)(9), 6-2361(3).

A registration certificate is also denied to (1) anyone who has been convicted of a "crime of violence,"<sup>3</sup> a "weapons offense,"<sup>4</sup> or any violation of the D.C. laws requiring registration of guns or ammunition; and (2) anyone who, within the five years prior to the application, had been convicted of (a) a violation of any law restricting the use, possession, or sale of narcotics or dangerous drugs, or (b) any offense involving threats to do bodily harm or assault under the D.C. Code<sup>5</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 § 6-2313.

The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons residing in the District of Columbia. A presidential pardon restores all firearms privileges under the laws of both the District of Columbia and the United States.

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<sup>2</sup> Also prohibited from possessing a pistol is anyone convicted of prostitution (D.C. Code § 22-2701), keeping a "bawdy house" (D.C. Code § 22-2722), or vagrancy (D.C. Code §§ 22-3302 - 3306). D.C. Code § 22-3203(a)(3).

<sup>3</sup> Defined in D.C. Code § 6-2302(5) 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; rape; mayhem; maliciously disfiguring another; abduction; kidnapping; burglary; robbery; housebreaking; any assault with intent to kill, commit rape, 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>4</sup> Defined in D.C. Code § 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>5</sup> Specifically under D.C. Code § 22-507 or § 22-504.



## FLORIDA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of a felony loses the rights to vote, to serve on a jury, and to hold public office. Fla. Const. art. VI, § 4; Fla. Stat. §§ 97.041(3)(b), 40.07.

A person may not be disqualified from public employment or from receiving a professional or occupational license solely because of a criminal conviction. Such employment or license may, however, be denied by reason of a prior conviction if the crime was a felony or first-degree misdemeanor and directly related to the employment sought. Fla. Stat. §§ 112.011(1)(a), (b). These restrictions do not apply to law enforcement or correctional agencies,<sup>1</sup> Fla. Stat. § 112.011(2)(a), or to the fire department, as to which a four-year disqualification is imposed. Fla. Stat. § 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 or an occupational license unless he has completed his sentence or complied with certain conditions. Fla. Stat. § 775.16. Examples of occupations in which conviction is relevant to the licensing decision include: teacher (§ 231.28); bartender (§ 562.13); liquor license (§ 561.15).

### II. 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. § 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 clemency. State felons may not apply for pardon until 10 years have elapsed following completion of sentence. See 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, 5D, 9C. 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, 9B.

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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 convictions in making this determination. See Sandlin v. Criminal Justice Standards & Training Comm'n, 531 So. 2d 1344 (Fla. 1988).

### III. FIREARMS

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. §§ 790.001(6), 790.23(1). Nor may he carry a concealed weapon. Fla. Stat. §§ 790.23(1). These prohibitions do not apply to a person whose "civil rights have been restored," Fla. Stat. § 790.23(2),<sup>2</sup> 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. Fla. Rules of Executive Clemency § 5C. Persons subject to state firearms disabilities are not eligible to apply to the Bureau of Alcohol, Tobacco and Firearms for relief from federal firearms disabilities.

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<sup>2</sup> Because the state's rules governing restoration of civil rights provide for a special procedure to obtain "specific authority to own, possess or use firearms," it would appear that mere restoration of civil rights without such specific authority would not be sufficient to remove state firearms disabilities.

## GEORGIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. § 21-2-219. 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. A person convicted of a felony involving moral turpitude under the laws of Georgia, or any other jurisdiction if the conduct would be a felony in Georgia, loses the right to hold any civil office. Ga. Code Ann. § 45-2-1(3). A person convicted of a federal or state felony is ineligible to be a sheriff. Ga. Code Ann. § 15-16-1(c)(1)(F).

A person convicted of a state felony loses the right to sit on a jury. Ga. Code Ann. §§ 15-12-60(b)(2), 15-12-120; Op. Att'y Gen. 83-33. 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 conviction of any felony or a crime involving moral turpitude in any state or federal court. Ga. Code Ann. § 43-1-19(3). E.g., chiropractor (§ 43-9-12(a)(3)); dentist (§ 43-11-47(a)(3)); dietician (§ 43-11A-15(3)).

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

The right to vote is restored upon completion of sentence. Ga. Const. art. II, § I, ¶ III(a). To regain the rights to hold public office and to sit on a jury, either a pardon or restoration of civil rights is necessary. Op. Att'y Gen. 83-3. In addition to obtaining a restoration of civil rights, a person convicted of a "felony involving moral turpitude" must wait 10 years after completion of sentence and have no subsequent conviction of a felony involving moral turpitude to be eligible to hold office. Ga. Const. art. II, § II, ¶ III.

The power to pardon and to remove disabilities is vested in the state Board of Pardons and Paroles. 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. 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).

For a felon convicted under federal law, Georgia law, or the law of 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>1</sup>

Certain first offenders prosecuted under Georgia law may be placed upon 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). After discharge the offender is "not considered to have a criminal conviction." Ga. Code Ann. §§ 42-8-62(a). In addition, an offender sentenced to probation under this scheme is not disqualified from jury service during the probation period, 1990 Op. Att'y Gen. No. U90-6, although a person who is incarcerated is considered convicted during the period of incarceration. Ga. Code Ann. § 42-8-65(c). A conviction so discharged may not be used to disqualify the offender from employment. Ga. Code Ann. § 42-8-63.

### III. FIREARMS

A person convicted of a felony<sup>2</sup> under the laws of any state or the United States loses the right to receive, possess, or transport a firearm, including handguns, rifles, and shotguns. 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>3</sup> In addition, persons who have obtained relief from federal firearms disabilities,<sup>4</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 person "would not present a threat to the safety of the citizens of Georgia." Ga. Code Ann. § 16-11-131(d).

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<sup>1</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 held that licensing privileges are not restored by a pardon. These boards consequently may refuse to 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.

<sup>2</sup> "Felony" is defined as "any offense punishable by imprisonment for a term of one year or more." It includes court-martial convictions for offenses that would be felonies under federal law. Ga. Code Ann. § 16-11-131(a)(1).

<sup>3</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 firearms disability upon discharge. Ga. Code Ann. § 16-11-131(e).

<sup>4</sup> Because state law permits relief from state firearms disabilities upon obtaining relief from federal firearms disabilities, the Bureau of Alcohol, Tobacco and Firearms will accept applications for such relief from felons residing in Georgia, even though they are still under a state-law ban on all firearms until the Board of Public Safety grants relief.

Under Georgia law, a license issued by a probate judge of the county of residence is required to carry a handgun. Ga. Code Ann. § 16-11-129. A license may not be issued to: (1) a person who has been convicted of a forcible felony<sup>5</sup> and who has not been free of all restraint or supervision for that crime for at least 10 years; (2) a person who has been convicted of a forcible misdemeanor<sup>6</sup> or a nonforcible felony 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>7</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 drugs, regardless of how much time has passed since completion of sentence. Ga. Code Ann. § 16-11-129(b)(3), (5).

The Georgia Supreme Court has held that the statute banning possession of all firearms by felons (§§ 16-11-131(b) and (c)) implicitly repeals the more limited disabilities imposed for carrying a handgun (§ 16-11-129(b)(3)). Therefore, a pardon is required before persons convicted of nonforcible felonies or forcible misdemeanors may carry a handgun, even if five years have passed since completion of sentence. Fain v. State, 386 S.E.2d. 144 (Ga. 1989).

As noted above, see note 4, the Bureau of Alcohol, Tobacco and Firearms will accept applications for relief from federal firearms disabilities from felons residing in Georgia.

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<sup>5</sup> A "forcible felony" is "any felony which involves the use or threat of physical force or violence against any person." Ga. Code Ann. § 16-1-3(6).

<sup>6</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>7</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. COLLATERAL CONSEQUENCES OF A CONVICTION

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(3). Hiring and licensing entities may, however, consider any 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. Haw. Rev. Stat. § 831-3.1(b).

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

### III. FIREARMS

A person convicted of any felony, any "crime of violence" (defined as an offense involving injury or threat of injury to the person of another), or any offense involving the illegal sale of any drug is disqualified from owning, controlling, or possessing a firearm (including long guns and handguns) within the state. Haw. Rev. Stat. §§ 134-1, 134-7. The office of the state's

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<sup>1</sup> Persons convicted of treason, however, lose the right to seek and hold public office permanently. Haw. Rev. Stat. § 831-2(c).

<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.

Attorney General advises 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. The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons residing in Hawaii who are under a state firearms disability.



## IDAHO

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A sentence of custody to the Idaho State Board of Correction for any time less than for life suspends all civil rights during the period of imprisonment; however, the person may exercise all civil rights that are not "political" (other than those pertaining to firearms) during any period of parole or probation. Idaho Code § 18-310(1). A person sentenced to life in a state prison is deemed civilly dead and loses all civil rights. Idaho Code § 18-311.

A state agency may discipline or discharge an employee who is convicted of official misconduct in office, any felony, or a crime involving moral turpitude. Idaho Code § 67-5309(m)(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(f), (g)); veterinary medicine (§§ 54-2113(3), (4)); pharmacy (§ 54-1726(1)(c)); dentistry (§ 54-923); podiatry (§ 54-608(3)); architecture (§ 54-305(1)(d)); accounting (§§ 54-217(5), (6)).

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

Upon final discharge, a felon<sup>1</sup> is restored to all rights lost upon conviction. 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").

A state judge may (except for cases of treason or murder) suspend execution of a judgment during the first 120 days of a sentence to the custody of the State Board of Corrections or withhold judgment, and place the defendant on probation. Idaho Code § 19-2601. Upon successful completion of probation, the court may 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), the court may amend the judgment of conviction from a term of custody of the State Board of

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<sup>1</sup> Other than one convicted of treason or, insofar as firearms privileges are concerned, one convicted of certain enumerated felonies committed on or after July 1, 1991. Idaho Code § 18-310(2).

<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 50.10(1)(a).

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).

### III. FIREARMS

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 when the person was sentenced to life, Idaho Code § 18-311, or was convicted of treason or certain enumerated felonies committed after July 1, 1991.<sup>3</sup> Idaho Code § 18-310(1)(a). 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 (defined to include both long guns and handguns), unless his conviction has been "nullified by expungement, pardon, setting aside the conviction or other comparable procedure," or his "civil rights to bear arms either specifically or in combination with other civil rights has been restored by any other provision of Idaho law" (presumably Idaho Code § 18-310). 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 enumerated felony 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.

A permit to carry a concealed weapon<sup>4</sup> outside one's home or fixed place of business<sup>5</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>3</sup> Examples of these offenses include murder, manslaughter, kidnapping, robbery, rape, kidnapping, and drug offenses.

<sup>4</sup> A concealed weapon includes certain knives, pistols, and revolvers, as well as any other deadly or dangerous weapon; it does not include shotguns and rifles. Idaho Code § 18-3302(7).

<sup>5</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).

The Bureau of Alcohol, Tobacco and Firearms will grant relief from federal firearms disabilities to felons residing in Idaho who are not prevented by state law from possessing all firearms.



