

OCTOBER 12, 2005

WEST VIRGINIA

I. Automatic Restoration of Rights:

Persons convicted of “treason, felony, or bribery in an election” cannot vote “while such disability continues.” W. Va. Const. art. IV, § 1. Right to serve on jury and hold office also forfeited. W. Va. Stat. §§ 6-5-5, 52-1-8(b)(5). Civil rights restored automatically upon completion of sentence, including parole (unless for bribery of a state officer). *See Webb v. County Court of Raleigh County*, 168 S.E. 760 (W. Va. 1933); 51 W. Va. Att’y Gen. Op. 182 (1965). Federal courts reach opposite conclusion respecting restoration of jury right under state law, *see U.S. v. Morrell*, 61 F.3d 279 (4th Cir. 1995), though § 52-1-8 appears to link right to vote and right to serve on jury. Disqualification from office permanent in the case of crimes involving elections and bribery. W.Va. Const. art 6, § 45; W. Va. Code § 61-5-4, -5; W. Va. Code § 6-5-5.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority* to pardon exclusively in Governor, except for impeachment. W. Va. Const. art 7, § 11. Governor required to report the particulars of every case to the legislature, with reasons for each grant. W. Va. Code § 5-1-16. As a matter of policy, Governor does not consider an application except upon recommendation of Parole Board.
- *Eligibility:* State offenders only.
- *Effect:* Pardon does not restore firearms rights. *Perito v. County of Brooke*, 597 S.E.2d 311 (W.Va. 2004). W. Va. Code § 61-7-7(c) - Must go to circuit court and prove fitness.
- *Frequency of Grants:* Pardons rarely granted – only 121 in 36 years, by nine governors. Conditional pardons (a sort of parole) more frequent (200 in this same time period) Executive records kept by Secretary of State: Pardons, Reprieves, Commutations, and Respites, available at <http://www.wvsos.com/execrecords/code/wvcpardons.htm>. Source: Governor’s Office.
- *Contact:* Janet Shelton, Office of General Counsel, Governor’s Office, Charleston, WV 25305-0770. 304-558-2000

B. Judicial sealing or expungement of adult felony convictions:

Persons granted full and unconditional pardon may apply for expungement from circuit court in which convicted, 2 years after pardon and 20 years after

discharge from sentence, with certain exceptions for violent crimes. W.Va. Code § 5-1-16a. If a conviction is expunged, educational institutions and licensing authorities may not consider. Otherwise no authority to expunge adult convictions.

C. Administrative certificate: N/A

III. **Nondiscrimination in Licensing and Employment:**

West Virginia has no general law regulating consideration of conviction in employment or licensure, except that licensing authorities may not consider expunged convictions, W. Va Code § 5-1-16a(b). (Expungement available only if conviction has been pardoned, and then not until 2 years after pardon, 20 years after offense committed. See above.)

West Virginia does require that a conviction be “directly related” to the practice of a few professions. *See* W. Va Code § 30-3-14(c)(2) (“Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine”); § 30-16-11(a)(3) (same, chiropractic); § 47-14-11(a)(4) (“found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts”).