FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION

DISCLAIMER

This monograph highlights significant collateral consequences that are imposed by federal law upon conviction of a felony offense. It is provided for informational purposes only, as an aid to further inquiry. The views expressed in the monograph on questions of federal or state law do not necessarily represent the official position of the Department of Justice. The Office of the Pardon Attorney does not have operational responsibility for the interpretation or enforcement of the statutes cited in the monograph. Readers should therefore consult with the appropriate agency with operational responsibility for administering the statutory provision of interest for authoritative and more complete information. In addition, the research for the preparation of the monograph was completed by the early fall of 2000. Because laws are revised frequently, readers are cautioned that the information in this monograph may be out of date and that they should consult with the appropriate agency for more current information.

We have not attempted to describe all the adverse legal consequences of a felony conviction, and do not cover in depth the adverse consequences of conviction of a crime other than a felony. In addition, although disabilities may attend being charged with or agreeing to pretrial diversion for a crime, we have not attempted to explore those issues or to define what is meant by "conviction" of a crime, which may vary from context to context. For example, a person may not be considered "convicted" for some purposes until sentence is imposed. Further, the treatment of military convictions, juvenile adjudications, and convictions in foreign countries or tribal courts is not covered to any significant degree in this monograph. Finally, the issue of the effective dates of particular disabilities and restoration procedures is not addressed in any detail, but should be considered before concluding that a particular disability or restoration procedure applies as a result of a particular conviction.

FEDERAL LAW

I. FEDERAL LAW REGARDING EFFECT OF CONVICTION ON VOTING, OFFICE HOLDING, JURY SERVICE, LICENSING, EMPLOYMENT, FEDERAL BENEFITS, AND IMMIGRATION

A. Right to vote

The United States Constitution, aside from prohibiting disenfranchisement on grounds such as age, gender, and race, U.S. Const. amend. XV, XIX, XXVI, provides that qualifications for voting in federal elections are determined by state law. U.S. Const. art. I, § 2, cl. 1; art. I, § 4; art. II, § 1, cl. 2; amend. XVII. (For the District of Columbia, see U.S. Const. amend. XXIII; D.C. Code Ann. § 1-1301.) *See also* the Voting Rights Act and related statutes, 42 U.S.C. §§ 1971 - 1973gg-10.

The power of the states to deny the right to vote because of participation in a crime is expressly recognized in the Fourteenth Amendment. U.S. Const. amend. XIV, § 2. *See generally Richardson v. Ramirez*, 418 U.S. 24 (1974). Therefore, the effect of a federal felony conviction upon the right to vote is determined by the law of the state in which the felon seeks to vote, and thus varies from state to state.[1]

The great majority of states impose some type of restriction on the ability of convicted felons to vote, at least during a period of incarceration following conviction. Many states impose or continue the disability during periods of supervision, such as probation or parole. Restoration of the right to vote may be automatic after a defined event (such as release from incarceration or expiration of sentence) or after the passage of a defined period of time, or may require the defendant to employ an administrative or judicial procedure in order to have the right to vote reinstated. In some states, only a pardon will restore the right to vote.

B. Right to serve on a federal jury

Conviction in federal or state court of a crime punishable by imprisonment for more than one year disqualifies an individual from serving on a federal grand or petit jury if "his civil rights have not been restored." 28 U.S.C. § 1865(b)(5). The only method currently provided by federal law to restore civil rights is a pardon; however, the court in *United States v. Hefner*, 842 F.2d 731, 732 (4th Cir.), *cert. denied*, 488 U.S. 868 (1988), noted that § 1865 reflects a congressional concern that requiring a pardon would unduly limit the potential means by which an individual's civil rights may be restored. The court nonetheless held that "some affirmative act recognized in

[1] The claim that felon disenfranchisement provisions are racially discriminatory and therefore violate either the Constitution or the Voting Rights Act has been litigated in several cases. *See, e.g., Baker v. Pataki*, 85 F.3d 919 (2d Cir. 1996); *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986); *Farrakhan v. Locke*, 987 F. Supp. 1304 (E.D. Wash. 1997); *Texas Supporters of Workers World Party Presidential Candidates v. Strake*, 511 F. Supp. 149 (S.D. Tex. 1981). The claim that disenfranchisement of persons under a felony charge is irrational and, therefore, violates the equal protection clause of the fourteenth amendment has also been litigated and rejected. *United States v. Green*, 995 F.2d 793 (8th Cir. 1993).

law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865(b)(5)." *Id*. This provision is discussed in greater detail at p. 13, *infra*.

C. Employment and licensing

1. Right to hold federal office or employment

In setting qualifications for federal office, the United States Constitution does not prohibit felons from holding elected federal office. *See* U.S. Const. art. I, §§ 2, 3; art. II, § 1; art. VI.[2] Various federal statutes, however, provide that a conviction may result in the loss of or ineligibility for office. For example, conviction of treason renders the defendant "incapable of holding any office under the United States." 18 U.S.C. § 2381. Likewise, when an individual is convicted of bribing a public official or accepting a bribe, disqualification from federal office may be ordered by the sentencing court. 18 U.S.C. § 201(b).

Other examples of loss of or disqualification for federal office or employment as a result of conviction or commission of a crime include:

- removal from federal or District of Columbia office and ineligibility for employment by the United States or the District of Columbia for five years upon conviction under federal or state law of a felony for inciting, organizing, encouraging, or participating in, a riot or civil disorder or any offense committed in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. § 7313);

- removal from office, and ineligibility for any federal office, of a collecting or disbursing officer upon conviction of trading in public funds or property (18 U.S.C. § 1901);

- removal from office or employment of designated federal officers and employees upon conviction of unauthorized disclosure of certain confidential information relating to trade secrets or the financial profile of any person or business (18 U.S.C. § 1905);

- removal from office or employment of a federal officer or employee convicted of using federal money to finance lobbying a Member of Congress (18 U.S.C. § 1913);

[2]The Constitution, however, provides that the "President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," U.S. Const. art. II, § 4, and further provides that a judgment in a case of impeachment may include removal from office and "disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States." U.S. Const. art. I, § 3.

- forfeiture of office, and disqualification from any federal office, of a records custodian convicted of unlawfully concealing, removing, falsifying, or mutilating public documents (18 U.S.C. § 2071);

- ineligibility for federal employment for five years after conviction of an offense arising from advocating the overthrow by force or violence of the federal government or the government of a state or territory or conspiring to do so, or interfering with the morale or discipline of the United States armed forces (18 U.S.C. §§ 2385, 2387);

- removal from the Board of Directors of the United States Institute of Peace upon conviction of a felony (22 U.S.C. § 4605(f)(1));

- ineligibility for appointment to or continued service on the National Indian Gaming Commission upon conviction of a felony or gaming offense (25 U.S.C. § 2704(b)(5)(A));

- dismissal from office or discharge from employment of an officer or employee of the United States upon conviction of unlawfully disclosing to any unauthorized person taxpayer return or return information (or disclosing the operations of a manufacturer or producer visited during the course of official duties) (26 U.S.C. §§ 7213(a)(1), (b));

- dismissal from office or discharge from employment of a federal officer or employee convicted of unauthorized inspection of a tax return (26 U.S.C. § 7213A);

- dismissal from office or discharge from employment of any officer or employee of the United States acting in connection with any federal revenue law who is guilty of extortion, bribery, conspiracy to defraud the United States, making false entries, or another enumerated offense (26 U.S.C. § 7214(a)).