## ILLINOIS

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person sentenced to imprisonment loses the right to vote until released from prison. Ill. Const. art. III, § 2; Ill. Rev. Stat. ch. 38, ¶ 1005-5-5(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. Rev. Stat. ch. 38, ¶ 1005-5-5(b). A convicted felon may not serve as an executor of a will or administrator of an estate. Ill. Rev. Stat. ch. 110 1/2, ¶ 6-13(a), ¶ 9-1.<sup>1</sup>

A felon may not do business with the state until one year after the date of completion of sentence, Ill. Rev. Stat. ch. 127, ¶ 132.10-3, and may be denied state employment when the offense involved "infamous or disgraceful conduct." Ill. Rev. Stat. ch. 127, ¶ 63b108b.4. An occupational or professional license may be revoked, denied, or suspended because of a felony conviction. *E.g.*, medicine (Ill. Rev. Stat. ch. 111, ¶ 4400-22(A)(3), (B)); real estate (Ill. Rev. Stat. ch. 111, ¶ 5811, 5818(b)); engineering (Ill. Rev. Stat. ch. 111, ¶ 5224; pharmacy (Ill. Rev. Stat. ch. 111, ¶ 4150(a)(14), (c); law (Ill. Rev. Stat. ch. 110A, ¶ 704, 761).

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

The right to vote is automatically restored upon release from prison. Ill. Const. art. III, § 2; Ill. Rev. Stat. ch. 38, ¶ 1005-5-5(c). The right to hold public office is automatically restored upon completion of sentence. Ill. Rev. Stat. ch. 38, ¶ 1005-5-5(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. Rev. Stat. ch. 38, ¶ 1005-5-5 (d).<sup>3</sup>

The pardon power is vested in the Governor, who is assisted by recommendations of the Prisoner Review Board. Ill. Const. art. V, § 12; Ill. Rev. Stat. ch. 38, ¶ 1003-3-13. Felons convicted under federal law or the law of another state are ineligible for a gubernatorial pardon.

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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. Rev. Stat. ch. 78, ¶ 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. Rev. Stat. ch. 46, ¶ 29-6, ¶ 29-10.

<sup>3</sup> This section does not apply to the suspension or revocation of a driver's license. Ill. Rev. Stat. ch. 38, ¶ 1005-5-5(d).

### III. FIREARMS

A person convicted of a felony under the laws of Illinois or any other jurisdiction may not possess a firearm (including both long guns and handguns, Ill. Rev. Stat. ch. 38, ¶ 83-1.1) or ammunition, unless relief from this disability is granted by the Department of State Police. Ill. Rev. Stat. ch. 38, ¶ 24-1.1(a).<sup>4</sup> The State Police Department will grant relief if it is established that 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; that he is not likely to act in a manner dangerous to public safety; and that restoration of firearms privileges would not be "contrary to the public interest." Ill. Rev. Stat. ch. 38, ¶ 83-10(c). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities unless the felon has received relief from the State Police.

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<sup>4</sup> Under state law a Firearms Owner's Identification Card is 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. Rev. Stat. ch. 38, ¶ 24-1.1. Ill. Rev. Stat. ch. 38, ¶¶ 83-2(a), 83-4(2)(ii), 83-10(c).

## INDIANA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person "imprisoned following conviction of a crime" may not vote during imprisonment. Ind. Code § 3-7-1-15(a). A person under sentence is disqualified as a juror. Ind. Code § 33-4-5-7(b)(4). A person convicted of certain federal offenses<sup>1</sup> loses 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). State judges may be suspended upon a plea or finding of guilt of, and removed upon final conviction of, a state or federal felony or a crime that involves moral turpitude. 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.

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

The right to vote is automatically restored to felons upon release from incarceration, and the right to serve on a jury is automatically restored upon completion of sentence, including any period of probation or parole. Ind. Code §§ 3-7-1-15, 33-4-5-7. Disabilities affecting the 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; 11-9-2-2. 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.

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<sup>1</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.

### III. FIREARMS

Under Indiana law, a license is required to carry a handgun (defined as any firearm with a barrel length less than 16 inches or an overall length of less than 26 inches), except in one's dwelling or fixed place of business. Ind. Code §§ 35-47-1-6, 35-47-2-1. Persons excluded from the category of "proper persons" eligible to obtain such a license include: (1) a 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) a person convicted of a crime for which he could have been sentenced for more than one year; (3) and a person convicted of any "crime involving an inability to safely handle a handgun." Ind. Code §§ 35-47-1-7, 35-47-2-3. It is unlawful to sell, give, or deliver a handgun to a person with a felony conviction. Ind. Code § 35-47-2-7.

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. The Governor may also issue a pardon that conditions removal of firearms disabilities upon a determination of 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 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. Indiana law does not provide for restoration of handgun privileges to a federal felon. Because state law does not bar possession of all guns, the Bureau of Alcohol, Tobacco and Firearms will grant relief from federal firearms disabilities to felons residing in Indiana.



## IOWA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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 court to the county commissioner of registration of the person's "conviction of a felony." Iowa Code §§ 48.30, 48.31.

It is grounds for contesting an election that the incumbent had been "duly convicted of a felony." Iowa Code § 57.1. Conviction of a felony also is grounds for removal of an appointed state officer. Iowa Code § 66.26. The disqualifications from voting and holding office have been held to apply to federal felons. *State ex rel. Dean v. Haubrich*, 248 Iowa 978, 83 N.W.2d 451 (1957). A felon does not appear to be disqualified from jury service.

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. Iowa Code § 147.55. E.g., accountant (Iowa Code § 116.21); real estate broker (§ 117.29); landscape architect (§ 118A.15).

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

The Governor has the authority 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 §§ 248A.1 - 248A.3. Federal felons may obtain restoration of civil rights from the Governor, but not a pardon. *State ex rel. Dean v. Haubrich*, *supra*; see also *United States v. Bell*, 970 F.2d 428 (8th Cir. 1992).

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, a person convicted under Iowa law may be sentenced to probation without adjudication, Iowa Code § 907.3, in which case the court's criminal record pertaining to the offense is expunged upon discharge. Iowa Code § 907.9.

### III. FIREARMS

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>2</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

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

<sup>2</sup> "Offensive weapon" is defined in Iowa Code § 724.1 to include such objects as a machine gun, bomb, and sawed-off shotgun. The term "firearm" is not defined, but appears to include both long guns and handguns.

excluding assault and harassment) may not obtain or maintain a permit to own a pistol or revolver, Iowa Code § 724.15, nor may he obtain a permit to carry firearms. Iowa Code § 724.8. 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. These firearms disabilities do not apply to a person "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 the chief executive to receive, transport, or possess firearms or destructive devices." Iowa Code § 724.27.

Iowa Code § 248A.7 provides that, notwithstanding the code provisions regarding pardon, "a person who has been convicted of a forcible felony, a felony violation of chapter 204 [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." The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons in Iowa who are prohibited by § 724.26 from possessing a firearm.

## KANSAS

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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 completion of sentence, including parole. 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)).

### II. 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 Parole Board. 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 the subject of expungement. 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 compliance with state or federal firearms laws is still required. Kan. Stat. Ann. § 21-4619(h).

### III. FIREARMS

A person may not possess a firearm with a barrel length of less than twelve inches if, within the preceding five years, he has been convicted of a felony under the law of Kansas or any other jurisdiction or been released from imprisonment for a felony. Kan. Stat. Ann. § 21-4204(1)(b). A person may not possess any firearm if, within the preceding 10 years, he has been convicted of or released from imprisonment for certain violent felonies, unless the

conviction has been expunged or pardoned.<sup>1</sup> Kan. Stat. Ann. §§ 21-4204(1)(c), 21-4204(2). A person adjudicated as a juvenile offender because of the commission of an act which, if done by an adult, would constitute a felony, is under a similar disability. Kan. Stat. Ann. § 21-4204(1)(c).

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, pursuant to Kan. Stat. Ann. § 21-4204(1)(b), the firearms privileges of a felon who had received the certificate were not restored until five years following his release. United States v. Burns, 934 F.2d 1157 (10th Cir. 1991). The Bureau of Alcohol, Tobacco and Firearms will grant relief from federal firearms disabilities to felons residing in Kansas who are subject to the five-year handgun disability, but not to violent felons while they are subject to the 10-year disability from possessing all firearms.

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<sup>1</sup> These violent felonies include murder in the first and second degree, manslaughter, aggravated assault, aggravated burglary, battery, kidnapping, certain sexual offenses, and certain drug offenses. Kan. Stat. Ann. § 21-4204(2).

## KENTUCKY

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. § 29A.080(2)(f). 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, or conviction of a "high misdemeanor, misdemeanors for which a jail sentence may be imposed, or offenses involving moral turpitude." Ky. Rev. Stat. §§ 335B.010, 335B.020. E.g., insurance (Ky. Rev. Stat. § 304.9-440(1)(f)); dentistry (§ 313.130(1)); nursing (§ 314.091(1)(b)); medicine (§ 311.595(4)).

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

The power to pardon 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, 145, 150; 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. Arnett v. Stumbo, supra (federal felon pardoned by Governor eligible to vote and hold elected public office notwithstanding absence of presidential pardon). The practice of the current Governor is to require the consent of the United States Attorney for the district of conviction before granting relief to a federal offender.

### III. FIREARMS

A person convicted of a state or federal felony is prohibited from possessing, manufacturing, or transporting a handgun.<sup>1</sup> This right can be restored by a full Governor's pardon expressly restoring firearms privileges, a presidential pardon, or relief granted by the Bureau of Alcohol, Tobacco and Firearms (BATF). Ky. Rev. Stat. §§ 527.010(3), 527.040; Op. Att'y Gen. 77-739. Because the state law disability applies only to handguns, persons subject to it are eligible to apply to the BATF for relief from federal firearms disabilities.

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<sup>1</sup> A handgun is defined as any pistol or revolver originally designed to be fired by the use of a single hand, or any other firearm originally designed to be fired by the use of a single hand. Ky. Rev. Stat. § 527.010(3).



## LOUISIANA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person "under an order of imprisonment for conviction of a felony" may not vote. La. Const. art. I, § 10; La. Rev. Stat. Ann. § 18:102(1). The disqualification from voting applies to federal convictions. Op. Att'y Gen. 79-787 (1980).<sup>1</sup> See also La. Const. art. I, § 20 (providing that rights of citizenship are restored upon termination of "state and federal supervision following conviction"). A felon loses the right to serve on a jury. La. Code Crim. Proc. art. 401(A)(5). Conviction of a federal or state felony during a term of office is grounds for removal of the officeholder. La. Rev. Stat. § 42:1411(A). See also La. Const. art. X, § 24(A) (dealing with impeachment of state officials).

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. La. Rev. Stat. Ann. § 37:2950(D). 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)(3),(4)). 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.

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

"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., voting, office holding, and state employment), not privileges (e.g., liquor license). *State v. Adams*, 355 So. 2d 917 (La. 1978); Op. Att'y Gen. 79-787 (1980).

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). Despite the wording of this provision, the Board of Pardons advises that a federal felon is eligible for a gubernatorial pardon. See Op. Att'y Gen. 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").

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) "shall be pardoned automatically upon completion of his sentence without a recommendation of the Board

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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 the 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 in state elections violated the state Constitution.

of Pardons and without action by the governor." La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. §§ 15:572(B), (C). 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. Paul v. Edwards, 323 So. 2d 488 (La. App. 1st Cir. 1975). According to the Louisiana Board of Pardons, federal felons are eligible for a Governor's pardon to remove civil disabilities arising under state law because of the conviction. See Op. Att'y Gen. 79-787 (1980).

