

MASSACHUSETTS

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

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

Massachusetts requires a nationwide criminal history records search for all prospective adoptive and foster parents. MASS. REGS. CODE tit. 102, §§ 14.01, 14.03, 14.10 (2006) (NCSL: Ch. 119, sec. 26; Ch. 210, sec. 3B.) Any marijuana-related conviction can result in a lifetime ban, if found to have “a substantial effect on the applicant's current or future ability to assume and carry out the responsibilities of a foster or adoptive parent in such a manner that the rights of the child to sound health and normal physical, mental, spiritual and moral development are insured.” MASS. GEN. LAWS ANN. ch. 119, § 26A (2006); MASS. GEN. LAWS ANN. ch. 210, § 3B (2006); MASS. REGS. CODE tit. 102, §§ 14.10, 14.16 (2006). Applicants for foster and adoptive parent licensure are barred if other household members have many of the same convictions that would disqualify the applicant as if (s)he were the one convicted. MASS. REGS. CODE tit. 102, § 14.05 (2006). Note that the Office of Child Care Services has discretion in implementing or lifting these various bans. MASS. REGS. CODE tit. 102, § 14.11 (2006).

Eligibility for Public Housing

The Housing Authority of Boston does not consider arrests not leading to conviction although it is entitled to this information. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, MASSACHUSETTS (hereinafter “LAC REPORT”), <http://www.lac.org/lac/main.php?view=profile&subaction1=MA> (last modified 2004); MASS. REGS. CODE tit. 803, § 5.03 (2006). There are bars for people convicted of crimes that threaten the public health, safety, or welfare, but no set time period for them exists. LAC REPORT. Rehabilitation will be considered in determining whether to lift the bars. *Id.*

Eligibility for Food Stamps and other Public Assistance

Massachusetts has modified the federal lifetime ban for felony drug offenders. TAFDC benefits (equivalent to TANF) are restored after a one-year waiting period, and there is no ban at all for receipt of food stamps. MASS. REGS. CODE tit. 106, § 701.110 (2006). Exemptions to the one-year waiting period are available for certain recipients, such as pregnant mothers and the disabled. MASS. REGS. CODE tit. 106, §§ 701.110, 203.100 (2006).

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

Public access to conviction information is limited to one year following release from custody or supervision for misdemeanors, two years for felony offenses, and three years following discharge from parole. MASS. REGS. CODE tit. 803, § 3.06 (2006). While public and private employers may not inquire about arrests not leading to conviction, no law prohibits licensing agencies, public employers, or private employers from discriminating based on conviction record, unless the conviction has been pardoned. MASS. GEN. LAWS ANN. ch. 151B, § 4(9) (2006); MASS. REGS. CODE tit. 804, § 3.02 (2006). Employers are prohibited from inquiring about any misdemeanor that occurred five or more years prior to the application date. MASS. GEN. LAWS ANN. ch. 151B, § 4(9) (2006).

Marijuana-related convictions can result in lifetime bans on employment with the Department of

Public Health (see e.g. Mass. Regs. Code tit. 105, §§ 950.105, 950.005 (2006)) and the Office of Health and Human Services. Mass. Regs. Code tit. 101, § 15.10 (2006).

Eligibility for Educational Loans

Students must be eligible for Title IV funds in order to receive state financial assistance. 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 15 (Coalition for Higher Educ. Reform 2006), <http://www.raiseyourvoice.com/statereport/fallingthrough.pdf> (last modified February 7, 2006). Students with marijuana convictions (felony or misdemeanor) are therefore being denied state financial aid. *Id.*

Driver's License

Massachusetts suspends a driver's license for a variety of marijuana-related offenses for a period of time ranging from one to five years, depending on the offense and the number of previous convictions. MASS. REGS. CODE tit. 540, § 20.03 (2006).¹ If certain criteria are met, individuals may apply for early reinstatement.² *Id.*

¹ Suspension classes are as follows:

One year:

Sale of Drug Paraphernalia, MASS. GEN. LAWS ANN. ch. 94C, § 32I(a) (2006).
Illegal Possession of a Class D Substance, MASS. GEN. LAWS ANN. ch. 94C, § 34 (2006).
Conspiracy to Violate the Controlled Substance Laws, MASS. GEN. LAWS ANN. ch. 94C, § 32K (2006).

Two year:

Possession of a Class D Substance with intent to Distribute/Manufacture/Cultivate, MASS. GEN. LAWS ANN. ch. 94C § 32C(a) (2006).
Sale of Drug Paraphernalia to Minors, MASS. GEN. LAWS ANN. ch. 94C, § 32I(a) (2006).
Larceny of a Controlled Substance, MASS. GEN. LAWS ANN. ch. 94C, § 37 (2006).

Three year:

Second or Subsequent Conviction of Possession of a Class D Substance, MASS. GEN. LAWS ANN. ch. 94C, § 32C(b) (2006).

Four year:

Not applicable.

Five year:

Convictions of Trafficking, Manufacturing, Distributing or Dispensing of a Class D Substance, MASS. GEN. LAWS ANN. ch. 94C, § 32E (2006).
Controlled Substance Violation in, on, or near School Property, MASS. GEN. LAWS ANN. ch. 94C, § 32K (2006).

² After the individual has served 50% of the assigned suspension period (s)he may request for a hearing for early reinstatement which is evaluated by a Hearings Officer who may grant reinstatement only if all of the following conditions exist:

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION

Right to Vote

A felony marijuana conviction bars voting while incarcerated. Voting is permitted while on probation or parole. MA. CONST. art. III.

Right to Sit on a Jury

A felony marijuana conviction bars jury service for seven years. MASS. GEN. LAWS ANN. ch. 234A, § 4(7) (2006).

Right to Possess a Firearm

Any conviction for use, possession or sale of marijuana results in a lifetime bar on possessing a firearm. MASS. GEN. LAWS ANN. ch. 140, § 131(d)(i) (2006).

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1. The individual has served at least 50% of the assigned suspension period.
 2. If the individual was a license holder, he or she physically surrendered the suspended license to the Registry.
 3. Reliable evidence is submitted to establish that the individual has dealt with or brought under control the causes of the present and past violations, and has complied with any conditions set by the court.
 4. The individual demonstrates that the continued suspension would cause a severe hardship.
 5. There is no evidence in the Registrar's record or elsewhere of motor vehicle operation during the suspension period.
 6. There is no evidence in the Registrar's record, the probation records or elsewhere of additional Controlled Substance Law convictions or incidents.
- MASS. REGS. CODE tit. 540, § 20.03 (2006).