Aside from such specific statutory disqualifications, a felony conviction does not disqualify a person from federal employment, but is a factor in determining suitability for it, according to the Office of Personnel Management.

2. Armed forces – qualifications for service; payment of benefits

Unless an exception is made (*see* p. 13, *infra*), an individual convicted of a felony is ineligible to enlist in any service of the armed forces. 10 U.S.C. § 504. *See also* 50 U.S.C. App. § 456(m). Any person guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies forfeits all accrued and future "gratuitous" veterans benefits.[3]

[3]According to the Veterans' Administration, *all* veterans benefits are considered gratuitous; therefore, the

38 U.S.C. § 6104(a). Anyone convicted of certain offenses related to espionage, treason, or subversive activities forfeits "gratuitous" veterans benefits (payable to himself or to his dependents or survivors) based on any of his military service. 38 U.S.C. §§ 6105(a), (b).[4] After the first 60 days, military pensions may not be paid to an individual who is incarcerated in a federal, state, or local penal institution as a result of conviction of a felony or misdemeanor. 38 U.S.C. § 1505(a). However, the pension lost as a result of such imprisonment may be paid to the spouse or children of the imprisoned veteran. 38 U.S.C. § 1505(b). Any person guilty of mutiny, treason, spying, or desertion forfeits all rights to National Service Life Insurance and Servicemembers' Group Life Insurance. 38 U.S.C. §§ 1911, 1973. National Service Life Insurance, Servicemembers' Group Life Insurance, and United States Government life insurance are not payable for death inflicted as lawful punishment for a crime or for a military or naval offense, except when inflicted by an enemy of the United States. 38 U.S.C. §§ 1911, 1954, 1973.

3. Other federally imposed occupational restrictions and disabilities

(a) General

Under 18 U.S.C. §§ 3563(b)(5), 3583(d), and the United States Sentencing Guidelines, the sentencing court may impose certain occupational restrictions[5] as a condition of probation or supervised release. Restrictions are authorized when a "reasonably direct relationship" exists between the defendant's occupation and the offense conduct, 18 U.S.C. § 3563(b)(5), U.S.S.G. § 5F1.5(a)(1); and the conditions are "reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted." U.S.S.G. § 5F1.5(a)(2). If such an occupational restriction is imposed, it must be imposed "for the minimum time and to the minimum extent necessary to protect the public." U.S.S.G. § 5F1.5(b).

In addition, specific federal statutes provide that particular convictions may result in the loss of or ineligibility for a federal license.[6] *See*, *e.g.*: grain inspector's license (7 U.S.C. § 85);

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benefits forfeited under §§ 6104(a) and 6105(a) include pension, disability, hospitalization, loan guarantees, and burial in a national cemetery.

[4]Certain veterans benefits are also forfeited if false claims for them are submitted. 38 U.S.C. § 6103.

[5]Specifically, the court may require the defendant to refrain from engaging in the occupation, or to engage in it only to a stated degree or under stated circumstances.

[6]The offenses for which conviction may result in revocation of or ineligibility for a license are generally spelled out in the statute imposing the disability, along with any time limit for the disability. *See*, *e.g.*, under 50 U.S.C. App. § 2410(h)(1), a license may be revoked, or a 10-year period of non-use of or ineligibility for a license may be imposed, upon conviction of specified offenses, such as espionage and violations of various statutes, including the Export Administration Act, the International Emergency Economic Powers Act, the Internal Security Act of 1950, and the Arms Export Control Act. In addition, sanctions may be authorized even if the individual is not convicted but is found to have been indicted for or to have committed a disqualifying violation. *See*, *e.g.*, 50 U.S.C. App. § 2410b(a) (certain knowing violations of the Arms Export Control Act may lead to a two-year denial of certain export licenses).

license to import, manufacture, or deal in explosives or permit to use explosives (18 U.S.C. § 843(d)); customs broker's license (19 U.S.C. § 1641(d)(1)(B)); license to export defense articles and services (22 U.S.C. § 2778(g)(4)); merchant mariner's document, license, or certificate of registry (46 U.S.C. § 7503); license or certification of locomotive engineer (49 U.S.C. § 20135(b)(4); 49 C.F.R. §§ 240.111, 240.115); commercial motor vehicle operator's license (49 U.S.C. § 31310); 49 U.S.C. §§ 44709(b)(2), 44710(b), and 14 C.F.R. § 61.15 (certificate, rating, or authorization of a pilot, flight instructor, or ground instructor) (*see also Zukas v. Hinson*, 124 F.3d 1407 (11th Cir. 1997) (revocation of commercial pilot's certificate as result of federal drug conviction)); export license (50 U.S.C. App. § 2410(h)(1).

A federal license may be lost upon conviction of a drug offense. 21 U.S.C. § 862(d)(1); U.S.S.G. §5F1.6, discussed in section I.D, *infra*. A professional license may be forfeited if used to facilitate a federal drug offense. 21 U.S.C. § 853; *United States v. Dicter*, 198 F.3d 1284 (11th Cir. 1999), *cert. denied*, 531 U.S. 828 (2000) (state medical license).

Depending on the statutory provision, a felony conviction may be an absolute bar to licensure. But even if not an absolute bar, a conviction may nonetheless be a relevant consideration when an agency reviews an application for a license. Agencies closely examine convictions related to the license being sought, and other convictions, as a sign of the prospective licensee's character. *See, e.g.*, 21 U.S.C. § 823 (Attorney General directed to consider convictions relating to the manufacture, distribution, or dispensing of controlled substances or to distribute certain listed chemicals in deciding whether to register an applicant to manufacture, distribute, or conduct research on controlled substances); 47 C.F.R. § 73.4280, 55 Fed. Reg. 23,082 (June 6, 1990, setting forth F.C.C. 90-195, the F.C.C.'s policy statement expanding the scope of inquiry to consider all felony convictions in evaluating a broadcast licensee's character); 49 U.S.C. § 44709(b)(1)(A) (revocation of airman's certificate if "safety in air commerce or air transportation and the public interest require that action") and 14 C.F.R. §§ 61.15(c), (d) (revocation of certificate, rating, or authorization of pilot, flight instructor, or ground instructor permitted if holder convicted of a specified offense).