### III. FIREARMS

A person convicted of certain enumerated felonies,<sup>2</sup> a felony violation of the state's Uniform Controlled Dangerous Substances Act, or an attempt to commit any of these offenses or an equivalent offense under federal laws or the laws of any state, loses the right to possess firearms and to carry a concealed weapon.<sup>3</sup> This right is automatically restored 10 years following 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(A), (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. Ann. § 14:95.1(C)(2). See Op. Att'y Gen. 87-371 (1987). The felon must also apply to the federal government for relief from federal firearms disabilities. Op. Att'y Gen. 91-607 (1992).

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. Op. Att'y Gen. 86-804 (1986), 88-11 (1988). The Board of Pardons advises that federal felons may regain their state firearms privileges through a Governor's pardon. The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to persons who remain subject to the state law prohibition against possessing all firearms.

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<sup>2</sup> The enumerated felonies are: first or second degree murder; manslaughter; aggravated battery; aggravated, forcible, or simple rape; aggravated crime against nature; aggravated kidnapping; aggravated arson; aggravated or simple burglary; armed or simple robbery; burglary of a pharmacy; burglary of an inhabited dwelling; unauthorized entry of an inhabited dwelling; 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>3</sup> Although the terms "firearm" and "concealed weapon" are not defined in the Criminal Code, they appear to include all guns.



## MAINE

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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 ten years for others) upon considering the conviction itself, rather than the offense conduct, in the licensing decision. Me. Rev. Stat. Ann. tit. 5, § 5303.

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

The pardon power 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.

### III. FIREARMS

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 or have in his possession or under his control any firearm (defined in Me. Rev. Stat. Ann. tit. 17-A, § 2(12-A), to include both long guns and handguns), 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.

The Bureau of Alcohol, Tobacco and Firearms honors the state's five-year waiting period, and will not process applications to remove federal firearms disabilities within that period unless the applicant has received a Governor's pardon.

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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).



## MARYLAND

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of "theft or other infamous crime," or of buying or selling votes, loses the right to vote. Md. Const. art. I, § 6; Md. Ann. Code art. 33, § 3-4. 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; Md. Courts and Judicial Proceedings Code Ann. § 8-207. A state elected official or a member of a state board or commission can be suspended and removed 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 or both may not serve as a juror. Md. Courts and Judicial Proceedings Code Ann. § 8207(b)(5). A person convicted of falsifying a juror qualification form may not serve as a juror. Md. Courts and Judicial Proceedings Code Ann. § 8-207(b)(6).

A felony conviction may be grounds for suspending, revoking, or denying a professional or occupational license. *E.g.*, veterinary medicine (Md. Agriculture Code Ann. §§ 2-310(2), (3), (4)); accounting (Md. Business Occupations and Professions Code Ann. § 2-315(a)(3)); dentistry (Md. Health Occupations Code Ann. § 4-315(A)(4)); nursing (Md. Health Occupations Code Ann. § 8-316(a)(4)); optometry (Md. Health Occupations Code Ann. § 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).

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

The disability from voting for first offender lasts only until sentence is completed, including probation or parole. Md. Ann. Code, art. 33, § 3-4. As a result, first offenders also regain the right to hold office and to sit on a jury (unless an additional disability applies as to jury service) upon completion of sentence.<sup>1</sup> 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 on every pardon application. Md. Ann. Code art. 41, § 4-504(b)(3). According to

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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.

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 criminal act, which is not a crime of violence,<sup>2</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. In addition, a procedure for imposing probation prior to judgment is available, 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.

### III. FIREARMS

A person convicted of a crime of violence or any violation of the Maryland law on pistols loses the right to possess a pistol or revolver (defined as any firearm with barrel less than 12 inches in length), to receive a license as a dealer in pistols and revolvers, or to be sold a pistol or revolver. Md. Ann. Code art. 27, §§ 442, 443, 445(c). 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," defined to include handguns, rifles, shotguns, assault weapons, and machine guns. Md. Ann. Code art. 27, § 291A(a), (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).

A person who is not prohibited by state law from possessing all types of firearms may apply for restoration of his federal firearms privileges from the Bureau of Alcohol, Tobacco and Firearms.

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<sup>2</sup> "Crime of violence" is defined to mean the following crimes or an attempt to commit any of them: abduction, arson, burglary, escape, housebreaking, kidnapping, manslaughter (except involuntary manslaughter), murder, rape, robbery, robbery with a deadly weapon, first degree sexual offense, and sodomy. It also includes assault with intent to commit any offense punishable by imprisonment for more than one year. Md. Ann. Code art. 27, § 441(e).

## MASSACHUSETTS

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. Law. ch. 234A, § 4. 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 ch. 234, § 8. A person sentenced to imprisonment for a federal or state felony forfeits any public office he currently holds. Mass. Gen. Laws ch. 279, § 30. Otherwise, conviction presumably does not affect the future right to run for and hold public office. The right to vote is not lost because of a conviction.

No person who has been convicted of a felony may be appointed as a peace officer. Mass. Gen. Laws ch. 41, § 96A. 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 ch. 112, § 5); dentistry (Mass. Gen. Laws ch. 112, § 52D); architecture (Mass. Gen. Laws ch. 112, § 60A); psychology (Mass. Gen. Laws ch. 112, § 128); veterinary medicine (Mass. Gen. Laws ch. 112, § 55).

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

As noted, the rights to vote and to run for and hold public office are generally unaffected by conviction. 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 ch. 234A, § 4(7); ch. 234, § 8. Other disabilities attendant on a felony conviction may be alleviated by a pardon.

The pardon power is vested in the Governor, who may grant a pardon with the advice and consent of the Governor's Council. Mass. Const. art. VIII, § 1; Mass. Gen. Laws 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 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 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 firearms statutes may not be sealed. Mass. Gen. Laws ch. 276, § 100A.

### III. FIREARMS

In Massachusetts a license is needed to carry a "firearm," defined as, in essence, a handgun. 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 a "firearm." Mass. Gen. Laws ch. 140, § 131. In addition, a Firearms Identification Card is needed to possess a "firearm" (unless the person has obtained a license to carry), a long gun, or ammunition. Mass. Gen. Laws ch. 140, §§ 121, 129C; ch. 269, § 10. A state or federal felon or drug offender may apply for a Firearms Identification Card five years after conviction or release from confinement, whichever is later. Mass. Gen. Laws ch. 140, § 129B.

The issue of whether restoration of civil rights under state law operates to restore federal firearms privileges has not been definitively settled in Massachusetts.<sup>1</sup> Felons residing in Massachusetts are eligible to apply to the Bureau of Alcohol, Tobacco and Firearms for relief from federal firearms disabilities after the five-year prohibition on possession of all guns.

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<sup>1</sup> See, e.g., United States v. Ramos, 961 F.2d 1003 (1st Cir. 1992), which held that a state misdemeanor was subject to federal firearms disabilities because his conviction fell within the federal definition of "crime punishable by imprisonment for a term exceeding one year," and he had not had his civil rights restored, despite the fact that he had lost no civil rights as a result of his conviction and therefore could not therefore have had his rights "restored."

## MICHIGAN

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person who has been convicted in state or federal court and sentenced to confinement is not eligible to vote while confined. Mich. Comp. Laws § 168.758b; Mich. Const. art. 2, § 2. 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. A candidate convicted of an election offense is not permitted to enter upon public office. 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 state licensing agency may deny, suspend, or revoke an occupational or professional license upon conviction of certain crimes. *E.g.*, private detective (Mich. Comp. Laws §§ 338.830, 338.838); real estate broker (§ 339.2505).

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

The right to vote is restored upon release from incarceration. Mich. Comp. Laws § 168.758b. The rights to serve on a jury and hold public office are restored upon completion of sentence. Mich. Comp. Laws § 600.1307a(e); 168.938. *See United States v. Driscoll*, No. 91-1583 (6th Cir. July 16, 1992); *United States v. Dahms*, 938 F.2d 131, 133-34 (9th Cir. 1991).

The pardon power 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).

### III. FIREARMS

A person convicted of a crime punishable by imprisonment for more than one year<sup>1</sup> may not obtain a license to purchase, carry, or transport a pistol,<sup>2</sup> unless the conviction has been expunged or set aside, or the person has been pardoned, and the expungement, order, or pardon does not expressly provide that the person shall not ship, transport, possess, or receive firearms. Mich. Comp. Laws § 28.422. No state-law prohibition applies to the purchase or possession of a rifle or shotgun. Therefore, felons residing in Michigan are eligible for relief from federal firearms disabilities from the Bureau of Alcohol, Tobacco and Firearms.

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<sup>1</sup> This term does not include "a state offense classified by the state as a misdemeanor and punishable by imprisonment for 2 years or less." Mich. Comp. Laws § 28.422(8)(a).

<sup>2</sup> A pistol is defined as "any firearm, loaded or unloaded, 30 inches or less in length, or any firearm, loaded or unloaded, which by its construction and appearance, conceals it as a firearm." Mich. Comp. Laws § 28.421.



## MINNESOTA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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, § 609.165, subd. 1; Minn. Stat. § 593 App. Standard 4. 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, 225 Minn. 91, 29 N.W.2d 810 (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); medicine (§ 147.091); nursing (§ 148.261); dentistry (§ 150A.08); pharmacy (§ 151.06); veterinary medicine (§ 156.081); law (§ 481.15).

### II. 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. Minn. Stat. § 609.165, subd. 1a. It has been held to apply to federal felons. United States v. Edwards, 946 F.2d 1347, 1349 (8th Cir. 1991). See Op. Att'y Gen. 68-h, Dec. 27, 1971.

The pardon power is vested in the Board of Pardons. Minn. Const. art. V, § 7; Minn. Stat. § 638.01. 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." Minn. Stat. § 638.02, subd. 2.<sup>1</sup> Federal felons and persons convicted under the law of another state are not eligible for a state pardon. See Minn. Stat. § 638.01 (pardon may be granted to any person "convicted of any offense against the laws of the state").

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<sup>1</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 2, *infra*) and the person must not have been convicted of any other crime during that period. Minn. Stat. § 638.02, subd. 2.

Five years after completion of sentence or discharge from probation, a state offender who was under 21 years old at the time the offense was committed, was convicted of an offense for which life imprisonment is not an authorized sentence, and who has not during that five-year period been convicted of a felony or gross misdemeanor, may request the court to set aside the conviction. Minn. Stat. § 609.166. If the request is granted, the person "shall be deemed not to have been previously convicted," except with respect to firearms disabilities for persons convicted of crimes of violence. Minn. Stat. § 609.168.

### III. FIREARMS

A person convicted of a crime of violence<sup>2</sup> is ineligible to possess any firearm for 10 years following either the expiration of sentence or restoration of civil rights, whichever occurs first. Minn. Stat. § 609.165, subd. 1a. The order of discharge for such a person must provide that firearms privileges are restored after the 10-year period only if the felon has not been convicted of any other crime of violence during that time. Minn. Stat. § 609.165, subd. 1a. Violent felons may regain their state long gun privileges earlier if, after receiving a discharge, they are granted relief by the Bureau of Alcohol, Tobacco and Firearms (BATF) under 18 U.S.C. § 925(c). Minn. Stat. § 609.165, subd. 1a.<sup>3</sup>

Another disability specifically pertaining to pistols also applies to persons convicted of a crime of violence.<sup>4</sup> Such persons may not possess a pistol<sup>5</sup> until 10 years have elapsed from either the expiration of sentence or restoration of civil rights, whichever occurs first, provided the person has not been convicted of any other crime of violence during that period. Minn. Stat. § 624.713, subd. 1b. 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.

