PARDONS SYSTEM IN CONNECTICUT

Institute for Municipal & Regional Policy

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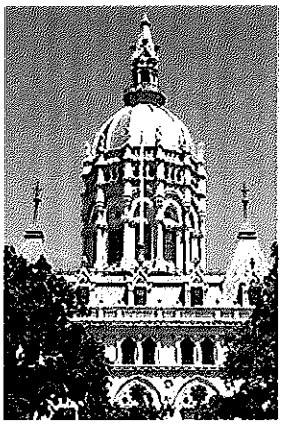

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Introduction

This memo examines the pardons system in Connecticut and considers potential areas for reform. Part I describes the composition, history, and operation of Connecticut's Board of Pardons and Paroles. Part II considers pardon and expungement systems nationwide. Part III discusses possible reforms, including whether Connecticut should further define standards for granting pardons.

I. Connecticut's Board of Pardons and Paroles

In Connecticut, the Board of Pardons and Paroles has the exclusive authority to grant pardons for any crime and commutations of sentences, including the death penalty. Connecticut General Statute 54-124a authorizes the Board to grant pardons, conditioned, provisional, or absolute for any offense after sentencing.[1] The Governor's only authority is to grant temporary reprieves for any offense with the exception of impeachment until the next session of the General Assembly.[2]

A. Composition

The Board of Pardons and Paroles consists of 20 members appointed by the Governor with the advice and consent of both houses of the General Assembly. Twelve members serve exclusively on parole release panels and seven members serve exclusively on pardons panels. In the appointment process, the Governor identifies the member appointed as chairperson, the (full time and part time) members appointed to serve on parole release panels, and the members appointed to serve on pardons panels.[3]

The chairperson may serve on both the parole release panels and pardons panels. These appointments must be qualified by education, experience or training. The term for members of the Board of Pardons and Paroles is continuous with the term of the Governor and any vacancy in membership is appointed by the Governor for the remainder of the existing term.[4]

B. History

The pardoning power in early common law was an attribute of sovereign prerogative. It involved the dispensation of mercy consistent with the common good. While not absolute in scope, it was complete in effect, restoring the offender to all normal rights and

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[1] CONN. GEN. STAT. § 54-124a.
[2] Richard Blumenthal, *Attorney General's Opinion*, OFFICE OF THE ATTORNEY GENERAL (July 27, 1992), http://www.ct.gov/ag/cwp/view.asp?A=1770&Q=281346 (last accessed June 1, 2011).
[3] CONN. GEN. STAT. § 54-124a.
[4] *Id.*

privileges.[5] The crown generally delegated the power to a colonial governor, but in Connecticut, it was vested in the General Assembly where it remained until the creation of the Board of Pardons in 1883.[6]

The governor had tremendous influence over the early Boards. Connecticut's Colonial Charter of 1662 provided that the General Assembly, under its common seal, could pardon or release offenders provided that the governor and six of his assistants were present in the Assembly.[7] The governor was a member of the Board, along with a Supreme Court justice and four others chosen by him with the advice of the senate. A unanimous vote was required, giving each member an effective veto power.[8] The governor's influence in the administration of pardons waned as the demands of the executive office grew.[9] In 1883, the General Assembly passed an Act establishing the Board of Pardons.[10] The Act effectively shifted the administration of pardons to a four-of-five vote format and the governor was relieved of his duties on the board.[11] The Board became composed of five members, appointed by the governor with the advice and consent of either the House or the Senate.[12]

In 2004, the Board of Pardons combined with the Board of Parole and created the new Board of Pardons and Paroles.[13]

C. Types of Pardons

Sentence Commutation: The Board has the authority to grant conditioned or absolute commutations of punishment or releases for a person convicted of any offense against the state, including commuting a death sentence.[14]

Expungement: Expunges the official criminal record of an offender.[15]

Provisional: Enacted in 2006, the "Provisional Pardon" statute allows the Board of

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[5] Christopher Reinhart, *Legislature's Power to Commute Death Sentences and Effect on Pending Cases*, OLR RESEARCH REPORT 2004-R-0930 (Dec. 6, 2004), http://www.cga.ct.gov/2004/rpt/2004-r-0930.htm (last accessed June 17, 2011).
[6] *Id.* In the *Connecticut Constitution of 1818*, the framers gave the governor just the limited power to grant reprieves. Connecticut Constitution, Art. IV, Sec. 13.
[7] Reinhart, *supra* note 5.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Lawrence K. Furbish, *Board of Pardons*, OLR Research Report 94-R-0597 (June 24, 1994).
[13] CONN. GEN. STAT. § 54-124a.
[14] Christopher Reinhart, *Board of Pardons and Paroles and Commutations*, OLR RESEARCH REPORT 2011-R-0216 (May 6, 2011), http://www.cga.ct.gov/2011/rpt/2011-R-0216.htm (last accessed June 17, 2011).
[15] Board of Pardons and Parole, *Frequently Asked Questions regarding the Pardons Process*, http://www.ct.gov/doc/lib/doc/pdf/PardonFAQ.pdf (last accessed June 1, 2011).

Pardons and Paroles to issue provisional pardons to relieve offenders of certain "barriers or forfeitures" due to their conviction of crimes named in the provisional pardon.[16] The Act prohibits employers from denying employment to a prospective employee or discharging/discriminating against an employee solely on the basis of a conviction that occurred before his employment for which the person received a provisional pardon. This type of pardon does not expunge the offender's official criminal record.[17]

The provisional pardon statute allows the board to issue a provisional pardon at any time after sentencing to a person who applies for one or who is under the board's jurisdiction if: 1) the person was convicted of a crime in CT or another jurisdiction and resides in the state, 2) the relief in the provisional pardon may promote the public policy of rehabilitating ex-offenders through employment, and 3) the relief in the provisional pardon is consistent with the public's interest in public safety and protecting property.[18] The board can have its staff investigate the applicant and can issue new provisional pardons that enlarge the initial relief granted.[19]

D. Administrative Pardon Docket

The administrative pardon docket is a set of applications that will be reviewed for a pardon without a hearing. At least two members of the pardons panel must approve of an application placed on the administrative docket for further consideration.[20] An application is eligible only if it meets the following criteria:

1.) The conduct for which the applicant was convicted was a misdemeanor and no longer constitutes a crime;
2.) Such applicant was convicted of a misdemeanor, under twenty-one years of age at the time of conviction, and has not been convicted of a crime during the five years preceding the date on which the provisional pardon is granted;
3.) Such misdemeanor conviction occurred prior to the effective date of the establishment of one of the following diversionary programs for which the applicant would have been eligible had such a program existed at the time of

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[16] CONN. GEN. STAT. § 54-130e. A "barrier" is a denial of employment/license because of a criminal conviction without considering whether the nature of the crime bears a direct relationship to the employment or license. A "forfeiture" is a disqualification or ineligibility for employment or a license by reason of law based on the offender's criminal conviction. *Id.; see also* OLR Bill Analysis. *HB 5846. §§ 84-87 Provisional Pardons*, CONN. GEN. ASSEMBLY, http://www.cga.ct.gov/2006/BA/2006HB-05846-R00-BA.htm (last accessed June 1, 2011).
[17] CONN. GEN. STAT. § 54-130e; *see also* George Coppolo, *Pardons and Provisional Pardons*, OLR RESEARCH REPORT 2007-R-0561 (Sept. 21, 2007), http://www.cga.ct.gov/2007/rpt/2007-R-0561.htm (last accessed June 1, 2011).
[18] CONN. GEN. STAT. § 54-130e; *see also* OLR Bill Analysis. *HB 5846. §§ 84-87 Provisional Pardons*, CONN. GEN. ASSEMBLY, http://www.cga.ct.gov/2006/BA/2006HB-05846-R00-BA.htm (last accessed June 1, 2011).
[19] CONN. GEN. STAT. § 54-130e.
[20] Board of Pardons and Parole, *Regulation of Board of Pardons and Paroles*, http://www.ct.gov/doc/lib/doc/PDF/PardonAdminReg.pdf (last accessed June 1, 2011).

conviction, provided the chairperson determines the applicant would likely have been granted entry into such a program:

a. Suspended Prosecution or Conviction and Probation and Court-Ordered treatment for drug or alcohol dependency;
b. Pretrial Family Violence Education Program;
c. Alternate Incarceration Program;
d. Community Service Labor Program;
e. Accelerated Pretrial Rehabilitation;
f. Pretrial Alcohol Education Program;
g. Pretrial Drug Education Program;
h. Pretrial School Violence Prevention Program;

4.) Such applicant was convicted of a violation of any of the following crimes, and such applicant has not been convicted of a crime during the five years preceding the date on which the administrative pardon is granted, providing such date is at least ten years after the date of the conviction or release from incarceration, whichever is later:

a. Section 21a-277 of the Connecticut General Statutes;
b. Section 21a-278 of the Connecticut General Statutes;
c. Section 21a-279 of the Connecticut General Statutes.[21]

When an application is placed on the administrative pardon docket, the victim is notified through the Office of Victim Services and/or the Department of Correction's Victim Unit. If the victim or the Office of the State's Attorney requests an opportunity to be heard personally the application will be removed from the administrative docket.[22]

E. Process of the Board

Hearings

The Board of Pardons and Paroles by statute must hold a pardons hearing at least once every three months in various geographical areas of the state with the exception of correctional facilities unless solely for the benefit of applicants who are incarcerated at the time of the hearing.[23]

Eligibility

Legislation enacted in 2007 specifies that the Board of Pardons and Parole may accept an application for a pardon three years after an applicant's conviction of a misdemeanor or violation, and five years after an applicant's conviction of a felony. However, in

[21] CONN. GEN. STAT. § 54-124a(j)(2); *see also* CONN. STATE AGENCIES § 54-124a(j)(2)-1 to -8.
[22] CONN. GEN. STAT. § 54-124a(j)(2).
[23] CONN. GEN. STAT. § 54-124a.

extraordinary circumstances the Board is authorized to accept an application before these time frames have expired.[24]

To obtain a pardon, the person seeking it must submit a petition stating the crime the person was convicted of, the sentence imposed, time served and why they should be pardoned. The petitioner must also submit a sworn statement explaining in their own words how the crime occurred, what they have been doing since the crime and why they wish to obtain a pardon.[25]

Standards/Guidelines for Granting Pardons

As discussed above, there are regulations limiting the eligibility of applicants for the administrative pardon docket, and statutory provisions specify the period of time which must pass after an applicant's conviction before the Board may accept an application.

There are no statutory provisions or regulations that create standards for when a pardon should be granted to an eligible applicant. However, the Board's website provides that:

> At all times the Board has the discretion to grant or deny any pardon application. The Board decides whether or not to grant a pardon, based on the severity of the offense, the impact on the victim and the victim's input, past criminal history and how much time has passed since the commission of the original offense. The States Attorney's opinion is also taken into consideration, along with what the individual has done since the offense occurred. The Board considers the individual's work history; whether they have stayed out of criminal justice system, personal references, etc. Besides the aforementioned, the Board may consider any other pertinent information available in deciding to grant or deny a pardon. Volunteer and community service activities on the part of the applicant are encouraged.[26]

Reasons for Denial

Regulations do provide that "[a]ny pardons panel of the Board of Pardons and Paroles that denies an application for a pardon must provide a written statement of reasons that the application was denied."[27]

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[24] George Coppolo, *Pardons and Provisional Pardons*, OLR RESEARCH REPORT 2007-R-0561 (Sept. 21, 2007), http://www.cga.ct.gov/2007/rpt/2007-R-0561.htm (last accessed June 1, 2011).
[25] Connecticut Board of Pardons and Parole, *Expungement and Provisional Pardon Application Forms*, DEPT. OF CORRECTION (Aug. 24, 2010, 8:42 AM), http://www.ct.gov/doc/cwp/view.asp?a=1520&q=464968.
[26] Board of Pardons and Parole, *Frequently Asked Questions regarding the Pardons Process*, http://www.ct.gov/doc/lib/doc/pdf/PardonFAQ.pdf (last accessed June 1, 2011).
[27] CONN. STATE AGENCIES § 54-124a(j)(3)-1.

F. Applications Received and Granted

The total number of applications for pardons received in Connecticut and the total number of applications granted between 2000 and 2010 is reflected in Table 1. Before the creation of the Board of Pardons and Paroles in 2004, the Board of Pardons did not maintain data on the number of pardons granted and denied, only the number of applications received. Legislation created provisional pardons as an option for pardons panels in 2007 and in 2009 created an administrative docket which allows pardons to be granted without a hearing. Table 1 reflects an increase in both the number of applications received and the number of pardons granted with these recent legislative changes.

Table 1: Pardons Applications Received and Granted

	Connecticut	Pardons Totals for:	2000 - 2010		
	Applications received	Granted w/o public hearing (Administrative, No Shows and Provisional)	Granted after hearing	Denied w/o hearing	Denied after hearing
2010	925	215 *63 Prov. & 32 No-shows*	188	327	48
2009	1290	220 *(66 Prov. & 8 No-shows)*	259	318	26
2008	835	32 Prov.	467	304	32
2007	495	4 Prov.	312	155	17
2006	393	0	220	144	26
2005	347	0	188	121	38
2004	303	0	145	70	9
2003	330	0	0	0	0
2002	246	0	0	0	0
2001	234	0	0	0	0
2000					

Source: Board of Pardons and Parole. (2011). *Pardon Counts.* Retrieved June 1, 2011, from http://www.ct.gov/doc/lib/doc/pdf/PardonFAQ.pdf

G. Statistics Regarding Race and Ethnicity

Currently, there is no data compiled from the Board of Pardons and Paroles that shows the racial and ethnic makeup of those who apply for pardons and those who obtain them. It

should be noted that some racial and ethnic groups are disproportionately impacted by the collateral consequences of criminal convictions.