(b) Banking, commodities, and securities

A person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering may not: become, or continue as, an institution-affiliated party[7] with respect to a federally insured depository institution; own or control, directly or indirectly, an insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of such an institution. 12 U.S.C. §§ 1818(e), (g)(1)(C), 1829(a). Nor may the institution permit a disqualified person to engage in such conduct or to continue such a relationship. 12 U.S.C. §§ 1818(e), (g); 1829(a)(1)(B). The prohibition may be waived upon the

[7]This term includes any director, officer, employee, agent, and controlling stockholder, as well as specified other persons who participate in conducting the affairs of the institution or who participated in the violations. 12 U.S.C. § 1813(u).

written consent of the Federal Deposit Insurance Corporation, but consent may not be given until 10 years after the date the conviction becomes final in the case of certain offenses, generally relating to the banking and financial industry. 12 U.S.C. § 1829. An exception to the prohibition may be made by the sentencing court upon motion of the FDIC "if the exception is in the interest of justice." 12 U.S.C. § 1829.[8] In addition, an indictment for a money-laundering offense or a felony offense for which removal or prohibition may be ordered upon conviction may also result in suspension. 12 U.S.C. § 1818(g)(1)(A).

The Commodity Futures Trading Commission may refuse to register, or may register conditionally, a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, or floor trader (or an associated person of an introducing broker, a commodity trading advisor, or a commodity pool operator) or may suspend him or her, place restrictions on a registration, or revoke a registration if, within 10 years of applying for registration or thereafter, he (or an associated person) has been convicted a felony relating to commodities futures trading or of an enumerated offense, including such crimes as embezzlement, mail fraud, false statements, theft, bribery, gambling, and federal tax offenses. 7 U.S.C. § 12a(2)(D). In addition, the Commission may refuse to register, or may register conditionally, a person who has been convicted of: a felony other than an enumerated offense, 7 U.S.C. § 12a(3)(D); an enumerated offense more than 10 years ago, 7 U.S.C. § 12a(3)(D); certain misdemeanors relating to commodities trading or misdemeanors involving an enumerated offense, 7 U.S.C. § 12a(3)(E); or a state, military, or foreign conviction for conduct that would be a felony under federal law, 7 U.S.C. § 12a(3)(H).

The Securities and Exchange Commission, after finding that such action is in the public interest, may censure, place limitations on the activities, functions, or operations of, suspend for up to one year, or revoke the registration of any investment adviser (or any person associated, or seeking to become associated, with an investment advisor) if he or she (or an associated person), within the 10 years before an application for registration is filed or thereafter, has been convicted of any felony or of certain enumerated offenses (whether felonies or misdemeanors), including such offenses as securities violations, theft, forgery, counterfeiting, embezzlement, perjury, bribery, and mail fraud. 15 U.S.C. §§ 80b-3(e)(2), (e)(3), (f). The Commission may take similar action against any broker or dealer (or any person associated, or seeking to become associated, with a broker or dealer) if he or she (or an associated person), within the 10 years before filing an application for registration or thereafter, is convicted of an enumerated felony or misdemeanor. 15 U.S.C. §§ 78o(b)(4)(B), (b)(6)(A).[9]

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[8]The appropriate federal banking agency has the discretion to impose the sanctions of removal or prohibition of further participation upon final conviction for the commission of a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year, if it is determined that "continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution." 12 U.S.C. § 1818(g)(1)(C)(i). Such a sanction is mandatory in the case of final conviction of certain money-laundering offenses. 12 U.S.C. § 1818(g)(1)(C)(ii).

[9]Except as otherwise provided by the Securities and Exchange Commission, an issuer of securities

(c) Labor organizations

Conviction of certain offenses (including such offenses as robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, drug violations, murder, assault with intent to kill, rape, and certain offenses relating to a labor organization or employee benefit plan) disqualifies an individual from serving in any of a wide range of capacities relating to a labor organization or an employee benefits plan, including consultant, adviser, officer, director, trustee, business agent, manager, or member of the labor organization's governing board. 29 U.S.C. §§ 504, 1111. The disability lasts for 13 years after conviction or until "the end of such imprisonment," whichever is later, unless the sentencing court sets a shorter period of no less than three years. 29 U.S.C. §§ 504, 1111. The disability may be removed sooner if the individual's "citizenship rights, having been revoked as a result of such conviction, have been fully restored." *Id*. For a federal offense committed on or after November 1, 1987, the disability may also be removed by the sentencing court, or, for state or local offenses, by the United States district court where the offense was committed, in accordance with the policy statements of the United States Sentencing Commission, if the court determines that the person's service in a prohibited capacity would not be contrary to the purposes of the law under which the disqualification is imposed. 29 U.S.C. §§ 504, 1111. The disability for offenses committed before November 1, 1987, may be removed by the United States Parole Commission. *See* U.S.S.G. § 5J1.1 (policy statement implementing §§ 504, 1111). *See Viverito v. Levi*, 395 F. Supp. 47 (N.D. Ill. 1975).

(d) Participation in federal contracts or programs

With certain exceptions, individuals convicted of fraud or any felony arising out of a contract with the Department of Defense are prohibited, for a period of time set by the Secretary of Defense of not less than five years, from working in a management or supervisory capacity for a defense contractor or first-tier subcontractor, or from serving on the board of directors or acting as a consultant for any company that is a defense contractor or subcontractor awarded a contract directly by the contractor, or being involved in any way proscribed by the Secretary of Defense with a defense contract or a first-tier subcontract. 10 U.S.C. § 2408(a); 48 C.F.R. § 252.203-7001. The five-year period may be waived by the Secretary of Defense "in the interests of national security." 10 U.S.C. § 2408(a)(3).

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convicted of such an offense is ineligible for three years for the benefit under the securities laws of provisions establishing safe harbor (immunity from civil liability in private actions under the securities laws) for forward-looking statements. 15 U.S.C. §§ 77z-2(b)(1)(i), 78u-5(b)(1)(i).

Mandatory and permissive exclusions from participation in any federal health care program or designated state health care program based on conviction of certain types of crimes are set forth in 42 U.S.C. § 1320a-7.[10] Mandatory and permissive periods of debarment from participation in aspects of the drug industry based on conviction of certain types of crimes are set forth in 21 U.S.C. § 335a.[11] The periods of debarment may be up to five years for an individual (10 years for an entity) depending on the offense, and in some circumstances may be permanent. 21 U.S.C. § 335a(c)(2).

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[10]The Secretary of Health and Human Services must exclude persons or entities convicted of an offense relating to the delivery of an item or service under the Medicare program or any state health care program or of an offense relating to the neglect or abuse of patients in connection with the delivery of a health care item or service. 42 U.S.C. §§ 1320a-7(a)(1), (a)(2). In addition, for offenses occurring after August 21, 1996, the Secretary must exclude persons or entities convicted of a felony offense relating to manufacturing, distributing, prescribing, or dispensing drugs, 42 U.S.C. § 1320a-7(a)(4), or of a felony offense in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than an offense already covered by mandatory exclusion) that consists of fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct. 42 U.S.C. § 1320a-7(a)(3). The Secretary may exclude persons convicted for an offense occurring after August 22, 1996, that is: (a) a misdemeanor "relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct" in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than an offense that results in mandatory exclusion); (b) a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct for an act or omission in a program financed by the federal or state government other than a health care program; or (c) "in connection with the interference with or obstruction of any investigation" into any offense requiring mandatory exclusion or described in (a) or (b), above. 42 U.S.C. §§ 1320a-7(b)(1), (2). The Secretary may also exclude persons convicted of a misdemeanor offense relating to manufacturing, distributing, prescribing, or dispensing drugs. 42 U.S.C. § 1320a-7(b)(3).