Persons convicted "in Minnesota or elsewhere for the unlawful use, possession, or sale of a controlled substance other than conviction for possession of a small amount of marijuana"

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<sup>2</sup> Crimes of violence include (among others) murder, manslaughter, aiding suicide or attempted suicide, felony assault, terroristic threats, use of drugs to injure or to facilitate crime, robbery, kidnapping, false imprisonment, criminal sexual conduct, felonious theft, arson, burglary, reckless use of a gun, and an attempt to commit any of these offenses, "as each of those offenses is defined in chapter 609." They also include "felony violations of chapter 152," dealing with prohibited drugs. Minn. Stat. § 624.712, subd. 5.

<sup>3</sup> Even though violent felons are prohibited by state law from possessing all firearms, they may nonetheless apply to BATF for relief from federal firearms disabilities. This is because a felon, by obtaining BATF relief, is no longer prohibited by state law from possessing all firearms.

<sup>4</sup> For the purpose of the prohibition on pistols, the statute specifies that "crime of violence" includes "crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state." Minn. Stat. § 624.713, subd. 1(b).

<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. "BB guns" are specifically excluded from the definition. Minn. Stat. § 624.712, subd. 2.

are also prohibited from possessing a pistol. Minn. Stat. § 624.713, subd. 1d. Unless these offenses are included in the definition of "crime of violence," persons convicted of them would not have their long gun privileges restricted.

The federal laws prohibiting possession of firearms by convicted felons have been held not to apply to a nonviolent felon whose civil rights were restored by discharge. See United States v. Edwards, supra. And, as noted above, see note 3 supra, BATF will accept applications for relief from federal firearms disabilities from violent felons residing in Minnesota, even if they are prohibited by state law from possessing all firearms.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping, including the need to maintain separate accounts for each transaction and to ensure that all records are properly indexed and filed.

3. The third part of the document discusses the importance of regular audits and reviews of the records. It states that audits should be conducted at least once a year and that the results of the audits should be reported to the appropriate authorities.

4. The fourth part of the document discusses the importance of training and education for all personnel involved in the record-keeping process. It states that all personnel should receive regular training and education to ensure that they are up-to-date on the latest record-keeping practices.

5. The fifth part of the document discusses the importance of maintaining the confidentiality of the records. It states that all records should be kept in a secure location and that access to the records should be restricted to authorized personnel only.

## MISSISSIPPI

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of certain felonies<sup>1</sup> loses the rights to vote, to serve on a jury, and to be appointed to any office of profit, trust, or honor. Miss. Const. art. 12, § 241; Miss. Code Ann. §§ 13-5-1, 99-19-35. In addition, persons convicted of bribery, perjury, or other "infamous crimes" are ineligible to run for or hold public office. Miss. Const. art. 4, § 44. Also disqualified from office is a person convicted of bribery to procure election. Miss. Const. art. 4, § 44. The disqualification from elective office has been held not to 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), or to convictions under the law of another state. Middleton v. Evers, 515 So. 2d 940 (Miss. 1987).

A person convicted of certain offenses may not practice medicine or dentistry unless he receives a pardon. Miss. Code Ann. § 99-19-35. Other professional or occupational licenses may be affected by certain convictions. E.g., physician, dentist, veterinarian, apothecary (Miss. Code Ann. § 41-29-311); nurse (§ 73-15-29); speech pathologist, audiologist (§ 73-38-27); social worker (§ 73-53-17); architect (§ 73-1-13); attorney (§ 73-3-41); barber (§ 73-5-25); cosmetologist (§ 73-7-27); chiropractor (§ 73-6-19); embalmer (§ 73-11-57); engineer/land surveyor (§ 73-14-35); nurse (§ 73-15-29); nursing home administrator (§ 73-17-15); optometrist (§ 73-19-23); pharmacist (§ 73-21-97); physical therapist (§ 73-23-59); occupational therapist (§ 73-24-25); podiatrist (§ 73-27-13); polygraph examiner (§ 73-29-31); licensed professional counselor (§ 73-30-21); psychologist (§ 73-31-21); real estate broker (§ 73-35-21); teacher (§ 37-3-2); bondsman (§ 83-39-3); bingo operator (§ 97-33-57). A felon may not serve as a sheriff's deputy (§ 19-25-19); nor as the administrator of an estate (§ 91-7-65.)

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

The right to vote may be restored by a two-thirds vote of the legislature. Miss. Const. art. 253. 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. Miss. Code Ann. § 99-19-37.<sup>2</sup> 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.

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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. The right to serve on a jury is forfeited upon conviction of any of these offenses or upon conviction of an "infamous crime" or the unlawful sale of intoxicating liquors within five years. Miss. Code Ann. § 13-5-1.

<sup>2</sup> 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 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.

The right to vote may also be restored by a pardon. 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. A pardon is the only method of restoring the right to hold public office. Miss. Code Ann. § 99-19-35. The Governor may also restore "any civil rights lost by virtue of conviction" by an executive order. Miss. Code Ann. § 47-7-41. Relief by executive order is, however, available only to a person discharged from probation, Miss. Code Ann. § 47-7-41, and, according to the state's Attorney General, restores only the right to vote. Op. Att'y Gen. June 27, 1983.

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

### III. FIREARMS

Miss. Code Ann. § 97-37-1 prohibits a person from carrying, concealed in whole or in part, a pistol, revolver, sawed-off shotgun, short-barrel rifle, or "any fully automatic firearm or deadly weapon"<sup>3</sup> unless he is licensed to do so.<sup>4</sup> A person who has been convicted of a felony in the court 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 a person is such a chronic or habitual user of 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(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 be such a chronic and habitual user of alcohol. Miss. Code Ann. § 45-9-101(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; however, an executive order 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. Because state law does not prohibit possession of all firearms, felons residing in Mississippi are eligible to apply to the Bureau of Alcohol, Tobacco and Firearms for relief from federal firearms disabilities.

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<sup>3</sup> That this section does not include a regular rifle or shotgun 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."

<sup>4</sup> Excluded from the coverage of this statute is carrying a firearm or deadly weapon if the person is engaged in a legitimate weapon-related sports activity (such as hunting, fishing, or target shooting). Miss. Code Ann. § 97-37-1(3). No statute prohibits felons from possessing firearms in their home, vehicle or business.

## MISSOURI

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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, 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 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(2). 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 it 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.

### II. 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. The right to hold office is restored upon completion of sentence. Mo. Rev. Stat. § 561.021. Felons are permanently disqualified from jury service, unless pardoned. Mo. Rev. Stat. § 561.026.

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

### III. FIREARMS

A person convicted of any "dangerous felony,"<sup>1</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>2</sup> for five years after conviction or release from imprisonment, 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

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<sup>1</sup> "Dangerous felony" is defined as "the felonies of armed criminal action, arson, assault, burglary, causing catastrophe, felonious restraint, forcible rape, forcible sodomy, kidnapping, voluntary manslaughter, murder, robbery or the attempt to commit any of these felonies." Mo. Rev. Stat. § 556.061(8).

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

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. § 571.090.2. Without such a permit, it is illegal to purchase, borrow, or receive a concealable firearm. Mo. Rev. Stat. § 571.080.1(1).

The restoration of civil rights provided by Missouri statutes does not remove federal firearms disabilities. United States v. Presley, 851 F.2d 1053 (8th Cir. 1988). Because state law does not prohibit possession of all firearms, even persons convicted of "dangerous felonies" are eligible to apply to the Bureau of Alcohol, Tobacco and Firearms for relief from federal firearms disabilities.



## MONTANA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person serving a sentence in a penal institution for a felony conviction is not eligible to vote, Mont. Const. art. IV, § 2; Mont. Code Ann. § 13-1-111(2), nor may a person convicted of a felony hold public office until final discharge from state supervision. Mont. Const. art. IV, § 4. A person convicted of a felony forfeits the right to serve on a jury. Mont. Code Ann. § 3-15-303. Other rights may be lost if enumerated by the sentencing judge "as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society." Mont. Code Ann. § 46-18-801. This provision does not supplant the constitutional disqualification from voting. Emery v. State, 177 Mont. 73, 580 P.2d 445 (1978).

A professional or occupational license may not be refused solely because of a previous conviction. Mont. Code Ann. § 37-1-203. A license may, however, be denied 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 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 offense reasonable employment or occupational restrictions designed to protect likely victims. Mont. Code Ann. § 46-18-255.

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

Except for the right to serve on a jury, all rights (including firearms privileges) are automatically restored "by termination of state supervision for any offense against the state." Mont. Const. art. II, § 28; see also Mont. Code Ann. § 46-18-801. The right to serve on a jury may only be restored by a pardon. The pardon power is vested in the Governor, who may not grant a pardon to anyone the Board of Pardons does not recommend, except in capital cases. Mont. Code Ann. §§ 46-23-301 to 316. A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon.

### III. FIREARMS

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(3).



## NEBRASKA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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 by imprisonment in Nebraska 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).

### II. 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 such committed offender as though a pardon had been issued." Neb. Stat. § 83-1,118(5).<sup>1</sup> For persons sentenced to probation, the sentencing court, when it releases the offender from probation, enters an order "in all felony cases [that] restore[s] the offender's civil rights the same as though a pardon had been issued." Neb. Rev. Stat. § 29-2264(1). Furthermore, the offender may petition the court to set aside the conviction, which has the effect of nullifying the conviction, Neb. Rev. Stat. § 29-2264(4)(a), and removing "all civil disabilities and disqualifications imposed as a result of the conviction the same as though a pardon had been issued." Neb. Rev. Stat. § 29-2264(4)(b).

The authority to grant pardons is vested in the Board of Pardons, of which the Governor is a member. Neb. Const. art. 4, § 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.

Apparently because of the unclear relationship between the statutory provisions dealing with restoration of rights and those relating to pardon, there is some question whether a discharged felon can hold an office of public trust in Nebraska, be bonded, or be eligible to practice certain professions, according to the office of the State Attorney General.

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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.

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.

### III. FIREARMS

A person convicted of a felony in any state or federal court may not possess a firearm with a barrel less than 18 inches in length. Neb. Rev. Stat. § 28-1206. A state felon may regain state firearms privileges by a state pardon only if the Board of Pardons expressly authorizes the individual to receive, possess, or transport in commerce a firearm. Neb. Rev. Stat. § 83-1,130. It is not clear whether felons convicted in other jurisdictions, including federal felons, may regain their state firearms privileges if they are pardoned by the appropriate authority in the jurisdiction of conviction. Because state law does not prohibit felons from possessing all guns, the Bureau of Alcohol, Tobacco and Firearms will process applications for the removal of federal firearms disabilities from felons residing in Nebraska.

## NEVADA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. Stat. § 197.230. No person convicted of treason, felony, or other infamous crime is qualified to serve on a jury. Nev. Stat. § 6.010.

A professional or occupational license may be denied, suspended, or revoked because of a conviction. E.g., gaming employee (Nev. Stat. § 463.335(7)(d)); telephone sales solicitor (§ 599B.220); nurse (§ 632.320); employment agent (§ 611.045); contractor (§ 624.265); physician (§ 630.301).

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

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. Stat. § 213.090(1). A pardon may not restore the right to hold public office lost by reason of Nev. Stat. § 197.230 to a person convicted of a felony or malfeasance in office. Op. Att'y Gen. 65-274 (October 29, 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 (either the Board of Pardons Commissioners or the Department of Parole and Probation) 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. Stat. §§ 176.225, 176.227, 213.090, 213.155, 213.157. Restoration of civil rights does not absolve a felon of professional licensing restrictions. Op. Att'y Gen. 83-13 (September 14, 1983).

