

## MEMORANDUM

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DATE: September 7, 2016

TO: Members of the Advisory Commission on the Administration of Justice

FROM: Nicolas Anthony, Senior Principal Deputy Legislative Counsel

SUBJECT: Materials Requested During the Advisory Commission on the Administration of Justice Meeting held on August 3, 2016 (Restoration of Rights and Direct Impacts of Felony Convictions)

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This memorandum responds to several requests for information made by members of the Advisory Commission on the Administration of Justice during the meeting held on August 3, 2016. Specifically, this memorandum provides an overview of the restoration of rights of convicted persons in Nevada and a list of Nevada Revised Statutes (NRS) sections wherein the category of felony conviction may have a direct implication beyond the underlying criminal sentence.

### RESTORATION OF RIGHTS

Under federal law and the laws of many states, a felony conviction may have consequences that continue long after a sentence has been served. For example, convicted felons may lose essential rights of citizenship. These are often referred to as civil rights or civil liberties that are guaranteed and protected under the United States and Nevada Constitutions.

In a majority of states, as in Nevada, civil rights that may be lost include: the right to vote, the right to hold public office and the right to serve on a jury. In addition, a convicted felon may lose his right to bear arms. Under Section 1 of Article 2 of the Nevada Constitution, “. . . no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights . . . shall be entitled to the privilege of an elector.” Further, under Section 3 of Article 15, “No person shall be eligible to any office who is not a qualified elector under this Constitution.” In addition, a person who is a qualified elector of the State, and who has not been convicted of treason, felony, or other infamous crime is qualified to serve as a juror. *See* NRS 6.010. Copies of all relevant legal authority

were provided during the meeting of the Advisory Commission held on August 3, 2016, and may be obtained electronically from the Advisory Commission's Internet website.

Given the foregoing, under Nevada law there are currently five ways to obtain a restoration of civil rights: (1) an honorable discharge from parole; (2) an honorable discharge from probation; (3) release from prison; (4) a grant of pardon; and (5) by the sealing of records.

#### **A. Automatic Restoration After Honorable Discharge from Parole or Probation, Release from Prison**

In 2003, the Legislature passed Assembly Bill No. 55 which, among its other provisions, immediately restores the right to vote and the right to serve on a civil jury for a person honorably discharged from probation or parole, or released from prison upon expiration of the sentence for certain crimes. Restoration of civil rights upon discharge from parole is currently found at NRS 213.155. Restoration of civil rights upon discharge from probation is discussed at NRS 176A.850. In cases where a convicted person has served his or her sentence and has been released from prison, restoration of civil rights is located at NRS 213.157.

Currently under Nevada law, if a person receives an honorable discharge from parole, an honorable discharge from probation, or is released from prison, certain rights are immediately restored and other rights are restored over time. Specifically, such a person is:

- Immediately restored is the right to vote and the right to serve on a civil jury;
- Four years after the discharge or release, the right to hold office is restored; and
- Six years after the discharge or release, the right to serve as a juror in a criminal case is restored.

Following a convicted person's release from prison or honorable discharge from probation or parole, a person must be given official documentation stating that the right to vote and serve on civil jury have been immediately restored, and the date on which the right to hold office and right to serve as a juror in a criminal action will be restored. If a person loses that information, he or she may file with a court of competent jurisdiction for an order restoring civil rights.

#### **B. Application to Court**

Persons convicted under Nevada law are not automatically restored civil rights if the person has previously been convicted of a category A felony, or a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim. Additionally, a person who has been convicted two or more times of a felony may not have his or her rights automatically restored. Such individuals may petition a court of competent jurisdiction for the restoration of his or her rights after completion of sentence or honorable discharge from parole

or probation or alternatively must apply for a pardon. *See* NRS 176A.850, 213.155 and 213.157. If the petition is granted by a court, similar to a discharge or release the person is:

- Immediately restored to the right to vote and serve on a civil jury;
- Four years after the petition is granted, restored to the right to hold office; and
- Six years after the petition is granted, restored to the right to serve on a criminal jury.

