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OVERVIEW

RESTORATION
OF
CIVIL RIGHTS

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ASSEMBLY JUDICIARY
DATE: 3/24/03 ROOM: 3138 EXHIBIT 6
SUBMITTED BY: C. GIANCAGLIANI

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MEMORANDUM

DATE: November 14, 2002
TO: Assemblywoman Chris Giunchigliani
FROM: Nicolas C. Anthony, Senior Research Analyst *NA*
Research Division
SUBJECT: **Restoration of Civil Rights**

This memorandum responds to your request for information on restoration of civil rights for convicted persons. Specifically, you inquired as to Nevada's current law, and what other states are doing in regards to restoration of civil rights.

Loss of Civil 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 Constitution.

In a majority of states, civil rights that are lost include: the right to vote, the right to hold public office, the right to serve on a jury, and the ability to obtain occupational or professional licenses. In addition, a convicted felon may lose his/her right to bear arms.

In Nevada, a person convicted of a felony may not vote, hold elected office, or serve on a jury (see enclosed Nevada provisions related to loss of civil rights). Under *Nevada Constitution*, Article 2, Section 1, "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 the privilege of an elector." Further, under Article 15, Section 3, "No person shall be eligible to any office who is not a qualified elector under this constitution." In addition, one must be 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. *Nevada Revised Statutes* (NRS) 6.010.

It is also important to note, under NRS 202.360, "A person who has been convicted of a felony in this 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 he has received a pardon and the pardon does not restrict his right to bear arms, shall not own or have in his possession or under his custody or control any firearm."

Restoration of Rights in Nevada

As you are aware, Assembly Bill 328 (Chapter 358, *Statutes of Nevada 2001*) revised the procedures for requesting restoration of civil rights. Enclosed for your information is an overview of Assembly Bill 328, copies of the current NRS relating to restoration of rights, and a detailed comparison of the law before and after A.B. 328. Also included is a flow chart depicting the restoration of the civil rights process in Nevada.

Generally, under Nevada law there are five ways to obtain a restoration of civil rights: (1) restoration after a convicted person receives an honorable discharge from parole; (2) restoration after a convicted person is released from prison; (3) restoration after a convicted person receives an honorable discharge from probation; (4) restoration of rights granted by a pardon; and (5) restoration after sealing of records.

Convicted Person Receives an Honorable Discharge From Parole

If a person receives an honorable discharge from parole under NRS 213.154, the State Board of Parole Commissioners may restore his civil rights. Under NRS 213.155, in any case where a convicted person has been issued an honorable discharge from parole, but was not automatically restored to his civil rights, he may immediately apply to the Division of Parole and Probation for restoration of his civil rights. If the Division determines that the applicant has received an honorable discharge from parole, then the Division must forward the application to the State Board of Parole Commissioners.

Convicted Person Released From Prison

Under NRS 213.157, where a person has served his sentence and been released from prison for a felony in the State of Nevada, he may immediately apply to the Division of Parole and Probation for restoration of his civil rights. If the Division determines that the applicant has served his sentence and been released from prison, then the Division shall forward the application to the district court where the conviction was obtained for restoration of the person's civil rights.

Convicted Person Receives an Honorable Discharge From Probation

Under NRS 176A.860, a person may also apply to the Division for restoration of his civil rights six months after an honorable discharge (NRS 176A.850) from probation. If the

Division determines the person meets the statutory requirements, it must petition the court for an order granting restoration of civil rights.

Convicted Person Receives a Pardon

In addition, under NRS 213.090, a person may receive a pardon (by the State Board of Pardons Commissioners), which may or may not include a restoration of civil rights. If the pardon does not specifically include a restoration, the person may immediately apply to the Board of Pardons for restoration of his civil rights.

Restoration After Sealing of Records

Under NRS 179.285, "the court shall order the civil rights of the person to whom the order (to seal records) pertains to be restored if the person has not been restored to his civil rights."

What Civil Rights are Restored in Nevada

Generally, in reviewing the NRS, the phrase "restore the civil rights of the applicant and release him from all penalties and disabilities which resulted from the offense or crime of which he was convicted" is used in the area of restoration of rights; however, it is not clear as to what rights are restored. This phrase is repeated in NRS 213.155 (restoration after discharge from parole), NRS 213.157 (restoration after completed sentence and release from prison), and NRS 213.090 (granting of pardon), yet the statutory structure does not readily define what civil rights and penalties and disabilities are restored.

The one area of restoration where the statutory scheme does state what is restored, is in the area of honorable discharge from probation. Under NRS 176A.850, the statutory language provides that

4. A person honorably discharged from probation who has had his civil rights restored by the court:

(a) Is exempt from the requirements of chapter 179C of NRS, but is not exempt from the requirements of chapter 179D of NRS.

(b) May vote, hold office or serve as a juror.

(c) Shall disclose the conviction to a gaming establishment and to the state and its agencies, departments, boards, commissions and political subdivisions, if required in an application for employment, license or other permit. As used in this paragraph, "establishment" has the meaning ascribed to it in NRS 463.0148.

(d) Except as otherwise provided in paragraph (c), need not disclose the conviction to an employer or prospective employer.

The prior conviction of a person whose civil rights have been restored or who has been honorably discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person who has had his civil

rights restored or who has been honorably discharged from probation, the prior conviction may be pleaded and proved if otherwise admissible.