The Board of Pardons Commissioners reports that it has restored the civil rights of persons convicted of federal offenses.

There is also a procedure for sealing the records of a Nevada conviction. Nev. 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. Stat. § 179.245(1)(a). This relief is available only if the person has not been arrested during that 15-year period. Nev. Stat. § 179.245(3). 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" when asked about his criminal record. Nev. Stat. § 179.285.

### III. FIREARMS

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 (defined as a weapon of .177 or greater caliber, Nev. Rev. Stat. § 202.253). Nev. Rev. Stat. § 202.360. This disability is not removed by obtaining a restoration of civil rights. Nev. Stat. § 176.225(5); Op. Att'y Gen. 83-13 (September 14, 1983) (interpreting predecessor of Nev. Rev. Stat. § 202.360). It may be removed by a pardon in which the right to bear arms is specifically restored. Nev. Rev. Stat. § 202.360. In addition, a person who has had the records of his conviction sealed is free from state firearms disabilities. Op. Att'y Gen. 83-13 (September 14, 1983). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons residing in Nevada who are subject to a firearms disability under state law.

## NEW HAMPSHIRE

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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); pharmacy (§ 318:29); real estate appraisal (§ 310-B:18); land surveying (§ 310-A:70); accounting (§ 309-A:16); child day care (§ 170-E:7); detective agency (§ 106-F:14). A license may be summarily suspended, limited, or revoked for conviction of a state drug offense. N.H. Rev. Stat. Ann. § 318-B:18.

### II. 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.

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 convicted and sentenced," except that, upon conviction of any later crime, the annulled conviction may be taken into account for sentencing purposes. N.H. Rev. Stat. Ann. § 651:5(VII).

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<sup>1</sup> A person sentenced to probation, conditional discharge, or a fine may apply to the sentencing court for annulment of his conviction one year after completion of sentence; however, if he has more than one conviction within the three-year period following completion of sentence or was convicted of certain offenses (such as a felony drug offense), he must wait until seven years after completion of sentence to apply. N.H. Rev. Stat. Ann. §§ 651:5(I), (VI), (XV). A person sentenced to unconditional discharge may apply after two years, provided he has no other convictions in that period, and a person given a suspended sentence may apply after five years, provided he has no subsequent convictions. N.H. Rev. Stat. Ann. §§ 651:5(II), (III). A person sentenced to prison for a crime he committed before age 21 may also seek annulment three years after release, provided he was not again convicted within that period. N.H. Rev. Stat. Ann. § 651:5(IV). Anyone who has more than one conviction in the three years following completion of sentence must wait seven years to apply for annulment. N.H. Rev. Stat. Ann. § 651:5(VI).

### III. FIREARMS

A person convicted in New Hampshire "or any other state of a felony against the person or property of another" or under New Hampshire's Controlled Drug Act, may not own or have in his possession or under his control a pistol, revolver, or any other firearm<sup>2</sup> or dangerous weapon. N.H. Rev. Stat. Ann. § 159:3.<sup>3</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. The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to felons who are subject to New Hampshire's firearms disability statute.

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<sup>2</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. New Hampshire v. Beaudette, 124 N.H. 579, 474 A.2d 1012 (1984).

<sup>3</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. COLLATERAL CONSEQUENCES OF A CONVICTION

A person serving a sentence 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, 19:4-1(8). A person convicted of a crime may not serve on a jury. N.J. Stat. Ann. §§ 2A:69-1, 2C:51-3. 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). An office holder convicted of an offense involving or touching on his office or position not only forfeits his office, but also is "forever disqualified from holding a position of trust, honor, or profit under this State or any of its administrative or political subdivisions." N.J. Stat. Ann. § 2C:51-2(c). For example, the State Board of Examiners has denied a teaching license to a former public office holder convicted of extortion in connection with his official duties on the basis of § 2C:51-2(c). The state appellate court has determined that this disqualification applies to all government employment. Pastore v. County of Essex, 237 N.J. Super. 371 (App. Div. 1989).

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.

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

The right to vote is automatically restored upon completion of sentence, including probation or parole. N.J. Stat. Ann. §§ 2C:51-3; 19:4-1(8). The right to serve on a jury may be restored by a pardon from the Governor. N.J. Const. art. 5, § 2, cl. 1, N.J. Stat. Ann. § 2A:167-5.<sup>1</sup> New Jersey law does not specify the effect of a pardon on the right to hold public office. A person convicted under the laws of another state is eligible for a gubernatorial pardon, but a federal offender is not.

A person convicted of certain offenses under New Jersey law may seek expungement of his criminal record 10 years after completion of sentence, provided he has no prior or subsequent criminal conviction. N.J. Stat. Ann. §§ 2C:52-1 - 2C:52-32. 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 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", like a pardon or expungement, precludes a

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<sup>1</sup> State statutes also provide for restoration of civil rights by the Governor, N.J. Stat. Ann. § 2A:167-4, but it is unclear whether this power is separate from the power of pardon.

licensing authority from disqualifying or discriminating against an applicant because of conviction. N.J. Stat. Ann. § 2A:168A-3.<sup>2</sup> However, it does not operate to restore civil rights or firearms privileges. See United States v. Breckenridge, 899 F.2d 540 (6th Cir. 1990).

### III. FIREARMS

Anyone convicted in New Jersey or elsewhere of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, certain gun offenses,<sup>3</sup> or "of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale"<sup>4</sup> of drugs may not own, purchase, possess, or control a "weapon" (defined to include a handgun, rifle, or shotgun). N.J. Stat. Ann. §§ 2C:39-1(r), 2C:39-7; 1991 N.J. Laws 432. No person convicted of a crime may obtain a permit to receive or purchase a handgun, or 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>5</sup> A New Jersey prosecutor has advised that non-violent felons may possess or use firearms legally owned by another.

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, 899 F.2d 540 (6th Cir. 1990). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to persons under a state firearms disability.

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<sup>2</sup> A federal felon may obtain a similar "certificate of good conduct" from a federal parole board, or the chief probation officer who has supervised the applicant's probation.

<sup>3</sup> Namely, 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; or the unlawful manufacture or defacement of weapons under N.J. Stat. Ann. § 2C:39-9.

<sup>4</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>5</sup> Under state law a permit is necessary to purchase a handgun, and a firearms identification card is necessary to purchase a rifle or shotgun. N.J. Stat. Ann. § 2C:58-3.

## NEW MEXICO

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. 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 through 4. See *Garcia v. State Board of Educ.*, 102 N.M. 306, 694 P.2d 1371 (Ct. App. 1984). 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).

### II. 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.

The Governor may restore to federal felons the rights to vote and to hold public office by issuing a certificate of restoration of civil rights. See Op. Att'y Gen. 70-85 (November 5, 1970). Restoration of the right to vote appears to result in restoration of the right to sit on a jury. However, a person convicted in another state is ineligible for gubernatorial relief.

### III. FIREARMS

Unless "pardoned of the conviction by the appropriate authority," state and federal felons may not receive, transport, or possess any firearm (defined to include both handguns and long guns) or destructive device for 10 years following conviction. N.M. Stat. Ann. § 30-7-16. Where a pardon is intended to restore firearms privileges, the Governor so informs the applicant. According to the United States Attorney, it is the current Governor's policy not to restore firearms privileges to federal felons,<sup>1</sup> nor to state felons convicted of a violent crime, drug offense, or of any crime in which a firearm was used. In addition, the restoration document provides that the firearm may not be taken out of state. Finally, under current gubernatorial

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<sup>1</sup> The Governor's authority with respect to federal convictions is limited to restoration of the rights to vote and to hold public office, which, though a "pardon" in "the broad sense of the term," Op. Att'y Gen. 70-85 (November 5, 1970), may not be a "pardon" by the "appropriate authority" within the meaning of N.M. Stat. Ann. § 30-7-16.

policy, restoration of state firearms privileges is ineffective unless and until the individual also obtains relief from the Bureau of Alcohol, Tobacco and Firearms (BATF).

Because relief from state firearms disabilities is conditioned upon relief from federal firearms disabilities, BATF will accept applications from felons residing in New Mexico, even though they are still under a state-law ban on all firearms.

## NEW YORK

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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(4). 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. 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. Stroh*, 74 N.Y.2d 801, 544 N.E.2d 608 (1989). Specific disqualifications are also imposed. *E.g.*, persons convicted of Selective Service violations ineligible for civil office (N.Y. Pub. Off. Law § 3); 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); attorney (N.Y. Jud. Law § 90).

### II. 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 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 or not convicted under New York law), N.Y. Correct. Law § 703, or the sentencing court (for non-prison state sentences), N.Y. Correct. Law § 702, provided in either case the applicant has not been convicted more than once of a felony. N.Y. Correct. Law § 700(1)(a).

In addition, a Certificate of Good Conduct may be obtained from the Board of Parole one to five years after release from custody, by parole or completion of sentence, depending upon the seriousness of the offense. N.Y. Correct. Law § 703-b. 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 (December 31, 1991) (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 of such person [the recipient] to retain or to be eligible for public office."<sup>1</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 is granted in 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 the judgment of conviction when given on the basis of innocence. The Governor does not generally accept pardon applications from federal offenders.

### III. FIREARMS

A person convicted of a felony or "serious offense" may not possess a rifle or shotgun. N.Y. Penal Law § 265.01(4).<sup>2</sup> It is unlawful for a person convicted of any crime to possess outside the home or place of business a "firearm" (defined as any pistol, revolver, sawed-off shotgun, or short rifle) without a license. N.Y. Penal Law §§ 265.00(3), 265.02, 265.20. 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 a "firearm." 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 to remove state disabilities 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>3</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), 702(1)(b). A gubernatorial pardon will also restore state gun privileges.

The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to a felon in New York who is prohibited by state law from possessing all guns.

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<sup>1</sup> Because a conviction does not result in any 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>2</sup> "Serious offense" is defined in § 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; endangering the welfare of a child.

<sup>3</sup> A Certificate of Good Conduct, issued by the state Board of Parole, also is an avenue for restoration of rights and privileges, including firearms privileges. 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. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of a state or federal felony 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(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)).

### II. RESTORATION OF CIVIL RIGHTS

Civil rights are automatically restored to state and federal felons upon receipt of an unconditional discharge of sentence or pardon. 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. Persons convicted under federal law or the law of another state are not eligible to apply for a gubernatorial pardon.

### III. FIREARMS

During the five-year period following completion of sentence, a person convicted of a designated felony<sup>1</sup> under the law of any state or under federal law may not purchase, own, possess, or have in his custody or control a firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches except within his own home or lawful place of business, or a "weapon of mass death or destruction."<sup>2</sup> N.C. Gen. Stat. § 14-415.1.<sup>3</sup> Because

<sup>1</sup> The designated felonies are: felony violations of Articles 3 (rebellion), 4 (subversive activities), 6 (homicide), 7A (rape and other sexual offenses), 8 (assaults), 10 (kidnapping and abduction), 13 (malicious injury or damage by use of explosive or incendiary device or material), 14 (burglary and other housebreaking), 15 (arson and other burnings), 17 (robbery), 30 (obstructing justice), 33 (prison breach and prisoners), 36 (offenses against the public safety), 36A (riots and civil disorders), 52A (sale of weapons in certain counties), or 53 (sale of weapons in certain other counties) of Chapter 14 of the General Statutes, or of Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act); common law robbery and common law maim; and violations of criminal laws of other states or of the United States substantially similar to these crimes if they are punishable where committed by imprisonment for a term exceeding two years. N.C. Gen. Stat. §§ 14-415.1(b)(1) - (3).