Nationally, African Americans are incarcerated at nearly six times the rate of whites, and Hispanics at nearly double the rate of whites.[28] On the state-level, racial disparity in the U.S. prison and jail population varies greatly as demonstrated by a black-to-white ratio of 13.6-to-1 in Iowa and 1.9-to-1 in Hawaii.[29] Connecticut currently has one of the highest black-to-white incarceration rates (12:1)[30] and the highest Hispanic-to-white incarceration rate (6.6:1)[31] in the United States.[32]

States with high black and Hispanic incarceration ratios fall into two categories: 1) states with high rates of black incarceration and average rates of white incarceration, and, 2) states with average rates of black incarceration and below-average rates of white incarceration. Connecticut falls into the latter category with average rates of black incarceration and below-average rates of white incarceration.[33]

F. Legislation Proposed in 2011

SB 1151, which was proposed during the 2011 legislative session, would have created a "special provisional pardon" subject to the same rules as provisional pardons, but which would automatically become an absolute pardon if the person was not convicted of another crime within the three years following the issue of a special provisional pardon for a misdemeanor conviction and five years after a felony conviction.[34] This bill was passed May 31, 2011 by the Senate and was added to the House Calendar on June 1, 2011.[35] The bill was not passed before the end of the legislative session.

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[28] Marc Mauer & Ryan S. King, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity*, THE SENTENCING PROJECT (July 2007), http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf.

[29] *Id.*

[30] *Connecticut Statistics*, THE SENTENCING PROJECT, http://www.sentencingproject.org/map/map.cfm#map (last accessed June 8, 2011).

[31] *Id.*

[32] Marc Mauer & Ryan S. King, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity*, THE SENTENCING PROJECT (July 2007), http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf.

[33] *Id.*

[34] Christopher Reinhart, *OLR Bill Analysis SB 1151: An Act Concerning Provisional Pardons*, CONN. GEN. ASSEMBLY (Apr. 14, 2011), http://www.cga.ct.gov/2011/BA/2011SB-01151-R000731-BA.htm.

[35] S.B. 1151, *An Act Concerning Special Provisional Pardons* 2011 Leg. Sess. (Ct. 2011) *available at* http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=1151&which_year=2011&SUBMIT1.x=9&SUBMIT1.y=20.

II. Pardon and Expungement Systems Nationwide

The "collateral consequences" of a criminal conviction can remain with people years and decades after they have fully served their sentences. Whether it is the reluctance of employers to hire an individual with a criminal record, the former offender's inability to obtain professional licenses or public housing, or the disqualification of the former offender in areas as diverse as education, health care, and child care, a person with a criminal record faces many barriers to reintegration into society. Even when people have fully rehabilitated themselves, they are likely to carry the "collateral disabilities and stigma of conviction to their grave."[36]

States have a variety of forms of relieving former offenders from the collateral consequences of convictions. However, these "mechanics of restoration" are often quite limited in scope, and not well understood by people with criminal records.[37] There is extraordinary variation in relief mechanisms available from state to state.[38] Below, we provide an overview of some the approaches used across the country. Every state, including Connecticut, has a mechanism for granting pardons. Some states, in addition to granting pardons, also have processes for sealing, expunging, or setting aside convictions.

A. Pardons Nationwide

Although most states grant them infrequently, pardons are nonetheless the most widely utilized relief mechanism for offenders seeking to move on from a criminal past.[39] In the vast majority of U.S. jurisdictions, the Governor as chief executive has the exclusive and unreviewable power to pardon.[40] "The power to pardon conferred by the various constitutions," including the United States Constitution and most state constitutions, "is practically unrestricted, or, as alternately stated, is left to the absolute discretion of the official having that power."[41]

1. Federal Pardons

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[36] Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide*, 4 (Oct. 2005), *available at* http://www.sentencingproject.org/doc/File/Collateral%20Consequences/execsumm.pdf (hereinafter "*State-by-State Resource Guide*").

[37] *Id.* at 2 (also explaining that the systems are also often unclear also to those who enforce and administer the laws).

[38] *Id.* at 5.

[39] *Id.*

[40] *Id.*

[41] 59 Am. Jur. 2d Pardon and Parole § 12; *see also* Roll v. Carnahan, 225 F.3d 1016, 1018 (8th Cir. 2000) (applying Mo. law); Bacon v. Lee, 353 N.C. 696, 717 549 S.E.2d 840, 854 (2001).

The Pardon Clause of the United States Constitution grants power to the President to "grant Reprieves and Pardons for Offenses against the United States, except in cases of Impeachment."[42] This Clause "grant[s] an unlimited power" to the President.[43] Those seeking a pardon in the federal system must submit an application to the Pardon Attorney, an office created by Congress and located in the Department of Justice operating under regulations promulgated by the executive. The Pardon Attorney sends his or her report and recommendation to the Attorney General. If the Attorney General signs off on it after review, he or she sends it to the President. [44] While the President may make his own determination and does not have to follow this process, Presidents usually do rely on this process, hoping to create a "presumption of legitimacy."[45]

The President's exercise of executive clemency has rapidly dwindled in modern times and President Barack Obama is on track to be the stingiest pardon-granter ever.[46] While President William McKinley granted 129 pardons and 73 commutations in 1900 alone, President Obama granted just 17 pardons thus far in his presidency while rejecting a total of 3,976 petitions for forgiveness.[47]

2. State Pardons

Although every state constitution provides for pardon authority, the pardoning mechanism is utilized irregularly, if at all, in the vast majority of jurisdictions.[48] Although pardons have an undeniably "central role" in "overcoming the legal barriers and disabilities impeding the reintegration of criminal offenders into society," their operational usefulness in many states is questionable.[49] Out of all jurisdictions, just 13 states grant more than a handful of pardons each year.[50]

In most states where the pardon power is exercised with regularity, the authority to pardon is exercised or controlled by an independent board.[51] The least active states are

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[42] U.S. Const., art II, § 2, cl. 1.
[43] *See* Ex parte Garland, 71 U.S. 333, 380 (1866); Lauren Schorr, *Breaking into the Pardon Power: Congress and the Office of the Pardon Attorney*, 46 AM. CRIM. L. REV. 1535, 1536 (2009) (stating that the Pardon Clause is a "near-unfettered" grant of authority to the President).
[44] Schorr, *supra* note 39, at 1535.
[45] Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 BUFF. CRIM. L. REV. 1, 46 (2005).
[46] Clemency Statistics: Office of the Pardon Attorney – United States Department of Justice http://www.justice.gov/pardon/statistics.htm (last accessed June 10, 2011).
[47] *Id.*
[48] Love, *State-by-State Resource Guide*, at 8
[49] *Id.*
[50] *Id.* (the most active jurisdictions are: Alabama, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Nebraska, Oklahoma, Pennsylvania, South Carolina, and South Dakota).
[51] *See, e.g.*, Alabama (Code of Ala. §15-22-20(a)); Arkansas (A.C.A. §16-93-204); Georgia (Ga. Const. art. IV, §2, para. II).

characterized by a governor who exercises the power without administrative constraint.[52] A 2005 study by Margaret Colgate Love found that Connecticut is one of only in 9 states where a pardon is a "reasonably attainable form of relief." The other states are Alabama, Arkansas, Delaware, Georgia, Nebraska, Oklahoma, Pennsylvania, and South Carolina.[53] Like Connecticut, most of these states have a public application process with regular hearings where boards are required to publish their reasons for recommendation or denial. However, even in these most active states, relatively few people apply for a pardon.[54]

Connecticut is unique in that it is the only state where the pardon power is vested in a legislative, not an executive, authority. [55] In addition, Connecticut stands out as one of just four states in which pardons are granted by an independent board appointed by the Governor, subject to some confirmation process by the state legislative bodies. The authority to grant pardons lies solely in this independent board.[56] Along with Connecticut, only Alabama, Georgia, and South Carolina have a similar model. [57] In Nebraska, pardons are granted by an "independent" board, but that board consists of the Governor, Secretary of State, and Attorney General. [58]

The remaining active states have a regime in which the Governor consults with a Board to reach his decision. In some of these states, the Board's advice to deny or grant a pardon is not binding on the Governor; although the Governor must consult with the Board, he may affirm or reverse its recommendation. Arkansas, Oklahoma, and Pennsylvania take this approach. In contrast, in Delaware and Oklahoma, the Board's recommendation is required for a gubernatorial pardon. In the remaining states with an independent board, the board's consultation role is merely optional; the Governor can decide without their involvement. Although several states follow this model, in only Hawaii, Illinois, Maryland, and South Dakota does this approach lead to a fairly regular granting of pardons to everyday offenders.[59]

In addition to the variation in the structures of the pardons processes around the country, states also differ in the effect that a pardon has on a criminal record. In states like South Carolina and Arkansas, a pardon restores all civil rights lost as a result of a conviction, including but not limited to, such areas as the right to register to vote, to serve

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[52] Love, *State-by-State Resource Guide,* at 8.
[53] Attached as Appendix VII is a table complied by Margaret Love of the "Characteristics of the 13 most Active Pardon Authorities" (hereinafter "*Characteristics of Active Authorities*").
[54] Love, *State-by-State Resource Guide,* at 8.
[55] Christopher Reinhart, *Office of Legislative Research Report 2001-R-0498: Pardons Power in Connecticut* (May 2001), *available at* http://www.cga.ct.gov/2001/rpt/2001-R-0498.htm.
[56] *Id.*
[57] *"Characteristics of Active Authorities"* (Appendix VII).
[58] R.R.S. Neb. § 83-188 through § 83-1,133, and Ne. Const. Art. IV, § 13.
[59] "Characteristics of Active Authorities" (Appendix VII); Love, *State-by-State Resource Guide,* at 8-9.

on a jury, and the right to hold public office.[60] In contrast, states like Alabama may place restrictions as appropriate. In fact, "full pardons" are exceedingly rare in Alabama: while 78% of pardon applicants were granted a pardon in the most recent fiscal year, "full pardons" were granted in less than 2% of cases.[61] Some of the restrictions that may be placed by the board include the right to possess a firearm, a requirement that a person convicted of a sex offense continue to comply with all sex offender restrictions, and/or an order that the offender not be relieved of the consequences of the habitual offender act.[62]

In Part III of this memo, we examine the standards for granting pardons in the other states where the pardon power is exercised with some regularity, and we consider whether Connecticut should adopt standards for granting pardons. Before turning to a discussion of standards, we first examine systems of judicial expungement and sealing nationwide.

B. Judicial Expungement and Sealing Systems Nationwide

In Connecticut, the only process for expunging a conviction or limiting the collateral consequences of the conviction is through the pardon process. Many other states, in addition to granting pardons, also have systems in place to seal or expunge convictions through judicial or administrative processes. Unlike pardon processes, many sealing or expungement mechanisms are non-discretionary – i.e., if the applicant meets the relevant criteria, the record will necessarily be expunged or sealed.

A number of states allow most types of convictions – including felonies – to be sealed or expunged after a certain number of years. These states include Arizona, Kansas, Massachusetts, Nevada, New Hampshire, Oregon, Utah, and Washington. Some of these states exclude certain violent, sex or drug-related offenses. Except Arizona, all of these states permit a person whose conviction has been expunged to deny its existence in response to most inquiries. However, the record of conviction will remain available to law enforcement authorities. Across these states, the waiting periods, eligibility requirements, and effect of the expungements differ.[63] For example:

- Kansas excludes some serious offenses and imposes a three- to five-year waiting period after discharge from probation or parole, depending on the offense, before an

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[60] State of South Carolina: Department of Probation, Parole, and Pardon Services – Applying for a Pardon http://www.dppps.sc.gov/pardon_facts.html (last accessed June 15, 2011); A.C.A. §16-93-204.
[61] Annual Report: Fiscal Year 2009-2010 – The Alabama Board of Pardons & Paroles, *available at* http://www.pardons.state.al.us/ALABPP/Main/ALABPP%20MAIN.htm.
[62] The Alabama Board of Paroles and Pardons: Frequently Asked Questions http://www.pardons.state.al.us/ALABPP/Main/ALABPP%20MAIN.htm (last accessed June 14, 2011).
[63] Margaret Love & April Frazier, *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws* *http://meetings.abanet.org/webupload/commupload/CR209800/sitesofinterest_files/AllStatesBriefingSheet10106.pdf* (Oct. 1, 2006).

expungement is granted. At that time, the person shall be treated as not having been convicted and an order of expungement erases the conviction except that it may be brought up in subsequent prosecutions and may be used in connection with licensing decisions.[64]

- In Massachusetts, a fifteen-year waiting period applies to expungement of felony convictions, but the statute permits the offender to deny the existence of the conviction on employment applications and prohibits licensing authorities from disqualifying the applicant based on the record.[65]

Other states have expungement or sealing mechanisms which are applicable only to more minor offenses. For example, Florida[66], Illinois[67], Kentucky[68], and Oklahoma[69] permit the sealing or expungement of records for some or all misdemeanors. Most of these states still require waiting periods before the expungement or sealing can occur. Michigan, New Jersey, Ohio, and Rhode Island make some form of expungement or sealing of records available to some or all first time felony offenders upon completion of their sentence.[70]

The sealing and expungement processes should be differentiated from the process of deferred adjudication,[71] which allows certain offenders to avoid obtaining convictions in the first place if certain criteria are met. Attached in the appendix is a chart compiled by Margaret Love outlining the various expungement, sealing, and deferred adjudication processes in the 50 states.