Thus, under Nevada law, it is not readily apparent what rights are restored, unless the person has been restored after an honorable discharge from probation; however, according to a Nevada Attorney General Opinion (83-13, 1983 copy enclosed), "A restoration of rights allows a convicted person to vote, hold office and avoid certain requirements to register as a convicted person. Such restoration does not allow a convicted person to carry a concealed firearm, enable the individual to avoid professional licensing restrictions, or relieve the individual of statutory enhancements based upon the underlying conviction" (see page 53). It should be noted that this opinion was rendered in 1983, and that a new legal opinion on this issue may be necessary.

As to firearms, the question of whether a restoration of civil rights (by pardon, or through statutory process outlined above) restores the right to bear arms also represents a complex legal issue. A casenote following NRS 202.360, seems to indicate that a restoration of civil rights does not include the right to possess firearms unless the right to possess firearms has specifically been restored.

It appears that a full legal analysis should be requested as to what specific civil rights are restored, and whether a restoration of civil rights includes the right to possess a firearm. If you should desire a legal opinion on these issues, I would be pleased to forward your request to the Legal Division of the Legislative Counsel Bureau.

Restoration of Civil Rights in Other States

As the principal author of the Office of the Pardon Attorney's, United States Department of Justice, publication, *Civil Disabilities of Convicted Felons: A State-by-State Survey* (portions enclosed) stated, "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" (copy enclosed).

Overall, the *State-by-State Survey* found that despite variation across the country, state laws regarding the loss and restoration of rights generally fall into five categories:

1. The right to vote, the right to hold office, or the right to sit on a jury is not lost as a result of a conviction or is lost only if the offender is incarcerated upon conviction and are automatically restored upon release from incarceration;
2. These rights are automatically restored by the completion of the sentence, by obtaining a certificate of discharge from the sentence, or by the passage of time;
3. Rights may be restored through a judicial or administrative procedure, which typically requires that the offender have completed his or her sentence and imposes a waiting period for seeking restoration and which may require a demonstration of law-abidingness and rehabilitation;

4. One or more rights may be regained only by a pardon; and
5. In a small number of states, one or more rights are permanently lost.

Restoration of Voting Rights in Other States

In researching this request, it appears that most state-by-state information on the restoration of civil rights, focuses on the restoration of the right to vote. This issue has recently come under national awareness and is often referred to as "felon disenfranchisement."

While the following research specifically details the restoration of voting rights, it is not immediately clear that the states follow the same guidelines for restoration of all civil rights (including the right to hold office or serve as a juror). Further, this research does not specifically address whether a restoration of rights in other states includes the right to possess a firearm, as that complex issue should be reserved for further research and evaluation.

Enclosed is a state-by-state overview by the United States Department of Justice titled "Voting Rights Restoration Process." In addition, included is another summary prepared by the United States Department of Justice titled "States Where Restoration of Civil Rights Must be Through Pardon or by Application to Pardons Board or Other Entity." This document has been recently updated by the National Conference of State Legislatures and the Legislative Counsel Bureau.

As you will note from these two documents, the vast majority of states automatically restore the right to vote upon the release from supervision or completion of sentence; however, it appears that there are currently 15 states (identified in the document "States Where Restoration of Civil Rights Must be Through Pardon or by Application to Pardons Board or Other Entity") that do not automatically restore voting rights.

Of these 15 states, at least three states (Delaware, Maryland, and Tennessee) have permanently removed a person's right to vote if he or she has been convicted of certain named crimes. By permanent removal, it appears that even a pardon will not restore these rights. In addition, eight states (Alabama, Florida, Iowa, Kentucky, Maryland [only requires a pardon to restore rights if a person has been convicted of theft or an infamous crime two or more times], Mississippi, Virginia [by "removal of political disabilities" granted by the Governor], and Wyoming) only allow for restoration of voting rights if there has been a pardon. Several other states (Arizona, Connecticut, Nebraska, Nevada, and Tennessee) do not automatically restore a person's rights, but rather require an individual seeking to restore rights to file papers with a governing body, such as a Board of Pardons or the courts.

For your reference, enclosed is a color state-by-state overview prepared by the United States Department of Justice titled "Process for Restoration of Voting Rights." Please note, this overview map is helpful, but may contain slight inaccuracies, as Nevada is shown as a state where one can only regain their voting rights by pardon. It should again be noted that in Nevada, a person may have his civil rights restored by pardon, at the discretion of the

State Pardons Board immediately upon honorable discharge from parole (or if not immediately restored, then by application to the Division), by applying six months after honorable discharge from probation, or by applying immediately after serving a sentence and being released from prison, or by having one's records sealed.

Restoration of Civil Rights After Conviction For A Federal Felony

In your request, you also asked how persons convicted of a federal felony can restore their civil rights. According to a Nevada Attorney General Opinion 96-27 (1996) "The only method available for a federal felon to obtain restoration of his civil rights appears to be a presidential pardon . . ."

Also, according to *Civil Disabilities of Convicted Felons: A State-by-State Survey*, it is generally thought that the only way for restoring political rights, exclusive of firearms rights, is through a presidential pardon (see pages ii and iii *Civil Disabilities of Convicted Felons: A State-by-State Survey*). Further, analysis from the Office of the Pardon Attorney notes, "That there is generally no federal statutory procedure whereby civil rights may be restored after conviction or judicial records of an adult federal criminal conviction expunged." For a full discussion of restoration of civil rights and removal of disabilities under federal law see pages 13—20 of Office of the Pardon Attorney's, United States Department of Justice document titled *Federal Statutes Imposing Collateral Consequences Upon Conviction* (November 2000) (copy enclosed).

Concluding Remarks

I trust that this information is helpful. Should you have any further questions or comments, please contact me.

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Enc.