I. Restoration of Civil Rights/Firearms Privileges:

_Civil Rights:_ Right to vote lost upon conviction of “treason, felony, or bribery,” and is automatically restored upon completion of term of imprisonment or probation. Wis. Stat § 304.078 (3). Jury right depends upon being a qualified elector, and is restored along with vote upon completion of sentence. _Id._ § 756.01(1). Right to hold public office and other rights lost (e.g., firearms, licenses) restored only by pardon. Wis. Const. art. XIII, § 3; Wis. Stat. §§ 111.335(cg), (cs); 941.29(1)(a)-(b),(5).

_Firearms:_ Person convicted of felony may not possess a firearm. Wis. Stat. § 941.29(1)(a)-(b), (2). Restored by governor’s pardon, _id._ § 941.29(5).

II. Discretionary Restoration Mechanisms:

A. Executive Pardon

- **Authority:** Governor has exclusive power to pardon, except in cases of treason and impeachment. Wis. Const. art V, § 6. Must communicate annually with legislature each case of clemency and the reasons. _Id._

- **Administration:** The governor generally appoints a non-statutory Pardon Advisory Board (PAB). The current governor has not appointed a board, and has announced his general belief that “these decisions are best left up to the courts.”

- **Eligibility:** Waiting period of eight years after completion of sentence, including probation and parole, though this may be waived by PAB in “extraordinary circumstances.” Pardon is only available to persons convicted of felonies under Wisconsin, and not to misdemeanants (unless “extraordinary circumstances”), or out-of-state or federal offenders. Frequently Asked Questions About Executive Clemency (“Clemency FAQs”), http://165.189.60.210/Documents/FAQs.pdf, including application form available at http://165.189.60.210/Documents/Application%20for%20Executive%20Clemency.pdf. Further details about the Wisconsin pardon process are available at the website of “Pardon 411,” http://www.pardon411.com/wiki/Wisconsin_Pardon_Information.

- **Process:** By statute, notification must be published in county paper, or posted on courthouse door. Wis. Stat. § 304.09. Notice must also be delivered to DA, judge and victim or victim’s family. _Id._ Process includes a public hearing before PAB, for those applicants that show “a demonstrated need for a pardon.” Clemency FAQs, _supra._

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1 Associated Press, _Walker has no plans for granting pardons_, JSOnline, Nov. 28, 2011, [http://www.jsonline.com/news/statepolitics/walker-has-no-plans-for-granting-pardons-j837jvk-134584228.html](http://www.jsonline.com/news/statepolitics/walker-has-no-plans-for-granting-pardons-j837jvk-134584228.html). Governor Walker’s website includes information about applying for pardon, and in March of 2011 he signed an executive order allowing him to appoint a Pardon Advisory Board, though he has not yet done so. _Id._ In November 2012 individuals with pending applications were informed that the Wisconsin process had been “suspended indefinitely,” that “applications currently on file will be saved for future use,” but that “no new applications [would] be accepted.” See letter on file with author.

_Margaret Colgate Love, NACDL Restoration of Rights Project, January 2013_
- **Effect of Pardon:** Restores rights and privileges lost as a result of conviction, relieves legal disabilities and signals rehabilitation, but does not expunge or seal the conviction. Gun rights are restored unless conviction was for a domestic violence misdemeanor. Felons convicted of a felony involving possession of a firearm must receive a pardon for both the underlying felony conviction and the firearm possession conviction in order to regain gun rights. Pardon does not result in removal from the sex offender registry. Conviction must be revealed if asked, but pardoned individuals are also encouraged to furnish proof of pardon to prospective employers. Clemency FAQs, *supra*.

- **Standards:** According to the Clemency FAQs, *supra*, an applicant should have a “significant and documented need” such as employment, education or job training. Pardons to clear conscience or regain firearms rights are not generally granted, unless the conviction is old and minor. Factors taken into account include age and seriousness of conviction, extent of need, applicant’s “personal development” since crime was committed, community or civic contributions. See Clemency FAQs, *supra*.

- **Frequency of Grants:** Governor Walker has granted no pardons to date, and early in his tenure announced his disinclination to do so. During his eight years in office, Governor Doyle granted 293 pardons overall, 176 in his final year, mainly for dated minor offenses. Since 2003, between 200-300 people who meet eligibility requirements apply annually, a number that has been increasing each year. More than triple the usual number applied in 2010, the final year of Governor Doyle’s tenure. Another 250 people apply for waivers, either because they have not satisfied the five-year waiting period or because they were convicted of a misdemeanor, but few waivers are granted (about 10 each year). Only about 15% of applicants are successful: Source: Governor’s Office.

- **Contact:** PAB, 608-266-7885, govpardon@wisconsin.gov.

### B. Judicial Expungement

- **Misdemeanor expungement:** In the case of misdemeanors and minor felonies committed before age 25, if the maximum period of imprisonment is 6 years or less, the court may order “at the time of sentencing” that the record be expunged upon successful completion of the sentence “if the court determines the person will benefit and society will not be harmed by this disposition.” See Wis. Stat. § 973.015(1)(a). The person must have successfully completed the sentence without being convicted of a subsequent offense and, if on probation, without having the probation revoked. See Wis. Stat. § 973.015(2). “Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.” *Id.*