C. Certificates of Rehabilitation

In addition to pardons and judicial sealing or expungement, some states also have administrative "certificates of rehabilitation" that restore some rights or privileges lost as a result of a conviction.[72] These mechanisms are similar in some respects to Connecticut's

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[64] Kan. Stat. Ann. § 21-4619/

[65] Mass. Gen. Laws, ch. 276, § 100A.

[66] Florida permits non-violent misdemeanors to be sealed and/or expunged. Fla. Stat. ch. 941.0585.

[67] Illinois permits the sealing of misdemeanors and two minor felonies, marijuana and prostitution. 20 Ill. Comp. Stat. 2630/5.2(c).

[68] Kentucky allows applicants to obtain an expungement for misdemeanors and Class D felony drug possession convictions after five years. Ky. Rev. Stat. § 431.078.

[69] Oklahoma permits first-time misdemeanor offenders to apply for judicial expungement of their record 10 years after judgment. Okla. Stat. tit. 22, § 18.

[70] Rhode Island utilized its expungement provisions to expunge 4,201 misdemeanors and 490 felonies in 2004. Margaret Love & April Frazier, *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws* http://meetings.abanet.org/webupload/commupload/CR209800/sitesofinterest_files/AllStatesBriefingSheet10106.pdf (Oct. 1, 2006).

[71] Deferred adjudication is utilized in Connecticut as well as in a number of states around the country. *Id.* at 10.

[72] Love finds that six jurisdictions have such mechanisms: New York, Illinois, Connecticut (the provisional pardon), California, Nevada, and New Jersey. *Id.* at 2.

"provisional pardon" system. For example, New York and Illinois offer Certificates of Relief from Disabilities (CRD)[73] and Certificates of Good Conduct (CGC)[74] intended to relieve recipients from licensing- or employment-related collateral consequences of a criminal conviction. In New York and Illinois, receipt of a CRD creates an enforceable "presumption of rehabilitation" that licensing boards must recognize. Illinois limits the CRD's reach to licensing boards, while New York also requires employers to recognize a judicially enforceable "presumption of rehabilitation."[75] In Illinois, the Department of Professional Regulation must report yearly to the Governor and General Assembly the number of persons with criminal records who applied for licenses, both with CRDs and without, and the numbers of licenses granted and rejected.[76]

In both New York and Illinois, courts can issue a CRD at the time of sentencing, which may prevent individuals from forfeiting licenses or employment.[77] In both states, CRDs and CGCs are also issued to relieve the collateral consequences of a conviction on housing and other areas of need, even though state statutes do not expressly mention them.[78]

III. Possible Reforms to Connecticut's System

A. Defining Standards for Pardons

One suggestion for reforming Connecticut's pardons system is to articulate specific standards for when a pardon should be granted. As set forth above, Connecticut has eligibility requirements for applications: individuals seeking an expungement pardon must wait three years after the date of the disposition of their most recent misdemeanor conviction and five years for felony convictions. The website for the Board provides some guidance on the factors the Board considers in deciding whether to grant a pardon, but there are no regulations or statutory provisions that define the standards used by the

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[73] *Id.* at 3 (citing N.Y. Correct. Law §§ 700-703; 730 Ill. Comp. Stat. 5/5-5.5-5, 10, 15).
[74] *Id.* at 3 (citing N.Y. Correct. Law §§ 703-a,b; 730 Ill. Comp. Stat. 5/5-5.5-25, 30).
[75] *Id.* at 3 (citing N.Y. Correct. Law § 753; 730 Ill. Comp. Stat. 5/5-5-5). In New York, CRDs and CGCs appear on a person's rap sheet beside relevant convictions. *See, e.g.,* The Bronx Defenders, *The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys and Other Advocates for Persons with Criminal Records* (February 2010). http://blogs.law.columbia.edu/4cs/files/2008/11/the-consequences-of-criminal-proceedings-in-new-york-state.pdf
[76] 730 Ill. Comp. Stat. 5/5-5.5-50; *see also* http://www.sentencingproject.org/doc/File/Collateral%20Consequences/Illinois.pdf.
[77] *Id.* at 3 (citing N.Y. Correct. Law § 702; http://www.sentencingproject.org/doc/File/Collateral%20Consequences/Illinois.pdf).
[78] *See, e.g.,* The Bronx Defenders, *The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys and Other Advocates for Persons with Criminal Records* (February 2010). http://blogs.law.columbia.edu/4cs/files/2008/11/the-consequences-of-criminal-proceedings-in-new-york-state.pdf

Board in making this decision.[79] Regulations do provide that "[a]ny pardons panel of the Board of Pardons and Paroles that denies an application for a pardon must provide a written statement of reasons that the application was denied."[80] The Committee could consider recommending regulations or statutory provisions that provide a more robust and defined set of standards for pardon consideration in Connecticut.

Below, we begin by discussing whether creating standards would subject the Board's decisions to judicial review or trigger procedural requirements under the Due Process Clause. We then consider the various purposes that pardons are intended to serve, as any standards must stem from an understanding of these purposes. Next, we examine pardon standards used by other states. Finally, we offer some initial suggestions for Connecticut standards.

1. Due Process and Pardons

Under the pertinent federal constitutional authority, procedural protections and judicial review are not generally necessary in the pardons process unless a state creates mandatory language in its pardon statute. In *Ohio Adult Parole Authority v. Woodard*,[81] the United States Supreme Court held that discretionary clemency proceedings in a death penalty case did not create a "liberty interest" protected by the due process clause, and it reversed the Sixth Circuit's ruling that Ohio's informal interview and hearing process violated the privilege against self-incrimination and the due process clause. The Court emphasized the "gift" rather than "entitlement" nature of pardon: "The process respondent seeks would be inconsistent with the heart of executive clemency, which is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations."[82] It reaffirmed its earlier conclusion in *Connecticut Board of Pardons v. Dumschat*,[83] that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review."[84]

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[79] Board of Pardons and Parole, *Frequently Asked Questions regarding the Pardons Process*, http://www.ct.gov/doc/lib/doc/pdf/PardonFAQ.pdf (last accessed June 1, 2011).
[80] CONN. STATE AGENCIES § 54-124a(j)(3)-1.
[81] 523 U.S. 272 (1998). The Court reaffirmed *Woodard's* principles in District Attorney for the Third Judicial District v. Osborne, 129 S.Ct. 2308, 2319 (2009). The Second Circuit recently relied on *Woodard* and *Osborne* in McKithen v. Brown, 626 F.3d. 143, 151 (2010), to reject a challenge to New York's clemency procedures for access to DNA evidence. The Second Circuit commented that petitioner had no "liberty interest" in clemency because "clemency is inherently discretionary and subject to the whim, or grace, of the decisionmaker; it is, in other words, a form of relief to which a prisoner has no right." *Id.*
[82] *Woodard*, 523 U.S. at 280-81.
[83] 452 U.S. 458 (1985).
[84] *Woodard*, at 523 U.S. at 276 (quoting *Dumschat*, 452 U.S. at 464).

There is no federal "liberty interest" in state clemency proceedings; the federal constitution requires only a fair trial and sentencing and one appeal as of right.[85] A state may create a liberty interest that is in turn protected by federal due process, but only if the state binds itself "by placing substantive limitations on official discretion."[86] In the *Dumschat* case, the petitioner argued that the Connecticut Pardon Board's lack of standards violated due process. The Court rejected that argument, because the very lack of standards meant that the state had not bound itself to act in any particular way, and that therefore, the petitioner had no state-created right to liberty that could in turn give rise to any right to particular procedures. The Court contrasted with Connecticut's system that of Nebraska, which *required* its Board of Parole to order the petitioner's release unless it made certain findings. As long as the decision to release remained discretionary, the petitioner had no right to complain of a denial of a pardon or parole nor any right to argue for particular procedures.

The Connecticut Supreme Court has not interpreted our existing pardon statute to establish any judicially enforceable state rights. In *Missionary Society of Connecticut v. Board of Pardons and Paroles*, the Connecticut Supreme Court held that there was no obligation on the part of the Board to adopt a procedure for hearing any last minute applications for clemency on behalf of inmates facing execution.[87] The Court stated flatly, "the statute creates no right, entitlement or protected liberty or life interest "beyond the [prisoner's] right to seek commutation."[88]

2. Purposes of Pardons

Pardon is a broad term that refers specifically to the public forgiveness of a crime and remission of its penalty, but generally also encompasses power to "commute" (mitigate a sentence), power to "exonerate" (recognize a public injustice or legal mistake), and power to "expunge" (forget or erase the record of a crime).

In the federal system, the power is used to "dispense the mercy of the government" when the criminal justice system has failed, to promote faith in a system of justice, and to allow the President to achieve broad policy goals and restore tranquility in times of upheaval.[89] Executive clemency also serves as a check on the legislative branch by signaling when the criminal law and the sentencing guidelines are too harsh, inflexible, or otherwise in need of change. The executive pardon power also checks the exercise of the judicial

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[85] Evitts v. Lucey, 469 U.S. 387 (1985); *Woodard*, 523 U.S. 283-84.
[86] Olim v. Wakinekona, 461 U.S. 238, 249 (1983)(holding that there was no state-created liberty interest in being in a particular prison because the prison administrator's discretion was "completely unfettered.").
[87] 272 Conn. 647, 651-52 (2005).
[88] *Id.* at 652 n.3.
[89] Lauren Schorr, *Breaking into the Pardon Power: Congress and the Office of the Pardon Power*, 46 Am. Crim. L. Rev. 1535 (2009).

branches, by responding to unjust determinations of guilt and punishment. The power plays an important role within executive branch as well; the President can use the power to change the outcome of a case that subordinates handled wrongly, or to send a message to inferior executive officers about how the law should be enforced in the future.[90]

Pardon power on the state level allows individualization, which becomes increasingly important as judges lose authority to tailor sentences due to mandatory minimums or sentencing guidelines, parole is more circumscribed, and collateral consequences are harsher.[91] Pardon power is also important because it can prompt attention to systemic failures in the criminal law or process. Grants of clemency have already brought about reforms in the law of self defense, insanity, and in the death penalty.[92]

From the standpoint of the petitioner, the purpose of seeking a pardon is either to mitigate a sentence or to eliminate its collateral consequences. These two types of pardon applications are very different, since the petitioners seeking relief from collateral consequences have usually completed their sentences and are already out in the community. Issues of culpability, which might be relevant to mitigating a sentence, are no longer at issue, and the sole remaining question is community safety and trust. Consequently, it seems that standards for these two types of pardons should be different.

From the standpoint of the pardoner, reasons for pardoning may be divided into these basic categories: 1) equity, 2) reformation and atonement, 3) gratitude, 4) compassion, and 5) amnesty.

Equity pardons provide a safety-valve for justice, when legal rules do not allow relief. When a defendant's appeal is barred by a procedural default, for example, a pardon process allows for non-rule-bound recognition of innocence,[93] or mitigated culpability.[94]

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[90] Schorr, Lauren *Breaking into the Pardon Power: Congress and the Office of the Pardon Power.* 46 Am. Crim. L. Rev. 1535 (2009).

[91] Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 Harv. L. Rev. 1332, 1360-61 (2008).

[92] Rachel E. Barkow, The *Ascent of the Administrative State and the Demise of Mercy*, 121 Harv. L. Rev. 1332, 1360-61 (2008).

[93] *See* Herrera v. Collins, 506 U.S. 390, 415 (1993) ("Executive clemency has provided the 'fail safe' in our criminal justice system"). K. Moore, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST 131 (1989). It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.").

[94] *See* Richard F. Celeste, *Executive Clemency: One Executive's Real Life Decisions*, 31 CAP. U. L. REV. 139-40 (2003) (Celeste, while governor of Ohio, granted clemency to 25 battered women who had killed or injured their abusers.); David Tait, *Pardons in Perspective: The Role of Forgiveness in Criminal Justice*, 13 FED. SENT'G REP. 134 (2001) (discussing clemency for euthanasia cases). Clemency granted for very young offenders may

Though, strictly speaking, these cases are exonerations (equitable corrections of law) rather than pardons (forgiveness), the discretionary nature of pardon has allowed pardons to serve this role.

Pardons are also traditionally used to mitigate sentences of those who have atoned and reformed. For this type of pardon, remorse, community service, and attempts to address the personal and social issues that caused the criminal behavior are key factors to balance against community safety and retribution. Here, the collision between a "debt" understanding of punishment (retribution) and a restorative (atonement) understanding of punishment is keenest. If the pardon authorities or legislature adopts a retributive understanding of punishment, reform shouldn't matter – the full debt must be paid regardless of post-conviction efforts to reform.[95] However, restorative theories of punishment focus instead on the restoration of community trust.[96] The success of punishment is measured by how well and how quickly an offender may be "brought home" to return to his or her community responsibilities, job and family, rather than whether a "debt" has been fully paid. Setting standards for pardons of this sort requires a choice of, or balance between, conflicting punishment theories.

