

ARKANSAS

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

Eligibility to Adopt a Child, or to Become a Foster Parent

A misdemeanor or felony conviction involving marijuana bars a person from adopting a child, serving as a foster parent, or working for any child welfare position, while serving his or her sentence, and/or while on probation or parole. A.C.A. §§ 5-64-401 (2006), 5-64-406, 9-28-409(e)(2)(A) (2006). Upon completion of his or her sentence or probation or parole, the person is still presumed to be disqualified to adopt, serve as a foster parent or work in any child welfare position. The person may overcome this presumption at a hearing. But in no case may a person convicted of a felony marijuana offense serve in any of the above positions within 5 years of his or her conviction. A.C.A. 9-28-409 (2006). These rules also apply if any member of the household over the age of 15 has such a conviction. A.C.A. 9-28-409(b)(1) (2006).

Eligibility for Public Housing

Any marijuana-related activity including an arrest not leading to conviction can be considered by the public housing agency. A misdemeanor marijuana conviction results in a three-year ban from public housing. A felony marijuana conviction results in a five-year ban. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, ARKANSAS (hereinafter "LAC REPORT"), at <http://www.lac.org/lac/main.php?view=profile&subaction1=AR> (last modified 2004).

Eligibility for Food Stamps and other Public Assistance

Arkansas has softened the federal ban by limiting the lifetime denial of state and federal assistance to persons who suffer a felony marijuana conviction that involves an element of distribution or manufacturing (cultivation). Thus, marijuana convictions involving possession or use do not result in a ban. A.C.A. § 20-76-409(b) (2006).

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

All arrests and convictions involving marijuana are permanently recorded on a person's criminal record. A.C.A. § 12-12-1007 (2006).

However, for personal possession of marijuana, successful completion of probation results in a complete dismissal of the case without a criminal conviction. A.C.A. § 5-64-413 (2006). In addition, under The Community Punishment Act, any person who is granted probation for a misdemeanor or felony marijuana offense (except for delivering marijuana to a minor), may upon completion of probation petition to have the charges expunged, so long as he or she does not have more than one prior conviction. A.C.A. §§ 16-93-1202(10)(A), 16-93-1207 (2006).

Public employers and licensing agencies may only ask about and consider felony marijuana convictions. A licensing agency that revokes, denies, or suspends a license based on a felony marijuana offense must include written explanation of the reasons. A.C.A. § 17-1-103(c) (2006). Misdemeanor marijuana

convictions or arrests not leading to conviction, may not be considered unless the person is applying for a teaching or nursing license. There appears to be no limits on what arrests or convictions a private employer may ask about or consider. A.C.A. §§ 6-17-410, 17-1-103, 17-87-312 (2006). Employers, however, can only obtain criminal history records with consent of applicant. A.C.A. §§ 12-12-1011, 12-12-212, 12-12-1013.

Eligibility for Educational Loans

Arkansas does not use follow the Higher Education Act in making determinations about state financial aid, however "students are required to sign a pledge to remain drug free." CHRIS MULLIGAN ET AL., FALLING THROUGH THE CRACKS: LOSS OF STATE-BASED FINANCIAL AID ELIGIBILITY FOR STUDENTS AFFECTED BY THE FEDERAL HIGHER EDUCATION ACT DRUG PROVISION 12 (Coalition for Higher Educ. Reform 2006), at <http://www.raiseyourvoice.com/statereport/fallingthrough.pdf> (last modified February 7, 2006).

Driver's License

A misdemeanor or felony marijuana conviction results in a six months suspension of driving privileges. If the person has a commercial license, that license is suspended for one year. A.C.A. § 27-16-915(a) (2006).

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION

Right to Vote

A felony marijuana conviction bars voting while incarcerated and/or until discharged from probation or parole. Ark. Const. amend. 51, § 11(a)(4).

Right to Sit on a Jury

A felony marijuana conviction results in a lifetime bar on jury service, unless pardoned. A.C.A. § 16-31-102(a)(4) (2006).

Right to Possess a Firearm

Any felony marijuana conviction results in a lifetime ban on the right to possess a firearm, unless pardoned. A.C.A. § 5-73-103 (2006).

NOTES

Under A.C.A. 5-64-413 (2006), a person who pleads guilty or is found guilty of possessing marijuana is placed on probation (for at least 1 year) without entering a judgment of guilt. If the person successfully completes probation the case is dismissed without any criminal conviction, and the person can also apply to have all records of the case sealed and destroyed. A.C.A. § 16-90-901 et seq. (2006). If the person violates probation, the conviction is entered.

Under the above provisions, it will be rare for personal possession of marijuana to lead to any collateral punishments, because it will be rare for a personal possession case to result in conviction.