[11]Mandatory debarment of an individual from providing services in any capacity to a person who has an approved or pending "drug product" application is required when the individual is convicted of a federal felony for conduct relating to the development or approval of any "drug product" or otherwise relating to the regulation of any "drug product." 21 U.S.C. § 335a(a)(2). "Drug product" is defined in 21 U.S.C. § 321(dd) to be a drug subject to regulation under 21 U.S.C. §§ 355 ("new drug"), 360b (new animal drug), or 382 (export of certain unapproved products), or 42 U.S.C. § 262 (biological products). Debarment may also be imposed for a conviction of a misdemeanor under federal law or a felony under state law for conduct relating to the development or approval of a "drug product" or otherwise relating to the regulation of "drug products," or a conspiracy to commit or aiding and abetting an offense that requires mandatory debarment for an individual, if, in either case, the conduct that formed the basis for the conviction "undermines the process for the regulation of drugs." 21 U.S.C. § 335a(b)(2)(B)(i). Debarment may also be ordered for any individual convicted of a felony involving bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with or obstruction of an investigation into, or prosecution of, any criminal offense, or for conspiracy to commit or aiding and abetting such a felony, if the individual "has demonstrated a pattern of conduct sufficient to find that there is reason to believe that [he] may violate requirements" under the Food, Drug and Cosmetic Act relating to "drug products." 21 U.S.C. § 335a(b)(2)(B)(ii). Mandatory debarment is also provided for entities convicted after May 13, 1992, of a federal felony for conduct relating to the development or approval of any abbreviated drug application, 21 U.S.C. § 335a(a)(1), and permissive debarment is authorized for federal felony convictions before that date, state felonies, or federal misdemeanor convictions after that date for conduct that relates to the development or approval of any abbreviated drug application if the "type of conduct which served as the basis for such conviction undermines the process for the regulation of drugs." 21 U.S.C. § 335a(b)(2)(A). Suspension of the distribution of drugs may also be ordered during the pendency of a criminal investigation under specified circumstances. 21 U.S.C. § 335a(g).

Conviction may result in debarment from participation in a federal contract or program. For example, a conviction for fraud, an antitrust violation, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or claims, receiving stolen property, obstructing justice, "a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction," or "any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person" may result in debarment from participation in contracts with the Department of Housing and Urban Development. *See* 24 C.F.R. § 24.305. Conviction of a crime may also form the basis for an order debarring an individual from obtaining other federal contracts. *See* 48 C.F.R. Part 9, Subpart 9.4.

Conviction of a designated crime, such as fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, and other business-related crimes, is cause for debarment or suspension from participating in procurement and non-procurement programs. Executive Order No. 12,549, 16,689; 5 C.F.R. §§ 970.110(c), 970.305, 970.405; 48 C.F.R. § 9.406-2. Under Executive Order No. 12,549, "Debarment and Suspension," 51 Fed. Reg. 6370 (1986), all federal agencies must participate in a system of debarment and suspension for non-procurement programs and "[d]ebarment or suspension of a participant in a program by one agency shall have government-wide effect." Under Executive Order No. 12,689, "Debarment and Suspension," 54 Fed. Reg. 34,131 (1989), debarment, suspension, or exclusion of a participant in a procurement or non-procurement program has government wide effect. The period of debarment is generally not to exceed three years. 5 C.F.R. § 970.320. The Office of Personnel Management has issued guidelines to implement the executive orders' provisions concerning non-procurement programs, 5 C.F.R. Part 970, and regulations pertaining to procurement programs are set forth in 48 C.F.R. Subpart 9.4.

D. Federal benefits

Certain federal benefits may be revoked or limited upon conviction of a crime. Under 21 U.S.C. § 862 and U.S.S.G. § 5F1.6,[12] drug offenders convicted after September 1, 1989, may be made ineligible for grants, licenses, contracts, and other federal benefits, excluding retirement, welfare, Social Security, health, disability, public housing, benefits based on military service, and benefits for which payments or services are required for eligibility. The exclusion of certain

[12]For individuals residing in federally funded public housing, "criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenant[s], any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises," is cause for eviction, whether engaged in by the tenant, any member of the tenant's household, or any guest or other person under the tenant's control. 42 U.S.C. § 1437f(d)(1)(B)(iii). *See also* 42 U.S.C. §§ 13661-13662. Anyone fleeing to avoid prosecution or to avoid custody or confinement after conviction for a felony (or high misdemeanor in New Jersey) may be evicted. 42 U.S.C. § 1437f(d)(1)(B)(v)(I). Expedited procedures may apply in cases of eviction for criminal or drug-related activity. 42 U.S.C. § 1437d(k). A person may also be evicted for violating a condition of probation or parole. 42 U.S.C. § 1437f(d)(1)(B)(v)(II).

benefits from restriction under these provisions, however, has been qualified by the more recent specific disqualifications of drug offenders discussed below. The maximum period of authorized denial of benefits is shorter for drug-possession offenses than for drug-trafficking offenses, *compare* 21 U.S.C. § 862(a) *with* § 862(b), but denial of benefits is mandatory and permanent upon a third conviction for a drug-trafficking offense. 21 U.S.C. § 862(a)(1)(C). The disability may be waived or suspended for participation in treatment programs, or for drug addicts who are rehabilitated or who enter into long-term treatment or who are prevented from entering into treatment because of its unavailability. 21 U.S.C. § 862(c). The disability does not apply to persons who cooperate with the government in connection with the prosecution of other offenders or who are in a government witness protection program. 21 U.S.C. § 862(e).

Anyone convicted of a federal or state felony for conduct occurring on or after August 22, 1996, that involved the possession, use, or distribution of drugs is not eligible to receive food stamps or temporary assistance to needy families, and the amount payable to any family or household of which such a person is a member is reduced proportionately. 21 U.S.C. §§ 862a(a), (b), (d)(2). States may, however, elect not to impose such a disability or may limit the period of the disability. 21 U.S.C. § 862a(d). Any person convicted of a federal or state offense involving the possession or sale of drugs is ineligible to receive any grant, loan, or work assistance for students in attendance at institutions for higher education (including so-called "Pell grants") or benefits under the federal work-study program for the statutorily designated period (two years after conviction in the case of a first offense for the sale of drugs). 20 U.S.C. § 1091(r). Persons convicted of illegally manufacturing or producing methamphetamine on the premises of federally assisted housing may be evicted and permanently barred from occupying such housing and from receiving federal low-income housing assistance. 42 U.S.C. § 1437n(f).

