

CALIFORNIA

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

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

Any marijuana conviction must be considered when evaluating a prospective adoptive parent, but does not necessarily result in ineligibility. Cal. Fam. Code §§ 8908, subd. (b), 8712. A license to operate a foster home must be denied for any criminal conviction, including a marijuana conviction, but, an exemption can be granted "if the director has substantial and convincing evidence to support a reasonable belief that the applicant [or household member] are of good character as to justify issuance of the license or special permit or granting an exemption..." Cal. Health & Safety Code §§ 1522 (b)(1), 1522(g)(1).

Eligibility for Public Housing

Marijuana arrests are not considered. Felony marijuana convictions may be considered, but the housing authority "shall review and evaluate that information in the context of other available information and shall not evaluate the person's suitability as a prospective participant based solely on his or her past criminal history." Cal. Penal Code §§ 11105.03, subd. (a)(1), (3), (4).

Eligibility for Food Stamps and other Public Assistance

Any felony marijuana conviction results in a lifetime ban on receiving food stamps. Cal. Welf. & Inst. Code §§ 11251.3, 18901.3, 18901.7. (Under section 18901.3, simple possession is excluded from the ban, but because simple possession is a misdemeanor, it is already not subject to the ban.)

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

Conviction and arrest records for marijuana possession, transportation or giving away less than one ounce, are automatically destroyed after two years. Employers are prohibited from asking about or considering these. Cal. Health & Safety Code § 11361.5 (a), Cal. Lab. Code § 432.7(f)(1),(2). All other marijuana convictions and arrests remain on a person's record for life.

Employers may not ask about or consider marijuana arrests that did not result in conviction unless the person is applying for a position with access to drugs and medication at a health facility. Cal. Code Regs. Tit 2 § 787.4(d)(1)(A), Cal. Lab. Code § 432.7(f)(1), (2).

Misdemeanor and felony marijuana convictions may be considered by licensing agencies, but denial of a license on the basis of a marijuana conviction is only permitted if "substantially related to the qualifications, functions or duties of the business or profession for which application is made." Cal. Bus. & Prof. Code, § 480, subd. (a)(1).

Eligibility for Educational Loans

A marijuana conviction does not render a student ineligible for state educational aid. 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 4 (Coalition for Higher Educ. Reform 2006), at <http://www.raiseyourvoice.com/statereport/fallingthrough.pdf> (last modified February 7, 2006)

Driver's License

California appears to have opted out of the federal suspension provision, and instead permits suspension of a person's driver's license for up to 3 years only if a motor vehicle was involved in or incidental to the offense. Cal. Veh. Code, § 13202. For minors, any marijuana conviction results in a mandatory one-year suspension of his or her driver's license. Cal. Veh. Code, § 13202.5.

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION**Right to Vote**

The felony marijuana conviction results in a loss of the right to vote while imprisoned or on parole. Cal. Const., art. II, § 4, Cal. Elec. Code, §§ 2150, subd. (a)(9), *Flood v. Riggs*, 80 Cal.App.3d 138, 155 (1978).

Right to Sit on a Jury

A felony marijuana conviction bars a person from serving on a jury for life unless civil rights are restored. Cal. Civ. Proc. Code § 203(a)(5).

Right to Possess a Firearm

A felony marijuana conviction results in a lifetime bar on possessing a firearm. Cal. Pen. Code, § 12021. A misdemeanor marijuana conviction only results in loss of firearm rights if the judge imposes the restriction as an express condition of probation. *Ibid*.

NOTES:

Because it is unique, California's provision that automatically seals and destroys most marijuana-related misdemeanor convictions after two years is quoted in full below:

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof. Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification. The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10). Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where

(1) the only entries upon the record pertain to the arrest or conviction and

(2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally,

no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.