<sup>2</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.





## OHIO

### I. COLLATERAL CONSEQUENCES OF A 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 § 2961.01. During any period of incarceration, he also loses the right to vote. Ohio Rev. Code § 2961.01. These disqualifications do not apply to persons convicted of federal felonies prior to the effective date of the statute, January 1, 1974. *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 §§ 2921.02, 2921.41(c).

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 § 3905.49); physician (§ 4731.22); pharmacist (§ 4729.16). If a person who is convicted of certain drug offenses is professionally licensed, his conviction must be reported to the licensing agency. Ohio Rev. Code § 2925.38.

### II. 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 § 2961.01. With respect to restoration of the rights to hold public office and to serve on a jury, two procedures are provided, apparently depending on whether the person was sentenced to probation or to imprisonment. Ohio Rev. Code § 2951.09 appears to deal only with persons sentenced to probation. It permits a state court to "restore the defendant to his rights of citizenship, of which such convict may or shall have been deprived by reason of his conviction under section 2961.01."<sup>1</sup>

Ohio Rev. Code § 2967.16 addresses persons sentenced to incarceration. It provides in part that a "prisoner who has served the maximum term of his sentence or who has been granted his final release by the adult parole authority shall be restored to the rights and privileges forfeited by his conviction."<sup>2</sup> A final release is not available until the earlier of the expiration of the maximum sentence or one year after release on parole, except in the case of a person serving a life sentence, when a waiting period of five years after release on parole is imposed.

State law also provides a procedure for sealing the records of a conviction that, by its terms, applies to federal as well as state convictions. Ohio Rev. Code §§ 2953.31 - 36. A first

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<sup>1</sup> Since § 2961.01 applies expressly to both state and federal convictions, one might assume that the restoration provision does too; however, the restoration statute specifies that the state court is to make a journal entry of the restoration "in the action in which the conviction or plea of guilty was entered." This is impossible for federal convictions and, therefore, it is unclear whether this remedy is available to federal convicts.

<sup>2</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.

offender, three years after final discharge for a probationable felony, may petition a state court for an order sealing the records of a conviction. Ohio Rev. Code §§ 2953.32, 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 § 2953.32(C)(2).

Sealing results in restoration of most rights lost under state law as a result of conviction. ("An 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 § 2953.33.) Sealing does not, however, restore the right to hold public office to a public servant convicted of bribery. State v. Bissant, 40 Ohio St. 3d 112, 532 N.E.2d 126 (1988).

While, as noted, the sealing statute applies to federal as well as state convictions, it has been held that only Ohio state records containing information about a federal (Schwab v. Gallas, 724 F. Supp. 509 (N.D. Ohio 1989)) or an out-of-state (Ohio v. Barker, 62 Ohio St. 2d 35 (1980)) conviction are subject to sealing under this statute. Nonetheless, it may be that a sealing order, however extensively it may apply, is sufficient to cause a restoration of Ohio state law rights to federal and out-of-state offenders.

The pardon power is vested in the Governor, and may also be a means of restoring civil rights and give relief from disabilities resulting from conviction. Ohio Rev. Code § 2967.04. According to the United States Attorneys, gubernatorial pardons are not available for federal felonies.

### III. FIREARMS

A person "convicted of any felony 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 §§ 2923.13(A)(2), (3); 2923.11.<sup>3</sup> Although the statute does not expressly mention federal convictions, as does the general disability statute quoted above, it is likely that federal convictions also would trigger the application of the statute.

A procedure for removing the disability relating to firearms (but not those relating to "dangerous ordnances") is provided under Ohio Rev. Code § 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

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<sup>3</sup> The terms "firearm" includes both long guns and handguns. Ohio Rev. Code §§ 2923.11(B).

from acquiring, having, or using firearms."<sup>4</sup> Ohio Rev. Code §§ 2923.14(D)(1), (2), (3). This procedure should be available to federal as well as state felons. Because the statutes governing sealing of conviction records, Ohio Rev. Code §§ 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 §§ 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 § 2923.13.

A convicted felon who has generally had his civil rights restored but who remains subject to state firearms disabilities is also subject to federal firearms disabilities, United States v. Cassidy, 899 F.2d 543 (6th Cir. 1990). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to violent felons or drug offenders in Ohio while they remain under a state firearms disability.

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<sup>4</sup> Since all felons are subject to firearms disabilities arising under federal law, it would appear that this state remedy would not be fully effective until the Bureau of Alcohol, Tobacco and Firearms had granted relief from federal firearms disabilities. It is possible, however, that this provision simply means that a person must not otherwise be disabled from owning firearms under state law. See, *e.g.*, Ohio Rev. Code §§ 2923.13(1), (4) and (5) (prohibiting possession of firearms by fugitives, drug addicts, and mental incompetents).



## OKLAHOMA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person "convicted of a felony" may not vote or register to vote. Okla. Stat. tit. 26, §§ 4-101, 4-120. The rights to hold public office and to serve on a jury are forfeited upon a state or federal felony conviction. Okla. Stat. tit. 26, § 5-105a; tit. 38, § 28. A state office is declared vacant upon the office holder's conviction of a state or federal felony, or any offense involving a violation of his official oath, and a state employee is automatically suspended from employment upon a state or federal felony conviction. Okla. Stat. tit. 51, §§ 8, 24.1; Okla. Const. art. VIII, § 1. 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.

A professional or occupational license may be denied, revoked, or suspended because of certain convictions. E.g., accounting (Okla. Stat. tit. 59, § 15.20); architecture (tit. 59, § 46.14); pharmacy (tit. 59, § 353.26); medicine (tit. 59, §§ 509, 513); podiatry medicine (tit. 59, § 148); psychology (tit. 59, § 1370); insurance (tit. 36, § 1428); law enforcement (tit. 70, § 3311); liquor license (tit. 37, § 527).

### II. 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. Okla. Stat. tit. 26, § 5-105a. (Presumably, this restoration procedure does not override the specific disqualification relating to legislative office.) The right to serve on a jury is restored only by a pardon. Okla. Stat. tit. 38, § 28.

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.

A person convicted of an Oklahoma crime who has not previously been convicted of a felony may be placed on probation before the court enters judgment and have further proceedings deferred. If the person successfully completes probation, the court discharges him without a court judgment of guilt and dismisses the case; the records of the plea or finding of guilt are then expunged. Okla. Stat. tit. 22, § 991c. Persons who were under 18 years old at the time their crimes were committed and who have received a full pardon may also seek expungement. Okla. Stat. tit. 22, § 18.

### III. FIREARMS

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. It is also unlawful to sell, give, or otherwise transfer a rifle, shotgun, or pistol to any convicted felon. 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> Op. Atty. Gen. No. 81-283 (Nov. 24, 1981). A person convicted and pardoned by another state is still subject to firearms disabilities in Oklahoma. Op. Att'y Gen. No. 85-26 (May 2, 1985). Because a convicted felon is not prohibited from possessing all firearms, the Bureau of Alcohol, Tobacco and Firearms will grant relief from federal firearms disabilities to felons residing in Oklahoma.

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<sup>1</sup> A "pistol" is defined as a firearm with a barrel of less than 16 inches and "sawed-off shotgun or rifle" means any shotgun or rifle that has been shortened to any length. Okla. Stat. tit. 21, § 1289.3. This probation excludes ordinary rifles. Marr v. State, 513 F.2d 324 (Okla. Cr. App. 1973), overruled on other grounds, Williams v. State, 759 (Okla. Cr. App. 1990). See also Price v. State, 532 F.2d 85.1 (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 gunsmithing or firearm repair. Okla. Stat. tit. 21, § 1283(B).

## OREGON

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

While incarcerated, a felon loses the rights to vote, to hold or seek public office, and to serve on a jury. 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).

A licensing board 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. E.g., accountant (Or. Rev. Stat. § 673.170(2)(h)); tax consultant (§§ 673.695(4)(a), (b)); social worker (§§ 675.540(1)(a), (b)); physician (§ 677.190(6)).

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

The rights to vote, to hold public office, and to serve on a jury are automatically restored upon release from imprisonment. Or. Rev. Stat. § 137.281. The pardon power is vested in the Governor. 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."

### III. FIREARMS

A person convicted of a federal or state felony is prohibited from owning, possessing, or having under his custody or control firearms (defined to include both long guns and handguns, Or. Rev. Stat. § 166.210(2)), and certain other weapons.<sup>1</sup> Or. Rev. Stat. § 166.270.<sup>2</sup> Firearms privileges are automatically restored 15 years after discharge from imprisonment, parole, or probation, unless the conviction involved "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). Except as provided in § 166.270, persons "convicted of a felony" may not possess a firearm, Or. Rev. Stat. § 166.250, or obtain a permit to carry a concealed handgun. Or. Rev. Stat. §§ 166.250(2), 166.291(1)(f).<sup>3</sup>

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<sup>1</sup> The statute prohibits possession of weapons such as switchblades and blackjacks. Or. Rev. Stat. § 166.270 (2).

<sup>2</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>3</sup> Misdemeanants also may not obtain a concealed handgun permit for four years following conviction. Or. Rev. Stat. § 166.291(1)(g).

A person may, at any time after conviction, petition the state court for relief from these disabilities, which will be granted (as to the ban on possession) 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). The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to a felon in Oregon unless and until he is permitted by state law to possess firearms.



## PENNSYLVANIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of "a crime punishable by imprisonment for more than one year" is not eligible to serve as a juror. 42 Pa. Con. Stat. § 4502. 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 may be removed upon conviction of "misbehavior in office or of any infamous crime." Pa. Const. art. 6, § 6. This provision has been held to apply to federal crimes. *In re Hughes*, 516 Pa. 90, 532 A.2d 298 (1987).

No person "confined in a penal institution" is eligible to be an absentee voter. 25 Pa. Con. Stat. § 2602(w). 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 *Owens v. Barnes*, 711 F.2d 25 (3d Cir. 1983).

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. Con. Stat. § 9125. 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. Con. Stat. § 9124(c). *E.g.*, architect (63 Pa. Stat. §§ 34.8, 34.19); psychologist (63 Pa. Stat. § 1208); pharmacist (63 Pa. Stat. § 390-5); social worker (63 Pa. Stat. § 1911(A)(1)).

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

The right to vote is regained upon release from prison. The rights to hold public office and to serve on a jury may be restored to state felons only through a pardon. Pa. Const. art. 4, § 9. 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. A gubernatorial pardon entitles the recipient to judicial expungement of his conviction. *Commonwealth v. C.S.*, 534 A.2d 1053 (Pa. 1987).<sup>1</sup> Pardoned or expunged convictions may not be used in a licensing decision. 18 Pa. Con. Stat. § 9124(B). According to state authorities, a person convicted under federal law is ineligible for a gubernatorial pardon.

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<sup>1</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. Con. Stat. § 9122.

### III. FIREARMS

A person who has been convicted in Pennsylvania "or elsewhere of a crime of violence"<sup>2</sup> may not own, possess, or control a "firearm," 18 Pa. Cons. Stat. §§ 6105, 6110. A "firearm" is defined under Pennsylvania law as (essentially) a handgun or sawed-off rifle or shotgun, 18 Pa. Cons. Stat. § 6102. Not even a full gubernatorial pardon removes these firearms disabilities. 18 Pa. Cons. Stat. § 6123.