Any person who is subject to a lifetime registration requirement under a state sex offender registration program is ineligible for federally assisted housing. 42 U.S.C. § 13663. Upon conviction of certain offenses related to the national security, an individual, his survivor, and his beneficiary may not receive an annuity or retirement pay from the United States or District of Columbia government and may be subject to additional penalties regarding his collection of old-age, survivors, or disability insurance benefits, or health insurance for the aged and disabled. 5 U.S.C. § 8312; 42 U.S.C. § 402(u)(1). A person confined for more than 30 days in a jail or penal institution upon conviction of a criminal offense may not receive old-age, survivors, or disability insurance payments for any month in which he or she was incarcerated. 42 U.S.C. § 402(x)(1)(A)(i). Persons convicted of fraud in applying for or receiving federal workers compensation benefits forfeit those benefits for any injury occurring on or before the conviction. 5 U.S.C. § 8148(a). Federal workers compensation benefits may not be paid to the offender (but may be paid to dependents) during a period of incarceration resulting from a felony conviction. 5 U.S.C. §§ 8148(b)(1), (3).

A passport may not be issued to a person convicted of a felony federal or state drug offense if he used the passport or otherwise crossed an international boundary in committing the offense. 22 U.S.C. §§ 2714(a)(1), (b)(1). An already issued passport may be revoked upon conviction of a disqualifying offense. 22 U.S.C. § 2714(a)(2). The disqualification lasts during

any period the person is imprisoned as a result of the conviction and during any period of parole or other supervised release after having been imprisoned as a result of conviction for such an offense. 22 U.S.C. § 2714(c). "Imprisoned" includes confinement in a jail-type facility and half-way house or treatment facility. 22 U.S.C. § 2714(e)(4). The Secretary of State may also apply the disqualification to a person convicted of a misdemeanor drug offense under federal or state law (except a person's first conviction for a misdemeanor that involves only possession of a controlled substance) if the Secretary determines that the disqualification should apply to that person on account of that offense. 22 U.S.C. § 2714(b)(2). Exceptions may be granted in emergency circumstances or for humanitarian reasons. 22 U.S.C. § 2714(d).

E. Immigration

An alien is ineligible for admission to the United States if he or she has been convicted of (or admits committing[13]) a crime involving moral turpitude (unless the alien was younger than 18 when the crime was committed, he committed only one crime, the penalty for which was less than one year's imprisonment and a sentence of six months or less was imposed, and the crime was committed (and the alien released from confinement) more than five years before applying for admission) or multiple offenses for which the aggregate sentences to confinement were five years or more. 8 U.S.C. §§ 1182(a)(2)(A), (B). An alien may be removed from the United States if he was inadmissible at the time of entry, 8 U.S.C. § 1227(a)(1)(A), or upon conviction of: a crime involving moral turpitude committed within five years after the date of entry (or 10 years in the case of an offender having certain lawful permanent resident status) and for which a sentence of one year or longer may be imposed; two or more crimes of moral turpitude not arising out of a single scheme; an "aggravated felony";[14] a drug offense (other than one involving possession for one's own use of 30 grams or less of marijuana); a specified firearms offense; a specified offense related to national security, such as treason or espionage; a specified immigration offense; or a domestic violence offense. 8 U.S.C. § 1227(a)(2). An individual is precluded from establishing "good moral character" and is therefore disqualified from naturalization and from certain forms of relief from removal if he or she, during the required

[13]Immigration consequences may flow from the commission of a number of criminal acts, whether or not they result in conviction. For example, an alien who is a known trafficker in drugs or persons is inadmissible and may be removed from the United States. 8 U.S.C. §§ 1182(a)(2)(C), (H). The discussion in this section on federal law, however, focuses on the statutory provisions relating to disabilities imposed by reason of conviction.

[14]"Aggravated felony" is defined to include a long list of enumerated crimes, under federal or state law or foreign violations for which the prison sentence was completed within the past 15 years; the list includes such offenses as murder, rape, illicit trafficking in any controlled substance or in any firearm or destructive device, offenses relating to the laundering of monetary instruments, theft or burglary offenses for which the term of imprisonment was at least one year, fraud or deceit causing a loss of more than $10,000, tax evasion causing a loss of more than $10,000, certain offenses involving aliens, failure to appear to begin serving a sentence for an offense punishable by five or more years in prison, perjury or obstruction of justice for which the term of imprisonment is at least one year, and a crime of violence for which the term of imprisonment imposed is at least one year. 8 U.S.C. §1101(a)(43). In general, an alien convicted of an aggravated felony is ineligible for most forms of relief from removal.

period of good behavior, was confined for 180 days or more as a result of a conviction, has at any time been convicted of an aggravated felony, or has been convicted of any of the following offenses committed during the required period of good behavior: a crime involving moral turpitude (except crimes punishable by less than one year's imprisonment for which a sentence of six months or less was imposed); two or more offenses for which the aggregate sentence was five years or more; a drug offense (except simple possession of a small amount of marijuana); or two or more gambling offenses. 8 U.S.C. §§ 1101(f)(3), (5), (7), (8); 1427(a).

F. Registration and notification statutes

The growing area of sex offender registration is addressed in several federal statutes, including the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act," 42 U.S.C. § 14071, and 64 Fed. Reg. 572, 3590 (implementing guidelines)) and the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. § 14072. Every state has enacted legislation requiring convicted sex offenders to inform designated authorities of their places of residence following conviction (sometimes referred to as "Megan's laws").[15] These registration laws assist law enforcement by making available for law enforcement purposes information concerning the identity and location of convicted sex offenders. The minimum national standards for state registration programs are set forth in the Wetterling Act, which addresses such issues as the types of offenses for which registration should be required, the duration of the registration requirement, the need for periodic verification of address information and updating of registration information when a sex offender changes address, and the release of information about registrants as necessary to protect the public. Compliance with the standards of the Wetterling Act affects state eligibility for certain federal funding related to law enforcement assistance. *See* 42 U.S.C. § 14071(g)(2) (10-percent reduction of assistance grant funds imposed on noncompliant states).

The registration laws of each state provide for some form of disclosure to members of the public of information concerning registered sex offenders (or some subset of such offenders). Examples of common methods of notification include: making available registration lists for public inspection at law enforcement offices; maintaining sex offender websites accessible by the public; and affirmatively notifying neighbors of the presence of particularly dangerous sex offenders.