Pardons have also been traditionally given out of gratitude for forms of community service. Mitigation of veterans' sentences, pardons for prisoners who perform heroic actions, pardons for extraordinary community service, pardons for prisoners who undertake dangerous missions or the very common practice of pardoning those who aid in prosecutions are examples. Pardons for those who are caring for children, the elderly, or the ill, or who are necessary to an important business employing many people, may also be in this category. The federal sentencing guidelines, for example, have recently been amended to allow increased consideration of irreplaceable family caretaking and military service in sentencing, however, other community service is deemed relevant only if extraordinary.[97]

Pardons are also given out of compassion for misfortunes or injustices the offender has suffered that are not necessarily related to the crime. Pardons for the very elderly, the very ill, those who have been abused or who have suffered from poverty or neglect may be in this category. Some authors have justified these pardons on the ground that they reflect justice at a more global level – the undeserved sufferings of these prisoners should "count"

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fit in this category as well. *See generally*, KATHLEEN DEAN MOORE, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST 142-78 (1989)(examples of equity pardons).

[95] *See, e.g.*, MICHAEL S. MOORE, *The Moral Worth of Retribution, in* RESPONSIBILITY, CHARACTER AND THE EMOTIONS 179-219 (1987).

[96] *See, e.g.*, Stephen Garvey, *Punishment as Atonement*, 46 UCLA L. REV. 1801 (1999); JOHN BRAITHWAITE& PHILIP PETTIT, NOT JUST DESERTS: A REPUBLICAN THEORY OF CRIMINAL JUSTICE (2002); LINDA ROSS MEYER, THE JUSTICE OF MERCY (2010).

[97] 18 U.S.C.S. Appx Sec. 5H1.11; 5H1.6.

toward the suffering they do deserve and mitigate their official punishment.[98] Other reasons often given for allowing pardons of this sort are that harder circumstances make for greater temptation to crime and therefore less culpability.[99] The more traditional account of compassion pardons, however, was simply that these pardons show sympathy and human decency – and generate loyalty and gratitude.[100]

Finally, pardoning may take the form of amnesty to allow "bygones to be bygones." Such pardons have been used to restore peace after a civil war, but also to provide a mechanism to eliminate collateral consequences. For older, minor crimes, this kind of pardon may take the form of an expungement of records, automatic and without the difficult and discretionary weighing of factors that other forms of pardon might require.

Despite the fact that pardons tend to fall in these loose categories, the pardon process has remained discretionary, both to avoid due process claims and to recognize the importance of a non-rule-bound power to do justice. Any non-discretionary or closed set of pardon standards will necessarily leave out some unforeseen future case that may not fit the standards, but that reasonable pardon administrators might believe deserves a pardon. If the pardon process is to remain the legal system's "last resort" for equity, it is important that any standards articulated are non-exclusive "guidelines" rather than binding rules.

3. Standards for Pardons Nationwide

The issuance of pardons, while purely discretionary, is not without principles. Indeed, the "appropriate governmental official is supposed to act in accordance with sound principles and upon proper facts."[101] This official can be either the Governor, or as in Connecticut, a Board. The official or officials remains the "sole judge of the sufficiency of the facts of the propriety of granting the pardon" and no other governmental department may exercise discretion or control. [102]

a. Federal Standards

In the federal system, the Pardon Attorney prepares the official record of the offense, drafting his or her recommendation which states "whether in his or her judgment, the President should grant or deny the petition."[103] Through the United States Attorney's Manual, the Justice Department has outlined principal factors to consider when determining whether to recommend a petition for pardon:

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[98] *See* Claudia Card, *On Mercy,* 81 PHIL. REV. 182 (1972).
[99] *Id.*
[100] Pat McCune, *Book Review*, 89 MICH. L. REV. 1661 (1991).
[101] 59 Am. Jur. 2d Pardon and Parole § 12.
[102] *Id.* (citing Wade v. Singletary, 696 So. 2d 754 (Fla. 1997); Montgomery v. Cleveland, 134 Miss. 132, 98 So. 111, 32 A.L.R. 1151 (1923)).
[103] 28 C.F.R. § 1.6.

(1) Post-conviction conduct, character, and reputation;
(2) Seriousness and relative recentness of the offense;
(3) Acceptance of responsibility, remorse, and atonement;
(4) Need for relief; and
(5) Official recommendations and reports, including recommendations by the United States Attorney and the sentencing judge.[104]

b. State Standards

Even in states like Connecticut where the pardon power is actively used, there tend not to be publically defined standards for the granting of pardons. Many states do have requirements that the Governor or Board granting the pardon provide a written statement with the grounds for the decision. [105] Also, states typically impose some type of waiting period, either formally or informally established, of a term of years after the commission of a crime or the completion of a sentence before an offender may submit a pardon application.[106] Yet despite these provisions, very few states have any form of guidelines as to when pardons should actually be granted. In this section, we will examine the few states with the clearest and most well-defined sets of standards for the granting of pardons.

- ***Delaware:***

  In Delaware, the authority to pardon is vested in the Governor; however, the recommendation of the Board of Pardons is required.[107] In reaching its decision, the Board considers:
  - Nature and age of crime;
  - Rehabilitation of applicant and contributions to the community;
  - Applicant's remorse;
  - Employment-related need for a pardon;
  - Official support; and
  - Lack of opposition by the victim[108]

- ***South Dakota:***

  In South Dakota, the Governor is also vested with the power to pardon, but applications go through the Board of Pardons and Paroles.[109] The Board has adopted

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[104]United States Attorneys Manual § 1-2.112, *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/title1/2mdoj.htm#1-2.112.
[105] *See, e.g.,* Del. Const. art. VII, § 1.
[106] *See., e.g.,* Ga. Comp. R. & Regs. R. 475-3-10(3)(pardon) and (6)(restoration of rights)
[107] Del. Const. art. VII, § 1
[108] Delaware Rules of the Board of Pardons (Re-Adopted April 3, 2009), available at http://pardons.delaware.gov/; Love, *State-by-State Resource Guide* - Delaware Appendix at D3.

the following factors to consider in deciding whether or not to recommend a pardon:

- Whether there is substantial evidence indicating the sentence was excessive or constitutes a miscarriage of justice;
- Innocence at the time of the crime, proven by clear and convincing evidence;
- Evidence showing remarkable rehabilitation;
- Personal and family history;
- Attitude, character, habits, and capabilities;
- Nature and circumstances of the crime the offender was convicted of;
- The effect the offense has had on the victim and the community;
- The offender's desire to pursue a professional career which society can benefit from;
- Age and medical status.[110]

- ***Pennsylvania:***

The state constitution, statutes, and regulations do not set forth any standards the Pardon Board is required to consider before making a recommendation to the Governor.[111] In 2005, the Pardon Board did approve standards for evaluation applications for pardons because they would be "helpful" but the Board specifically noted that the list is "by no means exclusive, and is not applied by every Board member in every case"; "rather, the Board evaluates every application on a case-by-case basis."[112] The five main factors are set forth below:

1. How much time has elapsed since the commission of the crime(s)? Obviously, this factor, coupled with being crime free after the offense, is one of the best indicators of whether the applicant has been successfully rehabilitated. Further, the more serious, or numerous, the crime(s), the greater the period of successful rehabilitation that the applicant should be able to demonstrate.
2. Has the applicant complied with all court requirements? The applicant should be able to demonstrate successful completion of all court-imposed requirements such as probation, parole, and payment of all fines and costs. If unsure of the latter, applicants should check with the County Clerk of Courts, and get receipts for any recent payments.

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[109] Clemency – Frequent Questions: The South Dakota Department of Corrections, http://doc.sd.gov/about/faq/clemency.aspx (last accessed 6/16/11).
[110] S.D. Admin. R. 17:60:05:12; Margaret Colgate Love, *The Sentencing Project: South Dakota*; South Dakota Pardon Information – Pardon 411, http://www.pardon411.com/wiki/South_Dakota_Pardon_Information#cite_note-ShortName-3 (last accessed June 15, 2011).
[111] 12 West's Pa. Prac., Law of Probation & Parole § 6:8 (2010 ed.).
[112] Factors Considered by the Board of Pardons in Evaluating Pardon/Commutation Requests, *available at* http://www.portal.state.pa.us/portal/server.pt/community/eligibility/14412 (last accessed June 15, 2011).

3. Has the applicant made positive changes to his/her life since the offense(s)? Successful rehabilitation may also be demonstrated by positive changes since the offense(s) in applicant's career, education, family or through community or volunteer service, particularly in areas that relate to the offense(s).
4. What is the specific need for clemency? The applicant should identify a specific need for clemency, e.g., a particular job that applicant cannot get, or some particular activity that he/she cannot participate in without clemency. as opposed to the more general answers of "employment purposes" or "to put this behind me" that applicants frequently use. Except in extraordinary circumstances, the Board does not view a pardon as an appropriate means of restoring any disability that has been imposed pursuant to a state law, e.g., suspension of driver's license, revocation of professional or business licensure, etc. Rather, the Board generally defers to the General Assembly and the means of restoration provided for in the law in question.
5. What is the impact on the victim(s) of the offense(s)? The Board's regulations require that victims or next of kin be notified and given the opportunity to appear at the hearing or make a confidential submission in writing. Applicants should be aware that victims or next of kin may be present and, in any event, will have their viewpoint considered by the Board. [113]

Even in states lacking any formal standards, an informal set of standards seems to emerge. Former Ohio Governor Ted Strickland made it clear that he operated under an informal set of criteria. In announcing his first pardons in 2009, Governor Strickland said:

> In every case, these pardons have been granted to individuals who have completed their entire sentence, usually many years ago. Virtually every case involves an individual who has not re-offended with the exception of traffic violations. The individuals granted pardons today have demonstrated that they have been rehabilitated and have assumed the responsibilities of citizenship. . . Executive clemency is an important part of our justice system—it provides a second chance to those who have earned one and ensures that unusually long sentences are in line with similar cases. This process also provides an opportunity to show mercy and forgiveness to those who have recognized what is expected of them in our society and who remain committed to being productive and responsible citizens. [114]

4. Initial Suggestions on Standards for Connecticut

The legislative subcommittee of the Sentencing Commission could formulate standards for Connecticut's pardon board to follow when considering pardon applications. These standards could ultimately be set forth in regulation or statutory provisions.

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[113] *Id.*

[114] Love, *State-by-State Resource Guide* - Ohio Appendix at OH3

We do not attempt to set forth a comprehensive set of standards in this memo, but we do offer some initial suggestions. First, for the reasons described above in the discussion of the purposes of pardons, we recommend that any list of standards or guidelines be non-exhaustive, as unanticipated circumstances warranting relief may arise in the future. Second, we recommend that if standards are formulated, a different set of standards should govern the Board's consideration of applications for sentence commutation as compared to expungement requests from individuals already released and living in the community.

Below, we outline several initial ideas.

a. "Collateral Consequences" Pardons

One reform to consider is to have standards that would make it easier for individuals to get pardons when they have old convictions and have not reoffended. Many of these people have completely turned their lives around yet nonetheless continue to face challenges in areas such as getting licenses, obtaining public housing, and finding jobs. The Board of Pardons and Paroles could increase the grant of pardons for individuals in these circumstances. For example, the Board could have a presumption that it will grant a pardon when the applicant has misdemeanor convictions that are more than 5 years old and has not reoffended. A longer time frame could apply for felonies.

b. "Post-Conviction Atonement" Pardons

Although the Board has the power to commute sentences, it does not appear that the Board has granted any such requests in recent years.[115] It might be helpful for the Board to have standards to help guide the clemency analysis. In particular, the Board could consider post-conviction atonement in the course of reviewing requests for commutation or pardon from those serving very long sentences or death sentences.

In the last decade, new thinking in punishment theory has highlighted the problems with traditional retributive approaches to criminal sentencing. Retribution tends to focus solely on the seriousness of the crime, and to imagine a prison sentence as a form of debt-payment to "right" the scales of justice. This metaphor of "debt," however, puts those who

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[115] Statistics on the Board's website go back to 2009. No pardons to inmates currently serving sentences have been granted since that time. It bears noting that historically, at least in the late 1970s, sentence commutations were routinely granted by the Board. In *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458 (1981), the Court noted that "'at least 75 percent of all lifers received some favorable action from the pardon board prior to completing their minimum sentences' and that virtually all of the pardoned inmates were promptly paroled." *Id.* at 461. "Of the inmates whose minimum sentences have been commuted by the Board of Pardons, the Board of Parole has paroled approximately 90% during the first year of eligibility, and all have been paroled within a few years. The Chairman of the Board of Parole testified that 'no more than 10 or 15 per cent' of Connecticut's life inmates serve their 20-year minimum terms." *Id.* n.5 (citations omitted).

struggle for atonement and rehabilitation in prison in no better position than those who continue their cruel or anti-social behavior: whether you are good or bad in prison, whether you care or don't care, your "debt" remains the same and must be paid in full. Newer punishment theories of atonement, however, argue that crime is better understood as a personal harm to its victims and breach of obligation to one's community. An offender should respond to his or her crime by trying to heal that breach rather than by paying off in years of isolation a metaphorical "debt." Atonement theory recognizes that good people can sometimes do bad things, but that they should have the chance to atone. Atonement should encompass and encourage efforts to apologize, make restitution to victims, do community service, and make sustained efforts to change aspects of one's behavior or situation that led to the criminal conduct.[116]

One possible model for directing the Board to a greater consideration of post-sentence rehabilitation in the context of commutation request might include consideration of the following (non-exclusive) factors:

(1) The petitioner sincerely expressed remorse, either formally or informally, by, for example, apology, spontaneous confession, seeking reconciliation, or other means;

(2) The petitioner made serious and sustained efforts to atone. Evidence of these efforts may include: helping others in the prison community to atone or change or stay safe; peer mentoring; paying restitution where or as possible; diligently performing community service; and reconciling as possible with supportive family members, such as children, or parents, or with victim representatives or community groups;

(3) The petitioner made serious, sustained, and largely successful efforts to change behaviors that contributed to the criminal conduct. Evidence of these efforts may include: demonstrating good prison discipline and reliable work habits; adhering to personal rehabilitation plans developed by the department of corrections; seeking education, job training, substance abuse counseling and treatment, mental health counseling and treatment, family counseling, anger management or impulse control counseling; developing self-discipline, good decision-making, empathy, and leadership, as is appropriate, available, and possible within the prison environment;

(4) The petitioner has performed a significant community service that demonstrates empathy, respect for, and a willingness to sacrifice for others, such as saving a life, aiding the investigation of a serious crime, devotedly caring for the disabled, ill, or

[116] Atonement can take place inside or outside the prison walls (where community safety permits), and requires a flexible approach to sentencing that allows for parole, restitution, and community service and focuses on successful reentry rather than on successfully enduring a prison term.

very young, preventing a crime or harm from occurring, or risking his or her own safety in the attempt to do such an act;

(5) Community support is available and well-planned and placed to aid in the offender's reentry in the form of housing, job opportunities, educational opportunities, family or social service emotional, financial, and logistical support, adequate mental health or substance abuse support, and adequate health care.

