

<http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/clemency.cfm>

Clemency

Solely the Governor has the authority to grant clemency and he may do so at his discretion. This discretionary power allows each governor to establish his own guidelines and policies regarding the eligibility of those seeking clemency.

There are two types of clemency: Restoration of Civil Rights and Pardons.

A restoration of rights restores the rights which are lost upon a felony conviction. These include the rights to vote, to run for and hold public office, to serve on juries and to serve as a Notary Public. It does not include the right to possess or transport any firearm or to carry a concealed weapon. [If the Governor restores your rights, you may petition the circuit court of the jurisdiction in which you reside for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such a petition and issue a permit.]

There are three types of pardons: simple, conditional, and absolute. All three types require the petitioner to write a letter to the governor stating why the pardon should be granted. If you have been convicted of a felony you must have your rights restored before the Governor will consider a petition for a pardon.

Under Article V, Section 12, of the Virginia Constitution and Section **53.1-229** through **53.1-231** of the Code of Virginia, all clemency authority is vested solely in the Governor. Clemency is not guaranteed and if a petition is denied, the petitioner has no right of appeal.

Petitions for the restoration of rights and pardons are processed by the Secretary of the Commonwealth. Files are reviewed according to the order in which a completed application is received. The petitioner is notified by mail as to whether his or her petition has been granted or denied by the Governor.

- **Get more information – including needed forms and instructions – about restoration of rights.**
- **Get more information about pardons.**

For questions on Pardons, please contact:

Patricia Tucker, Director of Extradition and Clemency
Office of the Secretary of the Commonwealth
Post Office Box 2454
Richmond, Virginia 23218-2454
(804) 692-0105

For questions on Restoration of Rights, please contact:

Micah Womack, Restoration of Rights Director
Office of the Secretary of the Commonwealth
Post Office Box 2454
Richmond, Virginia 23218-2454
(804) 692-2531

- Secretary of the Commonwealth

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<http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/restoration.cfm>

Restoration of Rights

General Information

A **restoration of rights** restores the rights which are lost in Virginia upon getting a felony conviction. These include the rights to vote, to run for and hold public office, to serve on juries and to serve as a Notary Public. It does not include the right to possess or transport any firearm or to carry a concealed weapon.

There are two different applications / petition processes to follow for restoration of rights, depending on the nature of the felony convictions. **Non-violent felony offenders** may use the short form to apply for restoration. **Violent or drug-distribution felony offenders** must use the longer application form.

General Requirements

Certain requirements must be met in order to be eligible for the restoration of your rights, regardless of felony type:

- You must be a resident of Virginia **OR** have been convicted of a felony in a Virginia court, a court in any other state (including the District of Columbia), a U.S. District Court, a military court, or any court of an associated Commonwealth, territory, or possession of the United States.
- You must have been released from **supervised** probation for a minimum of three (3) years for a non-violent offense or five (5) years for a violent, drug distribution, or drug manufacturing offense and have no other convictions (felonies or misdemeanors) during that time.
- You must have paid all costs, fines, and/or restitution or any obligations to any other court, including traffic courts.
- You cannot have a conviction for DWI (Driving While Intoxicated) within the past five (5) years immediately preceding your application.

The Secretary of the Commonwealth will conduct a criminal history check on all applicants. This restoration process **takes at least six months** from the time an application is considered complete. Petitions are reviewed in the order in which they are received AND complete; therefore it is in your best interest to make sure that all required documents are included with your petition from the start.

Again, granting a restoration of rights is solely at the discretion of the Governor; it is not guaranteed. **If your petition for restoration of rights is denied, you have no right of appeal – but you may reapply after a two-year period.**

Non-violent / Non-drug Felonies

If your felony convictions did not involve charges for violence or for drug manufacturing or distribution, you may fill out the short application for the restoration of your rights. Drug possession offenders are eligible for this form as long as there were no attendant convictions for distribution, sale, manufacturing or accommodation.

- **Short Application for the Restoration of Rights** (pdf, 51k)

The form above includes instructions on how to fill it out.

Violent / Drug Distribution Felonies

If you have been convicted of a violent offense, a drug manufacturing or distribution offense, or an election law offense (voter fraud), you must use the longer form below to apply for restoration of rights.

- **Longer Application for the Restoration of Rights** (pdf, 129k)

The form above includes instructions on how to fill it out.

Please direct all questions to:

Micah Womack, Restoration of Rights Director
Office of the Secretary of the Commonwealth
Post Office Box 2454
Richmond, Virginia 23218-2454
(804) 692-2531

or use our **Inquiry Form**

<http://www.sentencingproject.org/tmp/File/Collateral%20Consequences/Virginia.pdf>

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

FEBRUARY 1, 2006

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/RORpplicantsLetter.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

- *Contact:* Lynn Clayton, Restoration of Rights Specialist, Office of the Secretary of the Commonwealth, 804-692-2531; lynn.clayton@governor.virginia.gov.

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.

Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction, February 1, 2006