In addition to the standards set by the Wetterling Act for state registration programs, federal law directly imposes registration requirements on certain offenders. A sex offender registered in any state who moves to another state must notify the Federal Bureau of Investigation and the new state of residence. *See* 42 U.S.C. § 14072(g)(3), (i)(1). Federal authorities must notify state law enforcement and registration authorities when a federal prisoner

[15]While the Wetterling Act focuses on sex offenders, some states have more general felon registration statutes or require registration not only for sexual offenses but also for other serious offenses or for other serious offenses that harm children. *See*, *e.g.*, Fla. Stat. § 775.13; N.D. Cent. Code § 12.1-32-15.

who is a sex offender is released to their areas or when a federal sex offender is sentenced to probation. 18 U.S.C. § 4042(c). Federal sex offenders (including designated military offenders) are required to register in the states in which they reside, are employed, carry on a vocation, or go to school. *See* 42 U.S.C. §§ 14072 (i)(3), (i)(4), and 18 U.S.C. §§ 3563(a)(8), 3583(d), 4209(a) (registration as a condition of federal probation, supervised release, or parole).

II. RESTORATION OF CIVIL RIGHTS AND REMOVAL OF DISABILITIES UNDER FEDERAL LAW

A presidential pardon restores civil rights lost as a result of a federal conviction, including the rights to vote, to serve on a jury, and to hold public office, and generally relieves other disabilities that attach solely by reason of the commission or conviction of the pardoned offense. *See Ex parte Garland*, 71 U.S. 333 (1866); Opinions of the Office of Legal Counsel, United States Department of Justice, June 19, 1995, *Effects of a Pardon*. *See also Carlesi v. New York*, 233 U.S. 51 (1914). There is no general federal statutory procedure whereby civil rights may be restored after conviction or judicial records of an adult federal criminal conviction expunged.[16] The loss of civil rights generally occurs as a matter of state law and thus those rights may be restored by state action as well as by a presidential pardon.

Certain federal statutes also specifically provide that a presidential pardon will remove a particular disqualification. For example, removal of an alien from the United States may not be based on certain criminal convictions if they have been the subject of a presidential pardon. 8 U.S.C. § 1227(a)(2)(A)(v). A pardon will remove additional penalties relating to the receipt or calculation of old-age or disability insurance benefits that a court may impose upon conviction of certain offenses. 42 U.S.C. § 402(u)(3) (*see* p. 10, *supra*). Certain veterans' benefits forfeited by virtue of a conviction for subversive activities are restored by a presidential pardon. 38 U.S.C. § 6105(a); 38 C.F.R. §§ 3.903(c), 3.904(c).

The right to serve on a federal jury is reinstated if the individual's "civil rights have . . . been restored." 28 U.S.C. § 1865(b)(5). This provision has generally been interpreted by federal courts and the Administrative Office of the United States Courts to require an affirmative act (such as a pardon) by the state (or by the President, for a federal conviction) before the right to serve on a federal jury will be reinstated. Thus, the automatic restoration of civil rights that occurs in many states upon completion of sentence will not operate to restore the right to serve on a federal jury. *See, e.g., United States v. Hefner*, 842 F.2d 731, 732 (4th Cir. 1988) (relying

[16]Under 18 U.S.C. § 3607, a person found guilty of a misdemeanor offense of simple possession of marijuana under 21 U.S.C. § 844 who has no prior federal or state drug conviction may agree to complete up to a year of probation before a judgment of conviction is entered. If the defendant successfully completes the probationary period, the case is dismissed without the entry of a judgment of conviction and only a non-public record of the disposition is maintained. The defendant in such a case is not considered to have been convicted for any purpose. If the defendant was less than 21 years old at the time the offense was committed, the records of any arrest or initiation of criminal proceedings in the case may be expunged as well. This procedure is available to a defendant only once.

on the legislative history of § 1865 to hold that "some affirmative act recognized in law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865(b)(5)").

As noted in section I, ineligibility for some federal benefits or licenses because of a conviction may only last a limited time; eligibility for other benefits or licenses may be restored by administrative or judicial action. For example:

- The prohibitions relating to involvement in labor organizations and employee benefit plans last up to 13 years, but may be removed earlier if civil rights have been "fully restored" or if a federal court or the Parole Commission so directs. 29 U.S.C. §§ 504, 1111. (*See* section I.C.3(c), *supra*.) In order to grant relief from the disability, the court must determine that the person's service in the prohibited capacity would not be contrary to the purposes of the law under which the disability is imposed. 29 U.S.C. §§ 504, 1111. Relief from the disability must not be granted to aid rehabilitation, but only following "a clear demonstration" that the person "has been rehabilitated" and "can therefore be trusted not to endanger the organization in the position for which he or she seeks relief from the disability." U.S.S.G. § 5J1.1.

- Under the immigration laws, the Attorney General may waive the application of certain grounds for inadmissibility resulting from conviction. *See*, *e.g.*, 8 U.S.C. §§ 1182(h) (waiver of inadmissibility authorized for certain offenses, other than aggravated felonies, if certain conditions are met), 1227(a)(7) (conviction of a crime of domestic violence may be waived as a ground for removal in certain cases involving an alien who is also a victim of domestic violence). The Attorney General may also cancel removal of certain permanent resident aliens convicted of a criminal offense other than an aggravated felony. *See*, *e.g.*, 8 U.S.C. § 1229b(a).

- Exceptions to the prohibition on military enlistment of convicted felons may be authorized by the Secretary of the affected branch of the service in "meritorious cases." 10 U.S.C. § 504.

- The Federal Deposit Insurance Corporation may waive a conviction-related prohibition to permit individuals to participate in the affairs of a federally insured depository institution, but for certain offenses may not do so for 10 years. 12 U.S.C. §§ 1829(a)(1), (a)(2)(A). The sentencing court may make an exception to the prohibition "if granting the exception is in the interest of justice." 12 U.S.C. § 1829(a)(2)(B).

- The period of ineligibility for educational grants and work-study benefits imposed upon conviction of a drug offense may be shortened if the student satisfactorily completes a drug rehabilitation program. 20 U.S.C. § 1091(r)(2).

- The Secretary of the Treasury (or his delegate) may grant relief from the conviction-based disabilities concerning licenses and permits for explosives if he finds "that the applicant will not be likely to act in a manner dangerous to public safety and that . . . granting . . . relief will not be contrary to the public interest." 18 U.S.C. § 845(b).

- The Secretary of Health and Human Services may terminate the debarment (other than a permanent debarment) of an individual or entity prohibited from submitting drug approval applications under 21 U.S.C. § 335a. 21 U.S.C. § 335a(d). In certain cases, termination of debarment may be ordered "if such termination serves the interests of justice and adequately protects the integrity of the drug approval process," 21 U.S.C. § 335a(d)(3)(B)(ii); in other cases, special termination may be ordered by the Secretary under specified circumstances. 21 U.S.C. § 335a(d)(4).

III. LOSS AND RESTORATION OF FEDERAL FIREARMS PRIVILEGES

Under the Gun Control Act of 1968, as amended, 18 U.S.C. §§ 921 - 930, a person convicted in any court of a "crime punishable by imprisonment for a term exceeding one year" may not ship or transport a firearm or ammunition in interstate or foreign commerce, possess a firearm or ammunition in or affecting commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. 18 U.S.C. § 922(g)(1).[17] The definition of firearm includes both long guns and handguns. 18 U.S.C. § 921(a)(3). This prohibition is inapplicable to certain federal and state offenses related to business practices,[18] to certain state offenses classified as misdemeanors,[19] and to:

> [a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

[17]A parallel prohibition makes it unlawful to sell or otherwise dispose of a firearm or ammunition to such a person. 18 U.S.C. § 922(d).

