

## **CHAPTER 12.1-33 RIGHTS OF CONVICTS**

### **12.1-33-01. Rights lost.**

1. A person sentenced for a felony to a term of imprisonment, during the term of actual incarceration under such sentence, may not:
  - a. Vote in an election; or
  - b. Become a candidate for or hold public office.
2. A public office, other than an office held by one subject to impeachment, held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this state, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the secretary of state who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed, the defendant shall be restored to any public office forfeited under this section from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

### **12.1-33-02. Rights retained by convicted person.**

Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote; to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law.

### **12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions.**

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
  - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
  - b. Information pertaining to the degree of rehabilitation of the convicted person.
  - c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.
3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.
4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.

**12.1-33-02.2. Public employment - Consideration of criminal record.**

1. A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.
2. This section does not apply to the department of corrections and rehabilitation or to a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.
3. This section does not prohibit a public employer from notifying an applicant that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.
4. As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.

**12.1-33-03. Certificate of discharge.**

1. If the sentence were in this state, the sentence shall state that the defendant's rights to vote and to hold any future public office are not lost except during the term of any actual incarceration and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided in such sentence or by law.
2. If the sentence were in another state or in a federal court, the convicted person shall lose the rights to vote and to hold public office only during the term of actual incarceration. Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored.
3. If another state having a similar statute issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state, under section 12.1-33-01, are restored to him in this state.

**12.1-33-04. Savings provisions.**

This chapter does not:

1. Affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the parole board to impose conditions of parole.
2. Deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.
3. Affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.
4. Affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.
5. Affect laws governing rights of inheritance of a murderer from his victim.