- **Effect of expungement:** Expungement of a court record “enables an offender to have a clean start so far as the prior conviction is concerned.” *See State v. Leitner,* 646 N.W.2d 341, 352 (Wis. 2002) (“An expunged record of a conviction cannot be considered at a subsequent sentencing; an expunged record of a conviction cannot be used for impeachment at trial under § 906.09(1); and an expunged record of a conviction is not available for repeater sentence enhancement.”) However, this section authorizes expungement of court records only, and not records in the possession of law enforcement agencies or prosecutors. Nor does it prohibit courts from considering the facts underlying an expunged conviction in sentencing in another case: “[N]othing in the language or history of § 973.015 indicates that the legislature intended record expunction under § 973.015 to wipe away all information relating to an expunged record of a conviction or to shield a misdemeanant from all of the future consequences of the facts underlying a record of a conviction expunged under § 973.015.” *Id.*
Deferred Adjudication: Wis. Stat § 971.37 authorizes a prosecutor to enter into a deferred prosecution agreement with a defendant in domestic violence and some sex offenses. The prosecutor may require a guilty plea as a condition of deferral, notwithstanding Wis. Stat. § 971.37(4) (consent to deferred prosecution is not an admission of guilt). See State v. Daley, 716 N.W.2d 146, 149 (Wis. Ct. App. 2006). Notwithstanding statutory eligibility factors, it appears that prosecutors have considerable latitude in extending deferral to other offenses. See Wis. Stat. § 971.37(5) (deferred prosecution agreements are not precluded “for any alleged violations not subject to this section”). Upon successful completion of the terms of deferral, the charges may be dismissed and no conviction results. Wis. Stat. § 971.37(3). No provision for expungement.

Juvenile records: Upon turning age 17, a juvenile adjudicated delinquent may petition the court to expunge the adjudication records. Wis. Stat. § 938.355(4m). The court may expunge upon a finding “that the juvenile has satisfactorily complied with the conditions of his or her dispositional order and that the juvenile will benefit from, and society will not be harmed by, the expungement.” Id. Upon expungement, all paper and electronic records are removed, and the case file is sealed. Wis. Sup. Ct. R. 72.06. Arrest records generally remain confidential, but there is no method by which to expunge them.

C. Administrative Restoration: N/A

III. Occupational licensing and employment:

Wisconsin Fair Employment Act (1977) expressly bars employers from discriminating in employment and licensing decisions on the basis of an individual’s criminal record. Wis. Stat. § 111.321. However, it is not unlawful to discriminate against those previously convicted of a crime if the circumstances of the particular criminal offense “substantially relate to the circumstances of the particular job or licensed activity,” or if the person is not bondable. Id. § 111.335(1)(c). It is also not employment discrimination for an educational agency to refuse to employ, or to terminate the employment of, an individual who has been convicted of a felony, whether or not the circumstances of the crime relate to the job. Id. § 111.335(d)(2). It is employment discrimination to ask an employee or applicant for employment for information about arrest record, except when charges are pending, or when employment depends on bondability. Id. § 111.335(1)(a). Licensing authorities are specifically prohibited from issuing licenses to convicted persons for certain professions if they have not been pardoned (e.g., security personnel and private investigators, installer of burglar alarms), or who have been convicted of certain offenses (including drug offenses). See id. § 111.335(cf), (cm), (cs), (cv), (cx). The provisions of the Fair Employment Act are explained at http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7609_p.htm.

2 See, e.g., the Milwaukee Journal Sentinel’s investigative report on the deferred prosecution program of the Milwaukee County District Attorney, available at http://www.jsonline.com/watchdog/watchdogreports/111733029.html. While the report found that some admitted to the program had serious criminal records that should have made them ineligible under the DA’s own policy, it also reported a 70% rate of successful completion of probation in 910 cases studied.

3 Legislation was introduced in 2012 that would have restricted the protection of the nondiscrimination law relating to employment to felony convictions that have been pardoned. See S.B. 207, proposing to amend § 111.335(1)(c). It would leave the provisions relating to licensure substantially intact. The analysis of the bill by the Legislative Reference Service states: “This bill specifies that it is not employment discrimination because of conviction record for an employer to refuse to employ or to bar or terminate from employment an individual who has been convicted of a felony and who has not been pardoned for that felony, whether
As an integral part of the state’s nondiscrimination scheme, the provision is enforced by the Labor and Industry Review Commission (LIRC). In County of Milwaukee v. LIRC, 407 N.W.2d 908, 916 (Wis. 1987), the Wisconsin Supreme Court rejected an interpretation of the “substantial relationship” test as “a detailed inquiry into the facts of the offense and the job.” Instead, the court looked to the circumstances fostering criminal activity as essential evaluative criteria, such as having the opportunity for criminal behavior. The court concluded that the county could terminate a crisis intervention specialist after he was convicted of homicide by reckless conduct and multiple misdemeanor counts of patient neglect arising from actions taken during his previous employment as a nursing home administrator:

On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. . . On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

407 N.W.2d at 914-15. Since the County of Milwaukee decision, the “substantial relationship” test has for the most part been applied in favor of employers. See, e.g., Halverson v. LIRC, 431 N.W.2d 328 (Wis. Ct. App. 1988) (unpublished) (termination of employment following conviction for shoplifting from employer’s customer was not wrongful; shoplifting substantially related to work involving the need to enter residential and commercial premises when customers may not be present). Cf. Milwaukee Bd. of Sch. Dirs. v. LIRC, 632 N.W.2d 123 (Wis. Ct. App. 2001) (school district improperly discriminated against an individual convicted of a class C felony by refusing to hire him as a boiler attendant); Wal-Mart Stores v. LIRC, 583 N.W.2d 674 (Wis. Ct. App. 1998) (misdemeanor drug possession did not substantially relate to a "stocker" position at a retail store involving a highly regimented and structured workday).


or not the circumstances of the felony substantially relate to the circumstances of the particular job.” See https://docs.legis.wisconsin.gov/2011/related/proposals/sb207 This bill failed to pass.

Margaret Colgate Love, NACDL Restoration of Rights Project, January 2013