[18]Excluded are "any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices." 18 U.S.C. § 921(a)(20)(A).

[19]Excluded is "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20)(B).

18 U.S.C. § 921(a)(20). The statute further provides that "[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." *Id*.[20]

In addition, federal law prohibits gun possession by persons convicted in any court of a "misdemeanor crime of domestic violence." 18 U.S.C. § 922(g)(9).[21] A person is not considered to have been convicted of such an offense, however, "if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. § 921(a)(33)(B)(ii).

Contrary to the implication of these provisions, the meaning of the phrase "has had civil rights restored" is not monolithic but varies in practical effect from state to state depending on the laws regarding loss and restoration of rights. The problem of statutory interpretation has been further complicated in the case of the disability imposed upon conviction of a misdemeanor involving domestic violence because misdemeanor convictions generally do not result in the loss of civil rights under state law.[22]

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[20]While the statute does not expressly state which jurisdiction's law governs the determination whether the offender's civil rights have been restored, the Supreme Court in *Beecham v. United States*, 511 U.S. 368, 371 (1994) (*see* discussion in text accompanying note 23, *infra*), concluded, in considering a federal conviction, that the determination whether a person's civil rights have been restored "is governed by the law of the convicting jurisdiction." Cases dealing with state convictions have reached the same conclusion, drawing upon the reasoning of *Beecham*. *See, e.g., United States v. Collins*, 61 F.3d 1379, 1382 (9th Cir. 1995) (restoration determined by the law of Illinois, the convicting jurisdiction, rather than the law of Montana, the jurisdiction of residence and possession of a firearm); *United States v. Eaton*, 31 F.3d 789, 791-92 (9th Cir. 1994) (restoration determined by the law of North Dakota, the convicting jurisdiction, rather than the law of Montana, the jurisdiction of residence and possession of a firearm). *See also United States v. Capito*, 992 F.2d 218, 219-220 & n. 2 (8th Cir. 1993) (law of South Dakota, the jurisdiction of residence and possession of a firearm, restoring rights to felons held not to apply to defendants convicted in other states); *Thompson v. United States*, 989 F.2d 269, 270 (8th Cir. 1993) (same).

[21]This prohibition was added by the Lautenberg Amendment, passed in 1996. The term "misdemeanor crime of domestic violence" is defined to mean any federal or state misdemeanor that "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." 18 U.S.C. § 921(a)(33)(A). Unlike § 921(a)(20), the definition of "misdemeanor crime of domestic violence" does not specify the law that governs the determination of what constitutes a conviction. One court, however, in interpreting the definition in § 921(a)(33) in the context of applying a provision of the United States Sentencing Guidelines that incorporates it, concluded that federal law, rather than state law, applies. *See United States v. Cadden*, 98 F. Supp. 2d 193, 196-97 (D.R.I. 2000).

[22]*See, e.g., United States v. Smith*, 171 F.3d 617, 623 (8th Cir. 1999); *United States v. Wegrzyn*, 106 F. Supp. 2d 959, 961 (W.D. Mich. 2000).

Courts have generally held that the phrase "civil rights restored" refers to the basic rights of citizenship, such as the rights to vote, serve on a jury, and hold public office. Further, they have held that a felon's civil rights must have been "substantially restored" under state law in order to meet the statutory exclusion. *See, e.g., United States v. Metzger*, 3 F.3d 756, 758 (4th Cir. 1993); *United States v. Gomez*, 911 F.2d 219, 220-21 (9th Cir. 1990). *See also Caron v. United States*, 524 U.S. 308, 316, 318 (1998) (in discussing restoration of "civil rights," the Court speaks of "the right to vote, the right to hold office, and the right to sit on a jury" and notes that "state law limitations on firearms possession are only relevant once it has been established that an ex-felon's other civil rights, such as the right to vote, the right to seek and to hold public office, and the right to serve on a jury, have been restored"). With respect to felons, a minority of states automatically restore all these civil rights to a felon upon completion of his sentence. Some states have an administrative procedure for restoring a felon's civil rights, while others restore rights in piecemeal fashion. In approximately 12 states, a pardon is needed to restore one or more of these rights.

The meaning of the statutory requirement that "civil rights" be "restored" was settled for federal offenders in *Beecham v. United States*,[23] in which the Supreme Court held that federal felons remain subject to the federal firearms disability until their civil rights are restored through a federal, not a state, procedure. Therefore, federal felons who have had their civil rights restored by a state law or procedure nonetheless are still prohibited by federal law from possessing firearms. As noted above, there is no general federal statutory procedure for restoring civil rights to federal felons. While the Bureau of Alcohol, Tobacco and Firearms (BATF) is authorized under 18 U.S.C. § 925(c) to restore federal firearms privileges to an individual convicted of a felony, it has not been permitted to expend funds for this purpose since fiscal year 1992 (although it may restore rights to corporations). Accordingly, at the present time an individual may regain federal firearms privileges forfeited as a result of a federal felony conviction only by obtaining a presidential pardon.[24]

Offenders whose conviction has been pardoned, expunged, or set aside or whose rights have been restored are still subject to the firearms prohibition if the "pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. §§ 921(a)(20), (a)(33). State offenders seeking to rely on a state

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[23]511 U.S. 368 (1994).

[24]*See McHugh v. Rubin*, 220 F.3d 53 (2d Cir. 2000); *Owen v. Magaw*, 122 F.3d 1350 (10th Cir. 1997); *Burtch v. United States Department of Treasury*, 120 F.3d 1087 (9th Cir. 1997); *United States v. McGill*, 74 F.3d 64 (5th Cir. 1996); *Moyer v. Secretary of Treasury*, 830 F. Supp. 516 (W.D. Mo. 1993). *But see Rice v. United States*, 68 F.3d 702 (3d Cir. 1995) (concluding that BATF's inability to process an application under § 925(c) for relief from federal firearms disabilities constitutes an undue delay that excuses the applicant from exhausting administrative remedies and permits him to seek judicial review, whereby the court may determine in the exercise of its sound discretion whether there is a potential for a miscarriage of justice that would justify the submission of evidence to the court to establish fitness to have federal firearms privileges restored); *Rice v. United States*, 1997 WL 48945 (E.D. Pa. 1997) (on remand, federal firearms privileges restored).

restoration of civil rights to meet the exception to the federal firearms disability may be caught by the proviso because, despite the restoration of various rights, their state firearms privileges are still restricted. The variation among state laws regarding the loss and restoration of a felon's state firearms privileges is quite pronounced. Some states, such as Colorado, prohibit a felon from possessing any firearm until and unless he is pardoned, while others, like New Mexico, restrict state firearms privileges for a specific period of time. A number of states, including Alaska and Massachusetts, prohibit felons from possessing certain types of firearms or restrict the places where a felon may possess a firearm. In some states, restrictions upon state firearms privileges are imposed for certain types of offenses, such as violent crimes. Finally, some states have established a mechanism for restoring a felon's state firearms privileges that involves an affirmative act by the governor of the state, an authorized state agency, or the sentencing court.