B. Other Reforms to Consider

Below, we outline other reforms regarding Connecticut's pardon system that might be considered.

1. Provisional Pardons

The following reforms to the provisional pardon system could be made without the need for statutory change.

- **Automatic Review:** To apply for a provisional pardon the applicant must check the "provisional pardon consideration" box on the "Application for a Connecticut Expungement or Provisional Pardon" form.[117] This means that there may be applicants who have been denied an expungement pardon, but would have received a provisional pardon if they had checked the "provisional pardon consideration" box. This process could be changed to automatically evaluate an applicant's eligibility for a provisional pardon.
- **Education:** Educating licensing boards, employers, landlords and potential applicants about the purpose and criteria of provisional pardons will be vital to its success going forward. Preliminary findings from a report, which will be released by IMRP later this month, address the impact and usefulness of Connecticut's provisional pardon and specifically identify a lack of public education as a significant barrier to its effectiveness.
- **Enforcement Mechanism:** The provisional pardon prohibits employers from denying employment to an ex-offender solely on the basis of a conviction for which the ex-offender has received a provisional pardon. To enforce this, a process could be created to follow-up when an ex-offender in possession of a provisional pardon believes they have been discharged, discriminated against, or denied employment based solely on their criminal record.

[117] A copy of the "Application for a Connecticut Expungement or Provisional Pardon" form is included in Appendix IV.

- **Redesign Certificate:** The current provisional pardon certificate does not explain the criteria considered or emphasize the reasons why the Board of Pardons and Paroles granted the pardon. Additionally, one of the only sections of the certificate that is in bold is the list of the ex-offender's conviction(s). This draws a disproportionate amount of attention to the ex-offender's conviction(s) and not enough attention to the substance of the provisional pardon: rehabilitation and eligibility for employment. Since the provisional pardon does not erase the ex-offender's official criminal record and it is readily available to employers and licensing boards, it may also be worth considering whether convictions should even be listed on the provisional pardon. Appendix V includes a sample copy of Connecticut's Provisional Pardon Certificate and appendix VI includes Illinois' Certificate of Relief From Disability which serves a similar function and can be used for the purpose of comparison.

2. Legislative Reform

The following reforms would require statutory change.

- **Create Expungement or Sealing Process:** In Connecticut, the only process for expunging a conviction or limiting the collateral consequences of the conviction is through the pardon process. Other states, in addition to granting pardons, also have systems in place to seal or expunge convictions through judicial or administrative processes. Many of these processes are non-discretionary – i.e., if the applicant meets the relevant criteria, the record will be expunged or sealed. Connecticut could adopt a similar expungement or sealing process. The process could be through the judicial system, or it could be placed in the Board of Pardons and Paroles (i.e., some expungement requests would be automatically granted by the Board if the applicant met certain criteria).
- **Allow Judges To Grant Provisional Pardons:** In Connecticut, only the Board of Pardons and Paroles may grant a provisional pardon. By changing Statute to allow judges to grant provisional pardons or certificates that remove barriers to professional licensure at sentencing, ex-offenders may be able to more successfully re-enter public life and find employment. New York and Illinois have similar systems.
- **Expand Provisional Pardon System to Permit Removal of Non-Employment Barriers:** Provisional pardons in Connecticut just address employment-related barriers to reentry. Provisional pardons could also be granted to remove other barriers such as access to public housing.
- **Protect Ex-Offenders with Provisional Pardons From Revealing Convictions on Job Applications:**

By legally allowing an ex-offender to deny a conviction during the front-end of the application process, an ex-offender may receive more serious consideration than would otherwise have been possible. Later in the process when an employer conducts a background check, the ex-offender could then explain they received a provisional pardon and any relevant information regarding their previous convictions. The employer would readily have access to this information throughout the hiring process since the official criminal record of the ex-offender is not expunged.

- **Expand Administrative Pardon Docket:** The administrative pardon docket allows pardons to be granted without a public hearing. However, only applicants meeting certain criteria may be placed on the administrative docket. By expanding the types of applications eligible for this process, the system could operate more efficiently.
- **Eliminate Collateral Consequences:** Legislation eliminating various collateral consequences of criminal convictions (which pardons remedy) could also be considered. This reform could create a more successful re-entry process for ex-offenders.

Appendix I:
CT Statutes Concerning the Board of Pardons and Paroles

Connecticut General Statutes Annotated Currentness
Title 54. Criminal Procedure
Chapter 961. Trial and Proceedings After Conviction
Part III. Probation, Parole and Pardon (Refs & Annos)
§ 54-124a. Board of Pardons and Paroles

(a) There shall be a Board of Pardons and Paroles within the Department of Correction, for administrative purposes only. On and after July 1, 2008, and prior to July 1, 2010, the board shall consist of eighteen members, and on and after July 1, 2010, the board shall consist of twenty members. The Governor shall appoint all members of the board with the advice and consent of both houses of the General Assembly. On and after July 1, 2008, twelve of the members shall serve exclusively on parole release panels, five of the members shall serve exclusively on pardons panels and the chairperson may serve on both parole release panels and pardons panels, except that on and after July 1, 2010, seven of the members shall serve exclusively on pardons panels. In the appointment of the members, the Governor shall specify the member being appointed as chairperson, the full-time and part-time members being appointed to serve on parole release panels and the members being appointed to serve on pardons panels. In the appointment of the members, the Governor shall comply with the provisions of section 4-9b. The Governor shall appoint a chairperson from among the membership. The members of the board appointed on or after February 1, 2008, shall be qualified by education, experience or training in the administration of community corrections, parole or pardons, criminal justice, criminology, the evaluation or supervision of offenders or the provision of mental health services to offenders. Each appointment of a member of the board submitted by the Governor to the General Assembly shall be referred, without debate, to the committee on the judiciary which shall report thereon not later than thirty legislative days after the date of reference.

(b) The term of each appointed member of the board serving on June 30, 2008, who had been assigned by the chairperson exclusively to parole hearings, shall expire on said date. The term of each member of the board serving on June 30, 2008, who had been appointed chairperson, had been assigned by the chairperson exclusively to pardons hearings or has been appointed by the Governor on or after February 1, 2008, shall be coterminous with the term of the Governor or until a successor is chosen, whichever is later. Any vacancy in the membership of the board shall be filled for the unexpired portion of the term by the Governor.

(c) The chairperson and five of the members of the board appointed by the Governor on or after February 1, 2008, to serve on parole release panels shall devote full time to the performance of their duties under this section and shall be compensated therefor in such amount as the Commissioner of Administrative Services determines, subject to the provisions of section 4-40. The other members of the board shall receive one hundred ten dollars for each day spent in the performance of their duties and shall be reimbursed for necessary expenses incurred in the performance of such duties. The chairperson or, in the chairperson's absence or inability to act, a member designated by the chairperson to serve temporarily as chairperson, shall be present at all meetings of the board and participate in all decisions thereof.

(d) The chairperson shall be the executive and administrative head of said board and shall have the authority and responsibility for (1) overseeing all administrative affairs of the board, (2) assigning members to panels, (3) establishing procedural rules for members to follow when conducting hearings, reviewing recommendations made by employees of the board and making decisions, (4) adopting policies in all areas of pardons and paroles including, but not limited to, granting pardons, commutations of punishments or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death, risk-based structured decision making and release criteria, (5) consulting with the Department of Correction on shared issues including, but not limited to, prison overcrowding, (6) consulting with the Judicial Department on shared issues of community supervision, and (7) signing and issuing subpoenas to compel the attendance and testimony of witnesses at parole proceedings. Any such subpoena shall be enforceable to the same extent as subpoenas issued pursuant to section 52-143.

(e) Of the members appointed prior to February 1, 2008, the chairperson shall assign seven members exclusively to

parole release hearings and shall assign five members exclusively to pardons hearings. Except for the chairperson, no member assigned to parole release hearings may be assigned subsequently to pardons hearings and no member assigned to pardons hearings may be assigned subsequently to parole release hearings. Prior to July 1, 2008, each parole release panel shall be composed of two members from among the members assigned by the chairperson exclusively to parole release hearings or the members appointed by the Governor on or after February 1, 2008, to serve exclusively on parole release panels, and the chairperson or a member designated to serve temporarily as chairperson, for each correctional institution. On and after July 1, 2008, and prior to October 5, 2009, each parole release panel shall be composed of two members appointed by the Governor on or after February 1, 2008, to serve on parole release panels, at least one of whom is a full-time member, and the chairperson or a full-time member designated to serve temporarily as chairperson, for each correctional institution. On and after October 5, 2009, each parole release panel shall be composed of two members appointed by the Governor to serve on parole release panels and the chairperson or a full-time member designated to serve temporarily as chairperson, for each correctional institution. Such parole release panels shall be the paroling authority for the institutions to which they are assigned and not less than two members shall be present at each parole hearing. Each pardons panel shall be composed of three members from among the members assigned by the chairperson exclusively to pardons hearings or the members appointed by the Governor on or after February 1, 2008, to serve on pardons panels, one of whom may be the chairperson, except that for hearings on commutations from the penalty of death, one member of the panel shall be the chairperson.

(f) The Board of Pardons and Paroles shall have independent decision-making authority to (1) grant or deny parole in accordance with sections 54-125, 54-125a, 54-125e and 54-125g, (2) establish conditions of parole or special parole supervision in accordance with section 54-126, (3) rescind or revoke parole or special parole in accordance with sections 54-127 and 54-128, (4) grant commutations of punishment or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death in accordance with section 54-130a.

(g) The Department of Correction shall be responsible for the supervision of any person transferred to the jurisdiction of the Board of Pardons and Paroles during such person's period of parole or special parole.

(h) The chairperson, or the chairperson's designee, and two members of the board from among the members assigned by the chairperson to serve exclusively on parole release panels or the members appointed by the Governor on or after February 1, 2008, to serve on parole release panels, shall conduct all parole release hearings, and shall approve or deny all parole revocations and parole rescissions recommended by an employee of the board pursuant to section 54-127a. No panel of the Board of Pardons and Paroles shall hold a hearing to determine the suitability for parole release of any person unless the chairperson of the board has made reasonable efforts to determine the existence of and obtain all information deemed pertinent to the panel's decision and has certified that all such pertinent information determined to exist has been obtained or is unavailable.

(i) The chairperson of the board shall appoint an executive director. The executive director shall oversee the administration of the agency and, at the discretion of the chairperson, shall: (1) Direct and supervise all administrative affairs of the board, (2) prepare the budget and annual operation plan, (3) assign staff to administrative reviews, (4) organize pardons and parole release hearing calendars, (5) implement a uniform case filing and processing system, and (6) create programs for staff and board member development, training and education.

(j) The chairperson, in consultation with the executive director, shall adopt regulations, in accordance with chapter 54, [FN1] concerning:

(1) Parole revocation and rescission hearings that include implementing due process requirements;

(2) An administrative pardons process that allows an applicant convicted of a crime to be granted a pardon with respect to such crime without a hearing, unless a victim of such crime requests such a hearing, if such applicant was:

(A) Convicted of a misdemeanor and (i) such conduct no longer constitutes a crime, (ii) such applicant was under

twenty-one years of age at the time of conviction and has not been convicted of a crime during the five years preceding the date on which the pardon is granted, or (iii) such conviction occurred prior to the effective date of the establishment of a program under sections 17a-692 to 17a-701, inclusive, section 46b-38c, 53a-39a, 53a-39c, 54-56e, 54-56g, 54-56i or 54-56j for which the applicant would have been eligible had such program existed at the time of conviction, provided the chairperson determines the applicant would likely have been granted entry into such program; or

(B) Convicted of a violation of section 21a-277, 21a-278 or 21a-279 and such applicant has not been convicted of a crime during the five years preceding the date on which the pardon is granted, provided such date is at least ten years after the date of such conviction or such applicant's release from incarceration, whichever is later; and

(3) Requiring board members assigned to pardons hearings to issue written statements containing the reasons for rejecting any application for a pardon.

(k) The Board of Pardons and Paroles shall hold a pardons hearing at least once every three months and shall hold such hearings in various geographical areas of the state. The board shall not hold a pardons hearing within or on the grounds of a correctional facility except when solely for the benefit of applicants who are incarcerated at the time of such hearing.