A person convicted of a "crime of violence" also cannot obtain a license to carry a concealed "firearm." 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, nor may he carry a "firearm," rifle, or shotgun on the public streets or public property. 18 Pa. Cons. Stat. §§ 6106, 6108.<sup>3</sup> Also prohibited from obtaining a license to carry a concealed "firearm" are 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." 18 Pa. Cons. Stat. § 6109(e)(1)(ii), (viii). The latter term is defined to exclude "[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. In contrast to the disabilities imposed upon possession of "firearms" by violent offenders, licensing disabilities are removed by a full gubernatorial pardon or by relief from federal firearms disabilities. 18 Pa. Cons. Stat. § 6123. Because state law prohibits possession only of handguns, the Bureau of Alcohol, Tobacco and Firearms will accept applications for relief from federal firearms disabilities from felons in Pennsylvania.

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<sup>2</sup> A crime of violence includes any of the following crimes, or an attempt, solicitation, or conspiracy to commit any of them: murder, voluntary manslaughter, rape, aggravated assault, robbery, burglary, involuntary deviate sexual intercourse, arson, extortion accompanied by threats of violence, assault by a prisoner, assault by a life prisoner, and kidnapping. 18 Pa. Cons. Stat. § 6102.

<sup>3</sup> Exceptions to the license requirement are made 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," or 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 notice. 18 Pa. Cons. Stat. §§ 6106(c), (d).

## RHODE ISLAND

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

"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, 120 R.I. 389, 394 A.2d 1338 (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). Because the right to serve on a jury depends on being an eligible voter, a felon may not serve on a jury as long as he is ineligible to vote. R.I. Gen. Laws § 9-9-1.

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 "such sentence" and of probation or parole. R.I. Const. art. 3, § 2.<sup>1</sup>

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); private security guard business (§ 5-5.1-8); pharmacist (§ 5-19-18); veterinarian (§ 5-25-14).

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

The rights to vote and (derivatively) 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. At least for misdemeanors resulting in a jail sentence of six months or more, see note 1, supra, 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. 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.

### III. FIREARMS

No person "convicted in this state or elsewhere of a crime of violence" may "purchase, own, carry, transport or have in his possession or under his control any firearm." R.I. Gen. Laws § 11-47-5. A "firearm" includes both long guns and handguns. R.I. Gen. Laws § 11-47-2. A "crime of violence" is defined to include any of the following crimes or an attempt to commit any of them: murder, manslaughter, rape, mayhem, robbery, burglary, breaking and entering, 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.

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<sup>1</sup> Because the only "sentence" referred to in art. 3, § 2 is a jail sentence of six months or more for a misdemeanor conviction, it is unclear whether this restoration of rights provision applies only to misdemeanors or whether it also applies to felonies.

No provision for restoration of these rights, other than pardon, is available under state law. The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to violent felons in Rhode Island who are subject to the state law disability.

## **SOUTH CAROLINA**

### **I. COLLATERAL CONSEQUENCES OF A CONVICTION**

A state or federal felon loses the right to serve on a jury. S.C. Code Ann. § 14-7-810. 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(4)(b). It is the opinion of the State Attorney General that the disqualification from voting extends to those convicted of federal offenses. See 1984 Op. Atty. Gen. No. 84-94. 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.

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); optometrist (§ 40-37-220); physician (§ 40-47-200); social worker (§ 40-63-110); bingo promoter (§ 12-21-3350).

### **II. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES**

The rights to vote and to hold public office are restored after completion of sentence, including probation and parole. S.C. Code Ann. § 7-5-120. 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, and must obtain a presidential pardon in order to regain their right to serve on a jury.

### **III. FIREARMS**

No person who has been convicted of a crime of violence 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 state. S.C. Code Ann. §§ 16-23-30(a), (e). "Crime of violence" is defined to include murder, manslaughter, rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year. S.C. Code Ann. § 16-23-10(c). No firearms restoration procedure other than pardon exists under state law. Because state law prohibits only possession of handguns, the Bureau of Alcohol, Tobacco and Firearms will accept applications for relief from federal firearms disabilities from felons residing in South Carolina.



## **SOUTH DAKOTA**

### **I. COLLATERAL CONSEQUENCES OF A CONVICTION**

"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 § 23A-27-35. The office of the State Attorney General advises that this disqualification extends to federal felons. See Official Opinion 89-09. Because only qualified voters may hold legislative office, S.D. Const. art. III, § 3, a person who is disqualified from voting by reason of a conviction is also disqualified from holding a seat in the legislature. Persons who have been convicted of any felony are not qualified to be jurors "unless restored to their civil rights." S.D. Codified Laws § 16-13-10.

Certain convictions may result in the denial, suspension, or revocation of a professional license. E.g., nurse (S.D. Laws § 36-9-49); pharmacist (§ 36-11-20); bail bondsman (§ 58-22-21); hearing aid dispenser (§ 36-24-40).

### **II. RESTORATION OF RIGHTS/REMOVAL OF DISABILITIES**

The period of disqualification from voting, serving on a jury, or holding public office is suspended only during the period of imprisonment "in the state penitentiary." S.D. Codified Laws § 23A-27-35. At the time of discharge the convicted person is to be "considered as restored to the full rights of citizenship." S.D. Codified Laws § 24-5-2. 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 court. S.D. Codified Laws § 24-5-2. State authorities indicate that, notwithstanding the wording of the restoration statute, it is also applicable to federal felons. 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 § 23A-27-35.

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 § 24-14-11. It is not clear whether federal felons are eligible for a state pardon.

### **III. FIREARMS**

A person "convicted in [South Dakota] or elsewhere of a crime of violence" may not possess or control a firearm (defined in S.D. Codified Laws § 22-1-2(16) to include both long guns and handguns) unless more than 15 years has elapsed since final discharge. S.D. Codified Laws § 22-14-15. "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 § 22-1-2(9).

A gubernatorial pardon will not remove the disability imposed by § 22-14-15 unless the Governor so specifies in the order granting pardon, nor will a restoration of civil rights. S.D. Codified Laws § 24-14-12. The Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to violent felons prior to the expiration of the 15-year period.



## TENNESSEE

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of "an infamous crime"<sup>1</sup> or "convicted in federal 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. Code Ann. §§ 2-19-143, 40-20-112; Tenn. Const. art. I, § 5.<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. Persons convicted of any felony under federal or state law are ineligible to hold the office of sheriff. Tenn. Code Ann. § 8-18-101.

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); attorney (§ 23-3-201); private investigator (§ 62-26-217).

### II. 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. Op. Att'y Gen. 84-063 (Feb. 15, 1984). Immediately after pardon, a pardoned person may petition the circuit court in the county of his residence or conviction for restoration of full rights of citizenship, which relief may not

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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 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> Specifically, 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).

supersede any restriction on suffrage placed in the pardon. Tenn. Code Ann. §§ 40-29-101, 40-29-102.<sup>4</sup>

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, 40-29-105. 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. "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. 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. An exoneration expunges all records of arrest, indictment, and conviction, and automatically restores all rights of citizenship. Tenn. Code Ann. § 40-27-109. Because of the nature of the remedy, it would appear that federal felons are not eligible for this relief.

### **III. FIREARMS**

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.<sup>5</sup> No specific state procedure exists for restoring the rights lost as a result of this provision.<sup>6</sup> Since the state-law prohibition applies only to handguns, the Bureau of Alcohol, Tobacco and Firearms will grant relief from federal firearms disabilities to felons in Tennessee.

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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. See Op. Att'y Gen. 84-063 (Feb. 15, 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. COLLATERAL CONSEQUENCES OF A CONVICTION

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; Tex. Code Crim. Proc. art. 19.08. A prospective petit juror may be challenged for cause if convicted of "theft or any felony." Tex. Code Crim. Proc. art. 35.16.

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. Educ. Code § 4.35 (removal and disqualification of school district trustee); Tex. Gov't Code §§ 406.011, 406.018 (ineligibility and removal of notary public).

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 person convicted of a felony or "crime involving moral turpitude" may not receive a Texas tuition assistance grant (without discharge, as described below). Tex. Educ. Code § 56.103. A felon may not serve as the executor or administrator of an estate. Tex. Prob. Code § 78(c). 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 within the previous 10 years of a felony or a crime involving moral turpitude under state or federal law. Tex. Rev. Civ. Stat. art. 350.

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

A convicted felon's right to vote is restored two years after he receives a certificate of discharge by the Pardons and Paroles Division of the Texas Department of Criminal Justice, two years after completing a sentence of probation, Texas Elec. Code § 11.002, or by a 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. It appears that certificates of discharge and gubernatorial pardons are not available to federal felons. See Shepherd v. Trevino, supra. Therefore, unless a federal felon receives a presidential pardon, only those federal felons who were sentenced to probation may regain the right to vote in Texas. Other rights may be restored through gubernatorial pardon for state felons, and presidential pardon for federal felons.

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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.

Certain state offenders, after pleading or being found guilty, may have adjudication of guilt deferred and be placed on probation. After successful completion of probation, the charges are dismissed and the offender 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. Code Crim. Proc. art. 42.12, § 5(a), (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. Code Crim. Proc. art. 42.12, § 23.

### III. FIREARMS

A person "convicted of a felony involving an act of violence or threatened violence to a person or property" may not possess a firearm (defined in Tex. Penal Code Ann. § 46.01(3) to include both long guns and handguns) "away from the premises where he lives." Tex. Penal Code Ann. § 46.05. According to the office of the state Attorney General, state violent felons may regain their firearms privileges by receiving a gubernatorial pardon; however, 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 § 46.05. See also Op. Att'y Gen. MW-270 (1980). The Bureau of Alcohol, Tobacco and Firearms will not accept applications for relief from federal firearms disabilities from violent felons in Texas who are under a state-law disability.

## UTAH

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A felony conviction may serve as a basis for disqualification from jury service at the court's discretion. Utah Code Ann. § 78-46-8. 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. Persons convicted of treason or election crimes are ineligible to vote and hold office. Utah Const. art. IV, § 6. Otherwise, felons are permitted to vote in their county of residence before incarceration. Utah Code Ann. § 20-2-14; *Dodge v. Evans*, 716 P.2d 270 (Utah 1985).

A professional or occupational license may be denied, suspended, or revoked because of a conviction of a "crime of moral turpitude which, when considered with the functions and duties of the occupation or profession for which the license was issued, demonstrates a threat to the public health, safety, and welfare." Utah Code Ann. § 58-1-15(2). No license revoked on the basis of a conviction may be reinstated before 90 days unless other conditions are imposed. Utah Code Ann. § 58-1-18.

### II. 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, comprising the Governor, the Justices of the Supreme Court, and the Attorney General. Utah Const. art. VII, § 12; Utah Code Ann. § 76-10-503.

A person convicted of a Utah offense other than a capital felony, a first-degree felony, a second-degree forcible felony, or a conviction involving a sexual act against a minor may seek expungement and sealing of his record by petitioning the court in which he was convicted. Utah Code Ann. §§ 77-18-2(a), (e). A person who has been convicted more than once of a felony, or who has previously had his felony record expunged is ineligible for this relief. Utah Code Ann. § 77-18-2(1)(b). The court grants relief as to a felony record if the person has no felony or misdemeanor conviction for seven years, has no pending charges against him, has presented the requisite proof that he has not previously had his record expunged, and has not engaged in any conduct similar to that involved in the offense for which he seeks expungement. Utah Code Ann. § 77-18-2(c). A person who has had his record expunged "may answer an inquiring employer as though the . . . conviction did not occur." Utah Code Ann. § 77-18-2(3).