### **C. Pardon**

The State Board of Pardons Commissioners may restore the civil rights of a person convicted of almost any felony. The Board has pardon authority for all offenses except impeachment and treason. *See* Nev. Const. art. 5, § 14; NRS 213.010. The Board consists of the Governor, the Supreme Court Justices and the Attorney General. Pardons are granted by majority vote, but the governor must be in the majority.

Pursuant to NRS 213.090, a pardon granted by the Board is “deemed to be a full, unconditional pardon unless the official document . . . explicitly limits the restoration of the civil rights of the person or does not relieve the person of all disabilities incurred upon conviction.” Additionally, the person pardoned must be given an official document which provides that the person has been granted a pardon.

Pursuant to Nevada Administrative Code there are certain waiting periods of time before a person may submit an application for a pardon. Under NAC 213.065, a person may not submit an application for a pardon from a conviction for a:

- (a) Misdemeanor which constitutes domestic violence pursuant to NRS 33.018 until 5 years after the date on which the person is released from actual custody or is no longer under a suspended sentence;
- (b) Category E felony until 6 years after the date on which the person is discharged from probation or parole or released from prison;
- (c) Category B, C or D felony for which the person was sentenced to probation until 8 years after the date on which the person is discharged from probation, except as otherwise provided in this paragraph. If the person was sentenced to probation upon a conviction for a category C or D felony and his or her probation was revoked, the person may not submit an application for a pardon until 9 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced. If the person was sentenced to probation upon a conviction for a category B felony and his or her probation was revoked, the person may not submit an application for a pardon until 10 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced;

- (d) Category C or D felony for which the person was sentenced to a term of imprisonment until 9 years after the date on which the person is discharged from parole or released from prison;
- (e) Category B felony for which the person was sentenced to a term of imprisonment until 10 years after the date on which the person is discharged from parole or released from prison;
- (f) Category A felony until 12 years after the date on which the person is discharged from probation or parole or released from prison.

However, it should also be noted that, pursuant to subsection 3 of NAC 213.065, “With the consent of a member of the Board, the Secretary may waive the waiting period.”

#### **D. Sealing of Records**

The sealing of criminal records is another way to restore a person’s civil rights if the rights have not already restored. NRS 179.245 provides that a person may petition the court in which he or she was convicted for the sealing of criminal records after certain time periods have passed. Those time periods range from 15 years for certain category A and B felonies, to 7 years for a category E felony. However, it should be noted that not all felonies are eligible to be sealed. Those felonies not eligible to be sealed are specifically outlined in NRS 179.245.

Pursuant to NRS 179.285, the effect of sealing records is that the person is immediately restored, if he or she has not previously been restored, to the right to: (1) vote; (2) hold office; and (3) serve on a jury.

#### **E. Firearms**

Under the provisions of NRS 202.360:

A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person: (a) Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33); (b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms.

Further, under Nevada law, the right to bear arms (possess firearms) may only be restored by pardon. *See* NRS 202.360, 213.090. If a person is restored to the right to bear arms, the official pardon document “must explicitly state that the person is restored to the right to bear arms.” NRS 213.090.

## **F. Juveniles**

Pursuant to NRS 62E.010, “[e]xcept as otherwise provided by specific statute, [a juvenile] adjudication . . . does not impose any of the civil disabilities ordinarily resulting from conviction.”

## **G. Out of State Convictions**

Persons convicted in another state may only exercise civil rights in Nevada if the person’s civil rights have been restored pursuant to the laws of the state in which he or she was convicted. *See* NRS 293.540. Further, persons convicted of a federal offense may regain civil rights in Nevada only upon proof of restoration by federal authorities, which is currently a presidential pardon. NV AGO 96-27 (Sept. 25, 1996).