(*l*) The chairperson and executive director shall establish:

(1) In consultation with the Department of Correction, a parole orientation program for all parole-eligible inmates upon their transfer to the custody of the Commissioner of Correction that will provide general information on the laws and policies regarding parole release, calculation of time-served standards, general conditions of release, supervision practices, revocation and rescission policies, and procedures for administrative review and panel hearings, and any other information that the board deems relevant for preparing inmates for parole;

(2) An incremental sanctions system for parole violations including, but not limited to, reincarceration based on the type, severity and frequency of the violation and specific periods of incarceration for certain types of violations; and

(3) A formal training program for members of the board and parole officers that shall include, but not be limited to, an overview of the criminal justice system, the parole system including factors to be considered in granting parole, victim rights and services, reentry strategies, risk assessment, case management and mental health issues.

(m) The board shall employ at least one psychologist with expertise in risk assessment and recidivism of criminal offenders who shall be under the supervision of the chairperson and assist the board in its parole release decisions.

(n) In the event of the temporary inability of any member other than the chairperson to perform his or her duties, the Governor, at the request of the board, may appoint a qualified person to serve as a temporary member during such period of inability.

(o) The chairperson of the Board of Pardons and Paroles shall: (1) Adopt an annual budget and plan of operation, (2) adopt such rules as deemed necessary for the internal affairs of the board, and (3) submit an annual report to the Governor and General Assembly.

CREDIT(S)

(1967, P.A. 152, § 48, eff. May 25, 1967; 1969, P.A. 537, § 1, eff. June 24, 1969; 1971, P.A. 230; 1972, P.A. 23, § 1, eff. April 5, 1972; 1974, P.A. 74-338, § 57, eff. May 31, 1974; 1977, P.A. 77-614, § 134, eff. Oct. 1, 1977; 1979, P.A. 79-560, § 32, eff. July 1, 1979; 1983, June Sp.Sess., P.A. 83-18; 1993, P.A. 93-219, § 3, eff. July 1, 1994; 1994, P.A. 94-183, § 1, eff. July 1, 1994; 1994, May 25 Sp.Sess., P.A. 94-1, § 64, eff. July 1, 1994; 1995, P.A. 95-189, § 1, eff. July 1, 1995; 1998, P.A. 98-234, § 1, eff. July 1, 1998; 2003, June 30 Sp.Sess., P.A. 03-6, § 161, eff. Aug. 20, 2003; 2004, P.A. 04-234, § 1, eff. July 1, 2004; 2005, P.A. 05-288, § 187, eff. July 13, 2005; 2005, P.A.

05-84, §§ 1, 2; 2008, Jan.Sp.Sess., P.A. 08-1, § 12, eff. Jan. 25, 2008; 2009, Sept.Sp.Sess., P.A. 09-7, § 36, eff. Oct. 5, 2009; 2010, P.A. 10-14, § 1, eff. May 5, 2010; 2010, P.A. 10-36, § 29, eff. July 1, 2010.)

[FN1] C.G.S.A. § 4-166 et seq.

HISTORICAL AND STATUTORY NOTES

Codification

1993, P.A. 93-219, became law July 4, 1993, without the Governor's signature.

Section heading was changed to conform to Gen.St., Rev. to 2005.

Technical changes were made to conform to Gen.St., Rev. to 2005.

Technical changes were made to conform to Gen.St., Rev. to 2009.

Amendments

1969 Amendment. 1969, P.A. 537, § 1, inserted first sentence; increased membership on board of parole to "nine" from "seven"; substituted the second sentence for the former second and third sentences which related to termination of term of members in office on July 1, 1968 to terminate on that date and the appointment of new members; deleted, from the fifth sentence provisions which related to a quorum; added last two sentences relating to the chairman and his duties and the function of panels.

1971 Amendment. 1971, P.A. 230, deleted, from the former third sentence, the words "the two additional members of said board provided for in this section shall be appointed for terms of four years, the terms of the members in office on June 24, 1969, shall continue until the expiration of their present terms, and" preceding "Appointment of members to replace"; and added the ninth sentence relating to appointment of temporary member.

1972 Amendment. 1972, P.A. 23, § 1, substituted, in the second sentence, "eleven" members for "nine" and deleted the words "and two women" following "including a chairman"; and added a former third sentence.

1974 Amendment. 1974, P.A. 74-338, § 57, deleted the former third sentence which read, "The two additional members provided for in this section shall be appointed for terms of four years."

1977 Amendment. 1977, P.A. 77-614, § 134, amended the third sentence by substituting "commissioner of administrative services" for the "personnel policy board" following "in such amount as the", and by adding "subject to the provisions of section 4-40" at the end.

1979 Amendment. 1979, P.A. 79-560, § 32, substituted, in the first sentence, "administrative" purposes for "fiscal and budgetary" purposes following "correction for".

1983 Amendment. 1983, June Sp.Sess., P.A.83-18, increased the compensation from seventy-five to one hundred ten dollars, in the fifth sentence.

1993 Amendment. 1993, P.A. 93-219, § 3, designated portion of existing text as subsec. (a), and in subsec. (a) as so designated, provided that, effective July 1, 1994, the number of board members be increased to 13 from 11, that the chairman be qualified by training, experience or education in law, criminal justice, parole matters or other related fields, and that members be appointed to reflect the racial diversity of the state; also, in subsec. (a) as so designated, deleted requirement that members appointed to replace those whose terms expire serve for four year terms; added subsec. (b); designated portion of existing text as subsec. (c); designated portion of existing text as subsec. (d), and in subsec. (d) as so designated, added subds. (1) to (10), and deleted provisions relating to the assignment of

members to panels; and added subsecs. (e) to (g).

1994 Amendments. 1994, P.A. 94-183, § 1, in subsec. (a), deleted "shall be an autonomous body and within the department of correction for administrative purposes only" following "There shall be a board of parole which".

1994, May 25 Sp.Sess., P.A. 94-1, § 64, without reference to amendment by 1994, P.A. 94-183, § 1, made identical changes in subsec. (a).

1995 Amendment. 1995, P.A. 95-189, § 1, in subsec. (d), added subd. (10) and subd. (11) designator.

1998 Amendment. 1998, P.A. 98-234, § 1, amended the section by increasing the board from thirteen members to fifteen members and inserting "and two vice-chairmen" and "and vice-chairmen" in subsec. (a); inserting "and the term of each vice-chairman" in subsec. (b); inserting "and vice-chairmen" in subsec. (c); adding subdiv. (12) in subsec. (d); and by making other nonsubstantive changes.

2003 Amendment. 2003, June 30 Sp.Sess., P.A. 03-6, § 161, substituted "within the Department of Correction which" for "which, on and after July 1, 1998," in subsec. (a); substituted "chairman shall devote full time to the performance of the duties" for "chairman and vice-chairmen shall devote their entire time to the performance of their duties" in subsec. (c); in subsec. (d), substituted "The Commissioner of Correction" for "Said chairman shall be the executive and administrative head of said board and", deleted former subd. (11), and redesignated former subd. (12) as subd. (11); and made other nonsubstantive changes. Prior to deletion, former subd. (11) read: "consulting with the Department of Correction on shared issues including, but not limited to, prison overcrowding, and".

2004 Amendment. 2004, P.A. 04-234, § 1, rewrote this section, which prior thereto read:

"(a) There shall be a Board of Parole within the Department of Correction which shall consist of fifteen members, including a chairman and two vice-chairmen who shall be appointed by the Governor with the advice and consent of either house of the General Assembly. The chairman and vice-chairmen shall be qualified by training, experience or education in law, criminal justice, parole matters or other related fields for the consideration of the matters before them and the other members shall be qualified by training and experience for the consideration of matters before them. In the appointment of the members, the Governor shall endeavor to reflect the racial diversity of the state.

"(b) The term of the chairman and the term of each vice-chairman of the board shall be coterminous with the term of the Governor or until a successor is chosen, whichever is later. The terms of all members, except the chairman, shall expire on July 1, 1994, and on or after July 1, 1994, members shall be appointed in accordance with subsection (a) of this section as follows: Six members shall be appointed for a term of two years; and six members shall be appointed for a term of four years. Thereafter, all members shall serve for terms of four years. Any vacancy in the membership of the board shall be filled for the unexpired portion of the term by the Governor.

"(c) The chairman shall devote full time to the performance of the duties hereunder and shall be compensated therefor in such amount as the Commissioner of Administrative Services determines, subject to the provisions of section 4-40. The other members of said board shall receive one hundred ten dollars for each day spent in the performance of their duties and shall be reimbursed for necessary expenses incurred in the performance of such duties. The chairman or, in his absence or inability to act, a member designated by him to serve temporarily as chairman, shall be present at all meetings of said board and participate in all decisions thereof.

"(d) The Commissioner of Correction shall have the authority and responsibility for (1) directing and supervising all administrative affairs of the board, (2) preparing the budget and annual operation plan in consultation with the board, (3) assigning staff to parole panels, regions and supervision offices, (4) organizing parole hearing calendars to facilitate the timely and efficient processing of cases, (5) implementing a uniform case filing and processing system, (6) establishing policy in all areas of parole including, but not limited to, decision making, release criteria and supervision standards, (7) establishing specialized parole units as deemed necessary, (8) entering into contracts, in consultation with the board, with service providers, community programs and consultants for the proper function of parole and community supervision, (9) creating programs for staff and board member development, training and

education, (10) establishing, developing and maintaining noninstitutional, community-based service programs, and (11) signing and issuing subpoenas to compel the attendance and testimony of witnesses at parole proceedings. Any such subpoena shall be enforceable to the same extent as subpoenas issued pursuant to section 52-143.

"(e) The chairman shall have the authority and responsibility for assigning members to panels, each to be composed of two members and the chairman or a member designated to serve temporarily as chairman, for each correctional institution. Such panels shall be the paroling authority for the institutions to which they are assigned and not less than two members shall be present at each parole hearing.

"(f) In the event of the temporary inability of any member other than the chairman to perform his or her duties, the Governor, at the request of the board, may appoint a qualified person to serve as a temporary member during such period of inability.

"(g) The Board of Parole shall: (1) Adopt an annual budget and plan of operation, (2) adopt such rules as deemed necessary for the internal affairs of the board, (3) develop policy for and administer the operation of the Interstate Parole Compact, and (4) submit an annual report to the Governor and General Assembly."

2005 Amendments. 2005, P.A. 05-84, § 1, in subsec. (j), substituted "ten" for "five" in subds. (2)(A) and (2)(B).

2005, P.A. 05-84, § 2, in subsec. (n), deleted "(3) adopt regulations, in accordance with chapter 54, for the administration of the Interstate Parole Compact, and (4)" and redesignated former subd. (4) as subd. (3).

2005, P.A. 05-288, § 187, in subsec. (f), substituted "54-130a" for "18-26".

2008 Amendment. 2008, Jan.Sp.Sess., P.A. 08-1, § 12, rewrote subsecs. (a), (b), (e) and (h); inserted "and five of the members of the board appointed by the Governor on or after February 1, 2008, to serve on parole release panels" in subsec. (c); added subds. (d)(2) and (d)(3); redesignated former subds. (d)(2) through (d)(5) as subds. (d)(4) through (d)(7), respectively; added subd. (*l*)(3) and subsec. (m); redesignated former subsecs. (m) and (n) as subsecs. (n) and (o), respectively; and made other nonsubstantive changes. Prior to being rewritten, former subsecs. (a), (b), (e) and (h) read:

"(a) There shall be a Board of Pardons and Paroles within the Department of Correction, for administrative purposes only. On and after October 1, 2004, the board shall consist of thirteen members appointed by the Governor with the advice and consent of either house of the General Assembly. In the appointment of the members, the Governor shall endeavor to reflect the racial diversity of the state. The Governor shall appoint a chairperson from among the membership. The chairperson of the board shall be qualified by education, experience and training in the administration of community corrections, parole or pardons.

"(b) The term of each appointed member of the board serving on September 30, 2004, shall expire on said date. The term of each member of the board beginning on or after October 1, 2004, shall be coterminous with the term of the Governor or until a successor is chosen, whichever is later. Any vacancy in the membership of the board shall be filled for the unexpired portion of the term by the Governor.

"(e) The chairperson may serve on both pardons panels and parole release panels and shall have the authority and responsibility for assigning members to such panels. The chairperson shall assign seven members exclusively to parole release hearings and shall assign five members exclusively to pardons hearings. Except for the chairperson, no member assigned to parole release hearings may be assigned subsequently to pardons hearings and no member assigned to pardons hearings may be assigned subsequently to parole release hearings. Each parole release panel shall be composed of two members and the chairperson or a member designated to serve temporarily as chairperson, for each correctional institution. Such parole release panels shall be the paroling authority for the institutions to which they are assigned and not less than two members shall be present at each parole hearing. Each pardons panel shall be composed of three members, one of whom may be the chairperson, except that for hearings on commutations from the penalty of death, one member of the panel shall be the chairperson.

"(h) The chairperson, or the chairperson's designee, and two members of the board shall conduct all parole release hearings and shall approve or deny all parole releases recommended by an employee of the board pursuant to section 54-125b, and all parole revocations and parole rescissions recommended by an employee of the board pursuant to section 54-127a."

2009 Amendment. 2009, Sept.Sp.Sess., P.A. 09-7, § 36, in subsec. (e), inserted "and prior to October 5, 2009," and "On and after October 5, 2009, each parole release panel shall be composed of two members appointed by the Governor to serve on parole release panels and the chairperson or a full-time member designated to serve temporarily as chairperson, for each correctional institution."