The Supreme Court's 1998 decision in *Caron v. United States*, 524 U.S. 308 (1998), addressed whether a state offender is still subject to the federal firearm disability if his civic rights have been restored, but state law continues to restrict his firearms privileges to some degree. The defendant in *Caron*, who resided in Massachusetts and had been previously convicted of felonies in Massachusetts and California, was charged under 18 U.S.C. § 922(g)(1) with being a felon in possession of a number of rifles and shotguns and his sentence was enhanced under the Armed Career Criminal Act based on his three prior convictions for violent felonies.[25] He argued that his prior Massachusetts offenses could not be counted toward the enhancement because under Massachusetts law his civil rights had been restored and state law permitted him to possess either rifles or shotguns. Massachusetts law, however, continued to prohibited him, as a felon, from possessing a handgun outside his home or business. The Supreme Court ruled that, although state law allowed him to possess rifles and shotguns, the federal firearms law nonetheless prohibited his possession of those guns. The Court reasoned that because the defendant was still subject to a state-law limitation regarding handguns, the restoration of his civil rights "expressly provides that [he] may not . . . possess . . . firearms," within the meaning of 18 U.S.C. § 921(a)(20); therefore, he could be prosecuted under § 922(g)(1) regardless of the type of firearm he possessed.

The *Caron* decision also appears to have answered another problematic issue of interpretation: whether the restoration of rights must be accomplished by an individualized assessment of rehabilitation or whether automatic restoration by operation of state law or by the routine issuance of a certificate of discharge is sufficient. In *Caron*, 524 U.S. at 313, the Court noted among its "preliminary points" the following:

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[25]The interpretation of the definition of "crime punishable by imprisonment for a term exceeding one year" also arises in the context of determining whether a person prohibited from possessing firearms under § 922(g) is subject to the enhanced penalty under the Armed Career Criminal Act, 18 U.S.C. § 924(e). One way the enhancement is triggered is by having three or more convictions for a "violent felony." The definition of "violent felony" includes among its components the requirement that the defendant have been convicted of a "crime punishable by imprisonment for a term exceeding one year," which in turn is defined in 18 U.S.C. § 921(a)(20), quoted on p. 16, *supra*. 18 U.S.C. § 924(e)(2)(B).

> First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of § 921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a case-by-case determination, "restoration of civil rights" does not. Massachusetts has chosen a broad rule to govern this situation, and federal law gives effect to its rule. All Courts of Appeals to address the point agree.

A number of cases have addressed other issues concerning under what circumstances a state offender's civil rights have been restored and in what circumstances the state felon's restoration of rights "expressly provides" that he may not possess firearms, including:

- whether civil rights are considered to have been "restored" when the offender does not lose his rights to vote, sit on a jury, and hold office under state law after conviction;[26]

- whether civil rights are considered restored when a state felon retains or regains some but not all his civil rights after conviction;[27]

- whether, in determining if a particular right has been restored, one looks to the law in effect at the time of the claimed restoration, or to the law in effect at the time of the claimed violation of the federal firearms statute;[28] and

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[26] *See*, *e.g.*, *McGrath v. United States*, 60 F.3d 1005, 1007-09 (2d Cir. 1995) (under Vermont law, felon's rights not considered restored because they were never lost); *United States v. Caron*, 77 F.3d 1, 5 (1st Cir. 1996) (fact that felon does not lose rights does not preclude a finding that rights have been restored), *aff'd on other grounds*, 524 U.S. 308 (1998). *See also United States v. Moore*, 108 F.3d 878, 881 (11th Cir. 1997) (fact that Tennessee law did not prohibit possession of guns by felons did not constitute restoration of rights).

[27] *See*, *e.g.*, *United States v. Caron*, 77 F.3d 1, 5 (1st Cir. 1996) (rights could be considered restored under Massachusetts law when the right to vote was never lost but the right to hold public office was restored and the right to serve on a jury was restored subject to a contingency), *on remand*, 941 F. Supp. 238 (D. Mass. 1996) (concluding rights were substantially restored); *United States v. Flower*, 29 F.3d 530, 536 (10th Cir. 1994) (rights not restored under Utah law when the right to serve on a jury was not restored); *United States v. McKinley*, 23 F.3d 181, 183-84 (7th Cir. 1994) (rights not restored under Indiana law when rights to serve on a jury and hold elective office were not restored); *United States v. Essig*, 10 F.3d 968, 974-76 (3d Cir. 1993) (rights not restored under Pennsylvania law when the right to serve on a jury not restored); *United States v. Meeks*, 987 F.2d 575, 578 (9th Cir. 1993) (rights not restored under Missouri law when rights to serve on a jury and to hold certain government office not restored).

[28] *See*, *e.g.*, *United States v. Collins*, 61 F.3d 1379, 1381 (9th Cir. 1995); *United States v. Varela*, 993 F.2d 686, 689-91 (9th Cir. 1993); *United States v. Bell*, 983 F.2d 910, 911 (9th Cir. 1993); *United States v. Cardwell*, 967 F.2d 1349, 1350 (9th Cir. 1992). *See also United States v. Clark*, 993 F.2d 402, 403-05 (4th Cir. 1993).

- whether, in a case charging a violation of 18 U.S.C. § 922(g)(1), the government must prove that the defendant did not have his civil rights restored.[29]

Because of the considerable variation among the states concerning the loss and restoration of civil rights and firearms privileges, the determination whether a person convicted of a state offense is subject to the federal law prohibiting possession of firearms is complex and requires a painstaking consideration of both state and federal law. While the Supreme Court has answered some of the significant questions of interpretation concerning the federal statute, the variation among the lower courts in addressing issues that have not been definitively settled further underscores the intricacy of the interplay between federal and state law in this area.

[29] *See*, *e.g.*, *United States v. Jackson*, 57 F.3d 1012, 1016 (11th Cir. 1995) (government not required to disprove possible exceptions to liability when defendant did not proffer evidence of their applicability); *United States v. Flower*, 29 F.3d 530, 535-36 (10th Cir. 1994) (defendant must raise applicability of exception). *But see, e.g., United States v. Essick*, 935 F.2d 28, 31 (4th Cir. 1991) (government must prove that defendant possessed firearm within five years of release from supervision for North Carolina felony when North Carolina law restricts felon's right to possess a firearm for only five years after release); *United States v. Clark*, 993 F.2d 402, 406 (4th Cir. 1993) (restoration of civil rights is not a distinct element of the offense but is a component of the definition of "crime punishable by imprisonment for a term exceeding one year," proof of which was obviated by defendant's stipulation).