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 in the jurisdiction of their conviction.

### III. FIREARMS

A person convicted of "any crime of violence"<sup>1</sup> under federal law or the law of any state forfeits the right to own, possess, or have under his custody or control a dangerous weapon.<sup>2</sup> Utah Code Ann. § 76-10-503.<sup>3</sup> Persons convicted of a felony, a crime of violence, an offense involving the use of alcohol, an offense involving the unlawful use of drugs, or an offense involving moral turpitude may not obtain a permit to carry a concealed weapon. Utah Code Ann. § 76-10-513. The practice of the Utah Board of Pardons is to state specifically whether a pardon restores firearms privileges. It is unsettled whether expungement removes firearms disabilities, although permits to carry concealed weapons are issued to persons whose convictions have been expunged. The Bureau of Alcohol, Tobacco and Firearms will not restore federal firearms privileges to a violent felon in Utah who is prohibited by state law from possessing all firearms.

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<sup>1</sup> This term is defined to mean murder, voluntary 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 a felony, felony arson, or an attempt to commit any of these crimes. Utah Code Ann. § 76-10-501(2)(e).

<sup>2</sup> This term is defined to include any item capable of causing death or serious bodily injury. Utah Code Ann. § 76-10-501(2)(a).

<sup>3</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. State law does not appear to prohibit a felon from obtaining a hunting license.

## VERMONT

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. 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); nurse (tit. 26, § 1582); license to sell lottery tickets (tit. 31, § 661).

### II. 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.

### III. FIREARMS

Vermont law does not prohibit felons from possessing firearms.<sup>1</sup> Accordingly, the Bureau of Alcohol, Tobacco and Firearms will process applications for removal of federal firearms disabilities from felons in Vermont.

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<sup>1</sup> A person may, however, be prohibited by a court from possessing firearms as a condition of probation. See *Vermont v. Kasper*, 152 Vt. 435, 566 A.2d 982 (1989).





## VIRGINIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. §§ 24.1-42, 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. § 24.1-79.3.

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., liquor license (Va. Code Ann. §§ 4-31, 4-37); optometry (§ 54.1-3215); healing arts (§§ 54.1-2916, 54.1-2917, mandatory disqualification); nursing (§ 54.1-3007); dentistry (§ 54.1-2706); accounting (§ 54.1-2006); geology (§ 54.1-1405); soil science (§ 54.1-2207); funeral director (§ 54.1-2806); pharmacy (§ 54.1-3316); veterinary medicine (§ 54.1-3807). State driver's licenses are revoked upon conviction of state motor vehicle offenses or of state and federal drug offenses. Va. Code Ann. §§ 46.2-389, 46.2-390, 46.2-390.1, and 46.2-415.

### II. 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.

### III. FIREARMS

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" (defined to include both long guns and handguns, Va. Code Ann. § 18.2-308.2:2(G)), 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. 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.

Because state law prohibits felons from possessing all firearms, state and federal offenders who are subject to them are not eligible for relief from federal firearms disabilities.

## WASHINGTON

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

A person convicted of an "infamous crime" is ineligible to vote. Wash. Const. art. VI, §§ 1, 3. 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. Felons also are prohibited from serving as a personal representative in a probate matter. Wash. Rev. Code § 11.36.010.

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. Wash. Rev. Code § 9.96A.020. This limitation on considering a felony conviction in hiring does not apply to law enforcement agencies. Wash. Rev. Code § 9.96A.030.

### II. 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. For 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. 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 never been convicted. Wash. Rev. Code § 9.94A.230.<sup>1</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 felon, whether convicted before or after July 1, 1984, may have his civil rights restored by the Governor, either by the grant of a pardon or by the express restoration of the felon's civil rights without a pardon. Wash. Rev. Code §§ 9.96.010, 9.96.020. A person convicted under federal law or the

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<sup>1</sup> The record 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 less than 10 years have passed from discharge; or (5) the offense is a Class C felony and less than five years have passed since discharge. Wash. Rev. Code § 9.94A.230(2).

law of another state is ineligible for a gubernatorial pardon. However, 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 in the jurisdiction of conviction.

### III. FIREARMS

A person convicted of a "crime of violence or of a felony in which a firearm was used or displayed" or of a felony drug offense may not possess or own a short firearm or pistol,<sup>2</sup> Wash. Rev. Code §§ 9.41.010, 9.41.040(1), (4),<sup>3</sup> unless (for certain offenses only)<sup>4</sup> he received a probationary sentence (under Wash. Rev. Code § 9.95.200) and a dismissal of the charges (under Wash. Rev. Code § 9.95.240). Wash. Rev. Code § 9.41.040(5). Felons prohibited from owning or possessing short firearms and pistols under § 9.41.040 also are ineligible for concealed weapon permits. Wash. Rev. Code § 9.41.070(l)(a).<sup>5</sup> No restriction applies to long guns.

A convicted felon is not prohibited from possessing short firearms "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 . . . of innocence." Wash. Rev. Code § 9.41.040(3). According to the office of the state's Attorney General, a pardon restores firearms privileges. However, most other methods of restoring civil rights 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). Op. Att'y Gen. No. 10

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<sup>2</sup> Defined as a weapon with a barrel length less than 12 inches long. Wash. Rev. Code § 9.41.010(1).

<sup>3</sup> "Crime of violence" is defined in Wash. Rev. Code § 9.41.010(2) to include: federal and state offenses that would be classified as Class A felonies under Washington law or 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, kidnapping, arson, assault, burglary, or robbery; and extortion in the first degree.

<sup>4</sup> That is, offenses other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or certain drug offenses, committed before July 1, 1984.

<sup>5</sup> Eligibility for concealed weapon permits may be restored one year after completion of sentence by petition to a state district court for the following offenses: third degree assault, indecent liberties, first degree malicious mischief, first or second degree possession of stolen property, or first or second degree theft. The felon must not have been convicted of any additional crime in the interim and also must not be under indictment for any crime. Wash. Rev. Code § 9.41.070(1)(g).

(1988).<sup>6</sup> See also Washington v. Thomas, 665 P.2d 914 (Wash. 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).

Because the state-law prohibition applies only to handguns, the Bureau of Alcohol, Tobacco and Firearms will entertain petitions for relief from felons residing in Washington. Under a 1992 law, any felon who has been granted relief from federal firearms disabilities by BATF, or who "is exempt [from the federal firearms prohibition] under 18 U.S.C. § 921(a)(20)," shall have his state firearms privileges restored. Wash. Rev. Code § 9.41.070(2).

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<sup>6</sup> Specifically, the Attorney General has concluded that a person is still subject to state firearms disabilities in each of the following situations: rights restored after completion of probation or suspended sentence, under Wash. Rev. Code § 9.92.066; rights restored after completion of parole, under Wash. Rev. Code § 9.96.050; rights restored after service of sentence, under Wash. Rev. Code § 9.94A.220 (statute specifically provides that discharge is not based on a finding of rehabilitation); or record of conviction vacated, under Wash. Rev. Code § 9.94A.230. Only a person who has had the charges dismissed upon successful completion of probation for an offense committed before July 1, 1984, is free from state firearms disabilities, a result specifically mandated by Wash. Rev. Code § 9.41.040(5).



## WEST VIRGINIA

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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 is not applicable to federal felons. Isaacs v. Board of Ballot Commissioners, 12 S.E. 2d. 510 (W.Va. 1940); 54 Op. Atty. 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. Any felony is an "infamous offense." State v. Bongalis, 378 S.E.2d 449 (W. Va. 1989).

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). 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. A felony conviction may be taken into account in determining the priority rating of a veteran for admission to the Barboursville, West Virginia Veteran's Home. W. Va. Code § 9A-2-1, et seq.

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

The rights to vote and to serve on a jury are 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. 51 Op. Atty. Gen. W. Va. 182 (1965); Webb v. County Court of Raleigh County, 113 W. Va. 474, 168 S.E. 760 (1933). The Governor has the power to grant pardons after conviction. W. Va. Const. art. 7, § 11. Federal felons are ineligible for a gubernatorial pardon.

### III. FIREARMS

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>1</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 license

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<sup>1</sup> "Firearm" is defined in W. Va. Code § 61-7-2(11) to include both long guns and handguns.

to carry a concealed deadly weapon other than on his own premises may not be issued to a person "convicted of a felony or of an act of violence involving the misuse of such deadly weapon." W. Va. Code §§ 61-7-4; 61-7-6. 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. The Bureau of Alcohol, Tobacco and Firearms will not process applications for relief from federal firearms disabilities from felons residing in West Virginia as long as they remain under a state law disability.



## WISCONSIN

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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. 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 employment or a license "because of 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, 111.335. *E.g.*, medical practices (Wis. Stat. § 448.05); optometry (§ 449.07); alcohol license (§ 125.04).

### II. 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. A person convicted under federal law or the law of another state is ineligible for a gubernatorial pardon. Accordingly, a federal offender may regain the right to hold public office only by a presidential pardon.

### III. FIREARMS

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.<sup>1</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. § 1203 (now repealed),<sup>2</sup> or has obtained relief from federal firearms disabilities under 18 U.S.C. § 925(c). Wis. Stat. § 941.29(5)(a). The Bureau of Alcohol, Tobacco and Firearms (BATF) takes the position that restoration of civil rights under Wisconsin law does not remove the state firearms disability of § 941.29. *See United States v. Ziegenhagen*, 420 F.Supp. 72 (E.D. Wis. 1976) (so

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<sup>1</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>2</sup> 18 U.S.C. App. § 1202 criminalized possession, receipt, or transportation of a firearm by a convicted felon. Section 1203 set forth an exemption for 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 has concluded that pardons granted after the repeal of 18 U.S.C. App. § 1203 render federal firearms disabilities inapplicable. Op. Att'y Gen. 6-89 (February 20, 1989).

interpreting effect of predecessor of Wis. Stat. § 304.078 in prosecution under 18 U.S.C. §§ 922(a)(6)(h)). Therefore, federal firearms disabilities apply to any felon residing in Wisconsin who has not been pardoned. Although felons are prohibited by state law from possessing all firearms, they are eligible to apply for relief from BATF because, under Wisconsin law (see note 2 supra), that relief will remove state firearms disabilities.

## WYOMING

### I. COLLATERAL CONSEQUENCES OF A CONVICTION

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, 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); insurance agent (§ 26-9-136); outfitter (§§ 23-2-411, 412, 416); dental hygienist (§ 33-15-121); radiologic technologist (§ 33-37-111); title agent (§ 26-23-321); cosmetologist (§ 33-12-135).

### II. 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. The Governor has the power both to pardon, 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 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. As a matter of policy, the current Governor does not consider requests for pardon or restoration of rights until at least five years after discharge from sentence, except when compelling reasons exist for early consideration, such as serious illness.

### III. FIREARMS

A person convicted of a "violent felony," or an attempt to commit a violent felony, who has not been pardoned, may not use or knowingly possess a firearm (including both handguns and long guns). Wyo. Stat. § 6-8-102. 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, or aggravated burglary. Wyo. Stat. § 6-1-104(xii). As a matter of practice, a full pardon by the Governor will usually indicate that the right to possess firearms is restored subject to applicable federal law. Because a certificate of restoration of rights does not restore firearms privileges, and because the Bureau of Alcohol, Tobacco and Firearms will not grant relief from federal firearms disabilities to violent felons in Wyoming, a person convicted of a violent federal felony may regain his state and federal firearms privileges only by a presidential pardon.