2010 Amendments. 2010, P.A. 10-14, § 14, rewrote subsec. (a), which prior thereto read:

"(a) There shall be a Board of Pardons and Paroles within the Department of Correction, for administrative purposes only. On and after February 1, 2008, and prior to July 1, 2008, the board shall consist of not more than twenty-five members appointed by the Governor. On and after July 1, 2008, the board shall consist of eighteen members. On and after February 1, 2008, the Governor shall appoint all members of the board with the advice and consent of both houses of the General Assembly. On and after July 1, 2008, twelve of the members shall serve exclusively on parole release panels, five of the members shall serve exclusively on pardons panels and the chairperson may serve on both parole release panels and pardons panels. In the appointment of members on and after February 1, 2008, the Governor shall specify the member being appointed as chairperson, the full-time and part-time members being appointed to serve on parole release panels and the members being appointed to serve on pardons panels. In the appointment of the members, the Governor shall comply with the provisions of section 4-9b. The Governor shall appoint a chairperson from among the membership. The members of the board appointed on or after February 1, 2008, shall be qualified by education, experience or training in the administration of community corrections, parole or pardons, criminal justice, criminology, the evaluation or supervision of offenders or the provision of mental health services to offenders. Each appointment of a member of the board submitted by the Governor to the General Assembly on or after February 1, 2008, shall be referred, without debate, to the committee on the judiciary which shall report thereon not later than thirty legislative days after the date of reference."

2010, P.A. 10-36, § 29, in subsec. (h), deleted "shall, prior to July 1, 2008, approve or deny all parole releases recommended by an employee of the board pursuant to section 54-125b," following "parole release hearings," and "or, prior to July 1, 2008, hold a meeting to consider the recommendation of an employee of the board made pursuant to section 54-125b, to grant parole to a person" following "parole release of any person".

Appendix II:
Regulation Regarding the Administrative Pardon Process

STATE OF CONNECTICUT

REGULATION

OF

Board of Pardons and Paroles

NAME OF AGENCY
Concerning

Administrative Pardons Process

SUBJECT MATTER OF REGULATION

The Regulations of Connecticut State Agencies are amended by adding Sections 54-124a(j)(2)-1 to 54-124a(j)(2)-8, inclusive, as follows:

(NEW) Section 1. Section 54-124a(j)(2)-1. Definitions. As used in Sections 54-124a(j)(2)-1 to 54-124a(j)(2)-8, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Administrative Pardon Docket" means a list of pardon applications that will be reviewed for a pardon by a panel of the Board of Pardons and Paroles without a hearing;

(2) "Administrative Pardon Process" means a process by which a pardon, conditioned or absolute, may be granted without a hearing to a person convicted of a crime after consideration of written materials submitted to the Board of Pardons and Paroles for consideration in accordance with sections 54-124a(j)(2)-1 to 54-124a(j)(2)-8, inclusive, of the Regulations of Connecticut State Agencies;

(3) "Board" means the Board of Pardons and Paroles or a panel thereof;

(4) "Chairperson" means the Chairperson of the Board of Pardons and Paroles;

(5) "Incarceration" means the period of time an individual is confined in a correctional institution, under Department of Correction community supervision, or under parole supervision;

(6) "Pardon" means the conditional or absolute release from the legal penalties resulting from the conviction of a crime;

(7) "Victim" means "victim of crime" or "crime victim" as defined in section 1-1k of the Connecticut General Statutes.

(NEW) Section 2. Section 54-124a(j)(2)-2. An employee of the Board of Pardons and Paroles shall review each application received for a pardon and identify applications that meet the criteria defined in Section 54-124a(j)(2)-4 of the Regulations of Connecticut State Agencies for pardon consideration by an administrative pardon process.

(NEW) Section 3. Section 54-124a(j)(2)-3. Prior to the scheduled pardon hearing, the Board shall meet and review all applications identified pursuant to section 54-124a(j)(2)-2 of the Regulations of Connecticut State Agencies for pardon consideration by an administrative pardon process. At least two members of a panel of the Board of Pardons must approve an application being placed on the administrative pardon docket for further consideration. Pardon applications that have been placed on the administrative pardon docket shall not be scheduled for a hearing unless the Board determines to consider the applications on the regular pardon docket pursuant to

section 54-124a(j)(2)-5 of the Regulations of Connecticut State Agencies or the victim or the Office of the State's Attorney pursuant to section 54-124a(j)(2)-8 of the Regulations of Connecticut State Agencies.

(NEW) Section 4. Section 54-124a(j)(2)-4. The Board shall consider and may grant a pardon pursuant to an application that was placed on the administrative docket, without a hearing, provided that a victim of the crime or the Office of the State's Attorney has not requested a hearing and:

(1) The conduct for which the applicant was convicted was a misdemeanor and no longer constitutes a crime;

(2) Such applicant was convicted of a misdemeanor, under twenty-one years of age at the time of conviction, and has not been convicted of a crime during the five years preceding the date on which the administrative pardon is granted;

(3) Such misdemeanor conviction occurred prior to the effective date of the establishment of one of the following diversionary programs for which the applicant would have been eligible had such program existed at the time of conviction, provided the chairperson determines the applicant would likely have been granted entry into such program:

(A) Suspended Prosecution or Conviction and Probation and Court-Ordered treatment for drug or alcohol dependency. Sections 17a-692 to 17a-701, inclusive, of the Connecticut General Statutes (formerly sections 19a-127a to 19a-127j, inclusive, of the Connecticut General Statutes), effective January 1, 1990;

(B) Pretrial Family Violence Education Program. Section 46b-38c of the Connecticut General Statutes, effective October 1, 1986;

(C) Alternate Incarceration Program. Section 53a-39a of the Connecticut General Statutes, effective, July 5, 1989;

(D) Community Service Labor Program. Section 53a-39c of the Connecticut General Statutes, effective July 1, 1990;

(E) Accelerated Pretrial Rehabilitation. Section 54-56e of the Connecticut General Statutes (Formerly Section 54-76p of the Connecticut General Statutes), effective June 12, 1973;

(F) Pretrial Alcohol Education Program. Section 54-56g of the Connecticut General Statutes, effective October 1, 1981;

(G) Pretrial Drug Education Program. Section 54-56i of the Connecticut General Statutes, effective January 1, 1998;

(H) Pretrial School Violence Prevention Program. Section 54-56j of the Connecticut General Statutes, effective January 1, 2000; or

(4) Such applicant was convicted of a violation of any of the following crimes, and such applicant has not been convicted of a crime during the five years preceding the date on which the administrative pardon is granted, provided such date is at least ten years after the date of conviction or release from incarceration, whichever is later:

(A) Section 21a-277 of the Connecticut General Statutes (Formerly Section 19-480 of the Connecticut General Statutes);

(B) Section 21a-278 of the Connecticut General Statutes (Formerly Section 19-480a of the Connecticut General Statutes);

(C) Section 21a-279 of the Connecticut General Statutes.

(NEW) Section 5. Section 54-124a(j)(2)-5. The Board shall have the discretion to move any application that was placed on the administrative pardon docket to the regular pardon docket and

require a full hearing.

(NEW) Section 6. Section 54-124a(j)(2)-6. The Board shall notify the Office of the State's Attorney that prosecuted the crime that is the subject of a pardon application that has been placed on the administrative pardon docket, and shall include notice of a comment period of not less than thirty days prior to the date that the application will be considered pursuant to the administrative pardon process.

(NEW) Section 7. Section 54-124a(j)(2)-7. The Board shall attempt to identify and notify the victim of the crime that is the subject of a pardon application that has been placed on the administrative pardon docket by contacting the Office of Victim Services and the Department of Correction's Victim Service Unit. The Board shall include notice of a comment period of not less than thirty days prior to the date that the application will be considered pursuant to the administrative pardon process.

(NEW) Section 8. Section 54-124a(j)(2)-8. If the Board is notified of a request for the opportunity to be heard personally by the victim or the Office of the State's Attorney prior to the Board taking final action on the application, the application shall be ineligible for consideration by an administrative pardon process and the Board shall reassign the application to the regular pardons docket. The Board shall notify the applicant, the Office of the State's Attorney, and the victim of the hearing date.

STATEMENT OF PURPOSE: To provide for consideration of certain pardon applications without a hearing.

Regulation of Pardons and Paroles, Department of Corrections, (2011), http://www.ct.gov/doc/lib/doc/PDF/PardonAdminReg.pdf

Appendix III:
Regulation Regarding Reasons for the Denial of a Pardon

REGULATIONS OF CONNECTICUT STATE AGENCIES

THIS DOCUMENT IS CURRENT THROUGH THE 05/15/07 ISSUE OF THE CONN. LAW JOURNAL

TITLE 54 CRIMINAL PROCEDURE
BOARD OF PAROLE
REASONS FOR DENIAL OF PARDON APPLICATION

Regs., Conn. State Agencies § 54-124a(j)(3)-1 (2007)

Sec. 54-124a(j)(3)-1.

Any pardons panel of the Board of Pardons and Paroles that denies an application for a pardon shall provide a written statement of reasons the application was denied.

New section published in Conn. Law Journal August 9, 2005, eff. July 18, 2005

Regulation of Pardons and Paroles, Department of Corrections, (2011), http://www.ct.gov/doc/lib/doc/PDF/PardonDenyReg.pdf

Appendix IV:
Application For a Connecticut Expungement or Provisional Pardon

STATE OF CONNECTICUT

BOARD OF PARDONS & PAROLES
55 West Main Street - Waterbury, CT 06702

APPLICATION FOR A CONNECTICUT EXPUNGEMENT or PROVISIONAL PARDON

Please type (strongly preferred) or print legibly in ink the answers to the following questions. If the space for any answer is insufficient, please continue the answer on the optional continuation page, labeling the section that you are continuing. Each question must be answered fully, truthfully, and accurately.
Any omission of falsification may constitute grounds for denial or revocation.

Official use only: **Leave Blank.**	CT Inmate Number:	FBI Number:	SPBI Number:

SECTION 1: Applicant Information:

Last Name	First Name	Middle Name

☐ **Provisional Pardon Consideration**: Check this box if you are applying for a provisional pardon or wish to be considered for a provisional pardon in the event that your petition for expungement is denied. This type of pardon does not erase your criminal history and is for employment purposes only. For more information about provisional pardons, please see the instruction sheet.

Date of Birth:	Social Security Number:	Place of Birth:	Gender: ☐ Male ☐ Female

ADDRESS (Number and Street):		Apartment Number / Floor
CITY:	STATE:	Zip Code:

HOME PHONE NUMBER: ( ) -	BUSINESS PHONE NUMBER: ( ) -	EXTENSION:
CELLULAR PHONE NUMBER: ( ) -	E-MAIL ADDRESS:	

Do you have a Driver's License: ☐ Yes ☐ No	If yes, issuing state:
	License Number:

SECTION 2: Family Information

For your current residence, please list all members of your household below:

Name:	Age:	Relationship:
1.		
2.		
3.		
4.		
5.		

How long have you lived at your current address?

Current Marital Status:	☐ Single ☐ Married	☐ Divorced ☐ Separated	☐ Widow ☐ Widower	☐ Civil Unionized

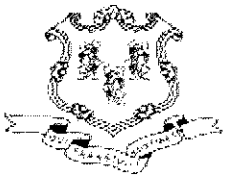
Current Spouse / Partner's Name	Current Address (if different from your current address)	Current Phone Number

How many children do you have?

Application For A Connecticut Expungement or Provsional Pardon, Department of Corrections, (2011), http://www.ct.gov/doc/lib/doc/PDF/form/PardonFormerOffender.pdf

Appendix V:
Connecticut Provisional Pardon Certificate

STATE OF CONNECTICUT



BOARD OF PARDONS AND PAROLES

PROVISIONAL PARDON

CERTIFICATE OF EMPLOYABILITY

Pursuant to the provisions of Connecticut General Statutes (CGS) 54-130a and 54-130e, the Board of Pardons and Paroles grants the relief of a Provisional Pardon to:

XXXXX XXXX

DOB: XX/XX/XX

The Board of Pardons and Paroles has determined that the above named individual has satisfactorily demonstrated, through written submissions and/or through an appearance at a formal hearing of the Board, that the said applicant meets the criteria for receipt of a Provisional Pardon.

This Provisional Pardon removes barriers to employment pursuant to CGS. 31-51i, however it is not valid if the criminal convictions listed bear a direct relationship to such employment or to the types of license(s) normally associated with such employment.

A Provisional Pardon is hereby granted for **Robbery 2, Criminal Impersonation, Breach of Peace** for which the above named person was convicted. While this Provisional Pardon provides relief from barriers or forfeitures to eligibility for employment, it does not expunge the criminal record. This Provisional Pardon is not valid for employment in Law Enforcement or to retain or be eligible for public office.

Board Members voting for this Provisional Pardon granted on the 1st day of July, 2009 at The Board of Pardons and Paroles:

Robert B. Smith

Joseph E. Milardo

Russell S. Palmer

Certified this 15th day of July, 2009

_____

Robert Farr, Chairman

*Please note this is a sample certificate and the date of the convictions and other relevant information is listed on official certificates.