## **H. Collateral Consequences**

The inability to obtain occupational or professional licenses may also be a direct or collateral consequence of conviction. According to the American Bar Association:

Collateral consequences are the penalties, disabilities, or disadvantages imposed upon a person as a result of a criminal conviction, either automatically by operation of law or by authorized action of an administrative agency or court on a case by case basis. Collateral consequences are distinguished from the direct consequences imposed as part of the court’s judgment at sentencing, which include terms of imprisonment or community supervision, or fines. Put another way, collateral consequences are opportunities and benefits that are no longer fully available to a person, or legal restrictions a person may operate under, because of their criminal conviction.

Pursuant to NRS 176.0125, enacted in 2013, the Advisory Commission on the Administration of Justice is directed to “cause to be identified any provision in the Nevada Constitution, the Nevada Revised Statutes and the Nevada Administrative Code which imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision of law that may afford relief from a collateral consequence.” In carrying out this duty the Advisory Commission “may rely on the study of this State’s collateral sanctions, disqualifications and relief provisions prepared by the National Institute of Justice described in section 510 of the Court Security Improvement Act of 2007, Public Law 110-177.” A hyperlink to the American Bar Association Criminal Justice Section’s “National Inventory of Collateral Consequences of Conviction” is available on the Advisory Commission’s Internet website.

## **I. Assembly Bill 301 (2011)**

During the 2011 Legislative Session, the Legislature passed Assembly Bill No. 301, which sought to automatically restore voting rights after completion of a convicted person’s

parole, probation or prison sentence, regardless of the underlying category of felony. However, Governor Brian Sandoval vetoed A.B. 301 on June 16, 2011, stating that, “[s]upporters of this bill argue that automatic restoration of voting rights for all felons, regardless of the severity of the offense, will streamline the voter registration process and eliminate confusion about when or how voter rights are restored. However, these arguments are not compelling reasons to overlook the severity of certain offenses and alter the just punishment that is delivered to those who commit these offenses.” Assembly Bill 301 76th Legislative Session Veto Message.

### **DIRECT IMPACTS OF FELONY CATEGORIES**

In reviewing the NRS, the Legislature has specifically differentiated between categories of felonies in many substantive areas other than so-called Assembly Bill No. 510 (2007) sentence credits. Specifically, the Legislature has statutorily enacted a distinction between felony categories in the following laws relating to crimes and criminal procedure:

1. Juvenile court jurisdiction (NRS 62B.335)
2. Requirement to get a work card to be employed on certain premises owned by landlords (NRS 118A.335)
3. Peace officer jurisdiction (NRS 171.1223)
4. DNA evidence to be stored (NRS 176.0912)
5. Presentence Investigation and report not required for category E offenses (NRS 176.151)
6. Probation secured by surety bond (NRS 176A.300)
7. Alternative programs of treatment (NRS 176A.400)
8. Restoration of civil rights (Honorable discharge from probation) (NRS 176A.850)
9. Motion to commit incompetent defendant (NRS 178.461)
10. Limitations of release on bail (NRS 178.4855)
11. Sealing of records (NRS 179.245)
12. Registration of “convicted persons” (NRS 179C.010)
13. Additional penalty for crimes committed with assistance of a child (NRS 193.162)
14. Additional penalty for crimes committed in violation of protective orders (NRS 193.166)
15. Attempt crimes (NRS 193.330)
16. Obtaining and using personal identifying information (NRS 205.463)
17. Residential confinement eligibility (NRS 209.392)
18. Sentence (good time) credits (NRS 209.4465))
19. Restoration of civil rights (honorable discharge from parole) (NRS 213.155)
20. Restoration of civil rights (after sentence served) (NRS 213.157)
21. Attorney General recoupment of costs for assistance in prosecution (NRS 228.130)

The Nevada Administrative Code also makes a distinction based on the underlying category of offense for purposes of determining the waiting periods for applying for a pardon. NAC 213.065. *See discussion supra.*

## **CONCLUDING REMARKS**

I trust this information is helpful. Should you have any further questions, please do not hesitate to contact me at (775) 684-6830 or [nanthony@lcb.state.nv.us](mailto:nanthony@lcb.state.nv.us).