

Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide

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VIRGINIA

I. Automatic Restoration of Rights: N/A

Person convicted of felony loses right to vote and serve on jury. Va. Const. art. II, § 1; Va. Code Ann. § 8.01-338 (2). Right to vote regained only by action of the governor, through restoration of rights or pardon. Va. Const. art. V, § 12. *See also* Va. Stat. Ann. § 53.1-231.2 (procedure for petitioning court for restoration, with subsequent referral to governor for action).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority:* Governor may grant full pardon or limited restoration of rights. Va. Const. art. V, § 12. Constitution also requires governor to make annual report to the legislature setting forth “the particulars of every case” of pardon granted, with reasons.
- *Administration:* Legislature has authorized Parole Board at the request of the governor to investigate and make recommendations on pardon cases, but this does not limit governor’s power. Va. Stat. Ann. §§ 53.1-136(5), 53.1-231. Secretary of the Commonwealth alone makes recommendation in restoration of rights cases. Parole Board consists of five members appointed by the governor to open-ended terms. No more than two are full-time. One must be representative of victims group.
- *Eligibility:*
 - Restoration of rights: Three years after completion of sentence for nonviolent applicants, five years after completion of sentence for violent and drug offenses (other than simple possession), and election fraud. No offenses are specifically excluded, but governor may decide not to grant some due to nature of offense or some other unstated subjective criterion.
<http://www.commonwealth.virginia.gov/Clemency/RORapplicantsLetter.pdf>.
 - Pardon: Five years after completion of sentence. Federal and out-of-state offenders are also eligible. *See* <http://www.commonwealth.virginia.gov/Clemency/clemency.cfm>. Eligibility rules informal, dating from 1990.
- *Effect:*
 - Restoration of rights restores right to vote, sit on jury, hold public office, and serve as a notary public.
 - Pardon: “Simple” pardon does not expunge the record, but “it does

constitute official forgiveness and often serves as a means for the petitioner to advance in employment, education, and self-esteem.” See “Pardon Letter,”

<http://www.commonwealth.virginia.gov/Clemency/pardonLetter2002.doc>. “Absolute” pardon generally granted only for innocence. (“Conditional” pardon reduces sentence.) Pardon is useful in signifying rehabilitation, but Virginia authorities advise that it is not clear what if any legal effect a pardon may have under state law. Pardon does not entitle a person to judicial expungement unless granted for innocence (“absolute” pardon). Neither restoration of rights nor pardon restores right to possess firearms, which is controlled by court. Va. Stat. Ann. §18.2-308.2, *amended by* 2005 Va. Acts ch. 600 and 2005 Va. Acts ch. 833; *see also* <http://www.commonwealth.virginia.gov/FAQs/FAQs.cfm#clem>

• *Process:*

- Restoration of rights – In 2003, Governor Warner implemented expedited application process for non-violent offenders seeking right to vote. Simple one-page application filed with Secretary of Commonwealth, who does a records check. Longer 13-page application form still necessary for persons convicted of violent offenses, including drug trafficking offenses, and election fraud. Restoration of rights first step in pardon application process. Va. Stat. Ann. § 53.1-231.1 requires Director of Corrections to give notice upon completion of sentence of procedure for regaining rights. In January 2006 incoming governor Timothy Kaine promised to continue the expedited policy established by his predecessor.
 - Court route to restoration - Alternative process through petition to local circuit court to restore right to vote (unavailable for those convicted of violent felonies, drug-trafficking, or election fraud). Petition filed with court, which holds a hearing and makes a determination as to whether the person has demonstrated “civil responsibility,” then makes recommendation to the governor. Va. Stat. Ann. § 53.1-231.2.
 - Pardon - applications are sent to Parole Board for investigation, and Board makes nonbinding recommendation to governor. Va. Code Ann. § 53.1-136(5). “Evidence of good citizenship is required, as are favorable recommendations from the official involved in the case and the Virginia Parole Board.” See Pardon Letter, *supra*. The governor is required by the state constitution to give a reason for each grant in his report to the legislature (see above), but he generally gives no reasons for denials.

• *Frequency of Grants:*

- Restoration: Between January 2002 and January 2006, Governor Mark Warner restored civil rights to 3,414 people, the most in . During the same period 195 applications were rejected, generally based on seriousness of offense or overall criminal record. (Predecessor

Governor Gilmore restored rights to 238 people, and his predecessor George Allen to 480. Governor Robb restored rights to 1180 people between 1982 and 1986.)

○ Pardon - In 2004 there were 231 requests for pardon, and 12 were granted (one medical, one to avert deportation). Three pardons were granted in 2003. As of June 2005, Governor Warner had granted a total of 37 pardons in his first 30 months in office. Source: Office of the Secretary of the Commonwealth

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B. Judicial Restoration or Expungement

Expungement available only where pardon is for innocence.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

Va. Stat. Ann. § 54.1-204 (“Prior convictions not to abridge rights”): A person shall not be refused a license or occupational/professional certificate “solely because of” a prior criminal conviction, unless the criminal conviction “directly relates” to the occupation or profession for which the license, certificate or registration is sought. However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession.

In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;
2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;
5. The extent and nature of the person's past criminal activity;
6. The age of the person at the time of the commission of the crime;
7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;
8. The conduct and work activity of the person prior to and following the criminal activity; and
9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Applicant denied licensure because of criminal record shall be so informed.