Appendix VI:
Illinois Certificate of Relief from Disability

CERTIFICATE OF RELIEF FROM DISABILITY

Pursuant to 730 ILCS/Section 5/5-5-5. Loss and Restoration of Rights. The Prisoner Review Board has carefully considered and granted a **Certificate of Relief from Disability** to

John Doe

This certificate is issued only for a Barber, Cosmetology, Esthetics, Nail Technology Act and Illinois Roofing Industry Act or certification issued under PA 93-0207 and/or PA 93-0914, and is issued pursuant the Prisoner Review Board order dated _____.

Granted on this ___th day of _____, in the year of our Lord two thousand and six.

_____ Jorge Montes,
Chairman of the Prisoner Review Board

_____ Date

SEAL OF THE STATE OF ILLINOIS AUG. 26TH 1818

Safer Foundation. (2006). *Certificates of Relief From Disabilities Implementation and Tracking*. Retrieved June 16, 2011, from http://www.saferfoundation.org/files/documents/CRD%20Implementation%20Full%20Report%20FINAL.pdf

TABLE #5 - JUDICIAL EXPUNGEMENT, SEALING, AND SET-ASIDE

STATE	All Or Most Offenses Eligible	First Offenders Only	Probationary Sentences (Incl. Deferred Adjudication)	Misdemeanors Only	Pardoned Offenses	Non-conviction records
Alabama						Non-conviction records deleted from rap sheets within 30 days of release from custody, dismissal of charges or favorable disposition
Alaska			Court may suspend imposition of sentence and "set aside" conviction after successful completion of probation, but no expungement.			
Arizona	"Set-aside" available following completion of sentence for all but violent and sex offenses; generally relieves from all penalties and disabilities,					

	but may not deny conviction.					
Arkansas		See next column	Probationers and others diverted to community corrections eligible for sealing if no more than one prior non-serious felony; first offenders who plead guilty and complete probation entitled to sealing.		Expungement must issue following pardon for all but a few serious offenses.	Non-conviction records may be expunged by sentencing court; "upon entry of an order of expungement may state that no such charges, arrest, and the resulting trial ever occurred." In diversion cases sealing limited to first offenders.
California			Set-aside for probationers, misdemeanants; rights restored and disabilities removed, may be used as predicate offense, disclosed in certain contexts. Deferred sentencing for felony convictions, treated as misdemeanors following probation. No expungement or sealing ex. for certain under-age misdemeanants.			In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, order that the records be sealed and destroyed. No sealing for deferred adjudication cases.
Colorado			Deferred adjudication may lead to sealing			Courts are authorized to seal a criminal record ("except basic identification information") where the

						charges were completely dismissed (including deferred adjudication) or the person is acquitted
Connecticut			Six programs for deferred adjudication may result in "erasure" of record.		Pardoned conviction "erased;" after 3 yrs records destroyed; may deny conviction	"Erasure" of criminal records where charges have been dismissed or nolled, or where person has been acquitted; may deny arrest under oath. Deferred adjudication included.
Delaware						Court may expunge records where matter results in acquittal or other termination of action in favor of the accused.
District of Columbia			Deferred adjudication, treatment, and expungement for drug use and possession.	Expungement for selected misdemeanors, one felony		Court authorized to seal nonconviction records after waiting period; law enforcement access
Florida			Adjudication may be withheld and defendant placed on probation for second and third degree felonies if requested by prosecutor or if court makes findings of mitigating circumstances; no conviction results. Sealing for certain first offenders.	Non-violent misdemeanors may be sealed and/or expunged		Court may order sealing of nonconviction records for first offenders, with certain exceptions.

Georgia			Adjudication deferred pending completion of sentence (including prison); rights restored, may deny conviction, but no expungement or sealing. Predicate offense			Expungement of noncriminal records only if no charges filed
Hawaii		See next column	Deferred adjudication for nonviolent first offenders, expungement			Expungement of nonconviction records; person "shall be treated as having not been arrested."
Idaho			Set-aside upon successful completion of probation; restores rights but does not expunge or seal.			
Illinois				Sealing for misdemeanors and two minor felonies only (marijuana and prostitution)		Arrests that resulted in acquittal or dismissal may be expunged
Indiana					Pardon "wipes out guilt" and automatically becomes basis for expungement. (Limited admin. sealing	Nonconviction records may be expunged only where no criminal charges are filed, or charges dropped because of mistaken identity or non probable cause

					also available from state police 15 yrs following completion of sentence.)	
Iowa		See next column	Deferred adjudication followed by expungement for first offenders.			
Kansas	Waiting period of 3-5 yrs; serious violent and sex offenses excluded. Presumption in favor of expungement if court makes certain findings. May deny conviction, ex. for certain employment and licensing contexts. No guns, predicate offense.					May be expunged on petition to court where no conviction results from arrest (including where charges dismissed), subject to certain court-ordered grounds for disclosure
Kentucky			Pretrial diversion for Class D felonies; no conviction results, but expungement may or may not be	Misdemeanants and Class D felony drug possession convictions		Court has discretion to expunge records of misdemeanor or felony cases that result in dismissals or acquittals

			available.	may obtain expungement after 5 yrs.		
Louisiana		See next column	Deferred adjudication for certain misdemeanor and first offender felony convictions sentenced to probation; record expunged but remains available for law enforcement and certain licensing purposes. Predicate offense.			Both felony and misdemeanor nonconviction records may be expunged, but remain available to law enforcement and for certain licensing purposes
Maine						
Maryland			Deferred adjudication available for certain crimes, record may be expunged		Non-violent first offenders pardoned may obtain judicial expungement	Arrest records not leading to charges are automatically expunged, and other non-conviction records (including probation before judgment) may also be expunged upon petition after a waiting period; records may be opened only upon court order.
Massachusetts	Felonies may be sealed after 15 years if no subsequent conviction (misdemeanors 10 years), but no				Pardon seals automatically, recipient may deny conviction.	Non-conviction records may be sealed on order of court; may not be used to disqualify a person from public employment.

	expungement. May deny conviction in employment application, but no guns, predicate offense.					
Michigan		Set-aside for first offenders 5 yrs following sentence or release from prison. Employment-related uses, predicate.				First offenders may have nonconviction record sealed by requesting court to return fingerprints
Minnesota	Trial court has common law expungement authority; balancing test applied.		Deferred sentencing for felony convictions, treated as misdemeanors following probation.	Minor marijuana convictions only statutory expungement authority.	"Pardon extraordinary" has effect of "setting aside and nullifying" conviction, but does not expunge or seal record. Recipient may deny conviction.	Expungement of nonconviction records; remain available for law enforcement purposes, for purposes of evaluating a candidate for a law enforcement position, for purposes of authorized background checks.
Mississippi		See next column	Deferred adjudication followed by dismissal, expungement of			Expungement of records not resulting in conviction; deferred adjudication first offenders only.

			arrest records for nonviolent first offenders (ex. drug trafficking); expungement of conviction for first offender misdemeanants.			
Missouri			Sealing for probationary sentences, becomes "non-conviction" record, need not be reported; "expungement" only for first-time alcohol-related misdemeanors. Sealed records remain available for law enforcement, certain licensing.	First time alcohol-related misdemeanors, after 10 yrs		Automatic sealing of records in all cases disposed of favorably to the defendant or where sentence suspended, upon successful completion of probation. Record becomes a "non-conviction record," and need not be reported as a conviction.
Montana		See next column	Deferred sentencing for first felony offenders and misdemeanants, after which charges dismissed and access to records limited (but not "expunged" or destroyed).			Fingerprints returned when charges not filed; deferred adjudication records sealed for first offenders.
Nebraska			Set-aside for probationers "nullifies" conviction, removes			Criminal history information that has not resulted in a prosecution after a period of one year

			"all civil disabilities and disqualifications" but does not expunge or seal record			may not be disseminated except to law enforcement agencies
Nevada	Seven to 15 yrs waiting period, depending on offense, court may seal all records, if no subsequent arrest; conviction may be denied (with law enforcement and firearms exceptions). Three year waiting period for misdemeanants, no waiting at all for probationers honorably discharged. Other special sealing statutes for drug -- related offenses. No guns, predicate offense.					Non-conviction records may be sealed at any time after completion of case, may deny arrest

New Hampshire	Less serious non-violent offenses may be "annulled" after waiting period of 1 to 10 yrs. Recidivists wait longer. May deny conviction, questions limited. Predicate offense.					Nonconviction data may be expunged by court subject to same "public welfare" standard; arrest deemed never to have occurred.
New Jersey		Expungement for first offenders after 10 yrs. May deny ex. in connection with judicial and law enforcement jobs.				Arrest and other non-conviction data may be expunged; deemed never to have occurred.
New Mexico			Deferred sentencing is available except in first degree felony cases; rights restored but conviction remains. No expungement.			
New York			Deferred adjudication, expungement automatic upon			Sealing automatic upon termination of the action in favor of a person (including deferred adjudication),

			termination unless the district attorney demonstrates "that the interests of justice require otherwise"			unless the district attorney demonstrates "that the interests of justice require otherwise"
North Carolina		See next column	Deferred adjudication for first-time minor drug offenders. No conviction results if probation successfully completed. No predicate effect. Expungement of records only if under 21.	First offender misdemeanors committed under age 18, and first offender alcohol-possession misdemeanors committed under age 21, after 2 years.		Where charges are dismissed or the person found not guilty, may apply to the court for expungement if no prior felony convictions
North Dakota			Minor felony convictions may be "knocked down" to misdemeanor, conviction set aside after completion of probation, but no expungement.			
Ohio		First offender "sealing" after 1-3 yr. waiting period for minor nonviolent convictions, if court finds rehabilitation.			Pardon "erases" conviction, may be denied, basis for judicial expungement	Sealing for records that did not lead to a conviction, or in which conviction was overturned

		Applies to federal and out-of-state. May deny if improperly questioned. Predicate offense.				
Oklahoma		See next column	Deferred adjudication and probation leading to expungement for first offenders	Misdemeanants after 10 years	Non-violent first offenders who have been pardoned	Expungement (sealing) of records of acquittals, or cases in which charges dismissed within one year. Deferred adjudication first offenders.
Oregon	Less serious non-violent offenses may be "set aside" after waiting period of 1 to 10 yrs, no other conviction in past 10 yrs, or arrest within 3 yrs. Order must issue unless court finds it would not be "in the best interests of justice." May deny conviction. Predicate offense.					At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court for entry of an order setting aside the record of such arrest.
Pennsylvania	Expungement		Deferred		Pardon basis	Constitutional right to seek

	at age 70 if no arrests for 10 yrs.		adjudication of guilt, expungement after "ARD" probation		for judicial expungement.	judicial expungement of an arrest record, and records must be expunged by central repository where no disposition received within a year
Puerto Rico	Broad expungement authority for all offenses, including violent felonies, after waiting period of six months to 20 years, if applicant demonstrates "good moral reputation in the community."					All nonconviction records may be expunged
Rhode Island		Nonviolent first offenders only, after 5-10 yrs. Allows denial ex. for certain jobs and licenses. Predicate offense.				Court seal records of persons acquitted or otherwise exonerated (including charges dismissed, etc.). Three-year waiting period for domestic violence cases.
South Carolina		See next column	Deferred adjudication for first-time minor			If charges dismissed or person found not guilty, all records must be destroyed

			drug offenders. No conviction results if probation successfully completed. No predicate effect. Expungement of records if under 25.			and "no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency."
South Dakota		See next column	Deferred adjudication for first offenders, results in no conviction, no predicate effect, records sealed.		Pardon seals record automatically	Records sealed where no adjudication of guilt, including deferred adjudication
Tennessee						Court may order "destruction" of records in case of acquittal, or where charges dismissed.
Texas			Deferred adjudication available for all offenses, results in dismissal of charges and no conviction; may result in sealing for most offenses, after 5-year waiting period for felony offenses.		Pardon basis for judicial expungement	"Expunction" of all records may be ordered in cases where an arrest does not result in a conviction, except that only Class C misdemeanants eligible in case of deferred adjudication
Utah	Most offenses may be "expunged" after 3-10 yr waiting period,					Person arrested may petition for expungement if acquitted or charges dismissed 30 days after arrest took place. Class C

	20 for recidivists. Order must issue unless court finds it would be "contrary to public interest." May deny conviction. Predicate offense.					misdemeanors where adjudication deferred may also qualify.
Vermont			Deferred sentencing and diversion both available at DA's discretion, may result in sealing of record, may deny conviction.			Deferred sentencing, first offender diversion may result in sealing.
Virgin Islands		See next column	Non-violent first offender probationers, record expunged; drug possession offenses if under age 21.			
Virginia						Nonconviction records may be expunged in case of acquittal or where charges nol prossed or dismissed
Washington	All but most serious offenses may be "vacated" after waiting period of 1 to 10 yrs.				Pardon vacates conviction automatically.	Nonconviction records in criminal justice agency files may be sealed administratively two years after disposition favorable to defendant.

	Conviction erased, limited predicate effect. Special provisions for probation and misdemeanor offenses.					
West Virginia					Pardon as basis for judicial expungement after 2 yrs, and 20 years following completion of sentence. May not be considered for licensing and teaching	
Wisconsin				Misdemeanor convictions may be expunged only if committed before age 21.		
Wyoming		See next column	Deferred sentencing for first felony offenders and misdemeanants; specifically prohibits expungement.	Expungement of misdemeanors for purposes of regaining firearms privileges		
Federal				Expungement for		

				misdemeanor possession of marijuana only.		
STATE	**All Or Most Offenses Eligible**	**First Offenders Only**	**Probationary Sentences (Incl. Deferred Adjudication)**	**Misdemeanors Only**	**Pardoned Offenses**	**No Provision For Expunging Adult Convictions**