

NEW JERSEY

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

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

An applicant for adoption or for a foster care license will be disqualified if that person or any adult residing in that person's household was convicted of any marijuana-related crime during the five years preceding the application. N.J. STAT. ANN. § 30:4C-26.8(e)(3) (2006). For convictions older than five years, "the Department of Children and Families [will] review the record with respect to the type and date of the criminal offense and make a determination as to the suitability of the person to become [an adoptive or foster] parent or the suitability of placing a child in that person's home, as the case may be." N.J. STAT. ANN. § 30:4C-26.8(b)(2006).

Eligibility for Public Housing

The Newark Public Housing Authority does consider marijuana arrests not leading to conviction. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, NEW JERSEY (hereinafter "LAC REPORT"), <http://www.lac.org/lac/main.php?view=profile&subaction1=NJ> (last modified 2004). A felony or misdemeanor marijuana conviction generally results in a three-year bar from public housing, however, the Newark PHA will consider rehabilitation in order to make individual determinations of eligibility. *Id.*

Eligibility for Food Stamps and other Public Assistance

New Jersey has modified the federal drug felon ban. See N.J. ADMIN. CODE tit. 10, §§ 87-3.18, 90-2.8 (2006). Individuals convicted of any marijuana-related felony offense are ineligible for food stamps and TANF, but eligibility is restored if they are currently enrolled in or have successfully completed a state-sanctioned drug treatment program. N.J. ADMIN. CODE tit. 10, §§ 87-3.18, 90-2.8 (2006). After completing a drug treatment program, applicants must remain drug free for sixty days, submit to drug testing, and test negative in order to become eligible for benefits. *Id.* Benefits will be terminated if test results come back positive. *Id.* After testing positive, benefits cannot be granted or reinstated until the person completes another substance abuse treatment program, and remains drug-free for a minimum of sixty days and is determined via testing to be free of any non-prescribed controlled substance. *Id.*

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

Criminal records are available to non-law enforcement agencies for employment purposes, but only upon the consent of the applicant. N.J. ADMIN. CODE tit. 13, § 59-1.2 (2006). If the prospective employee's criminal history record is used to disqualify a person from obtaining or holding any position, employment or license or performing any services the person making such a determination shall provide the prospective employee with adequate notice and opportunity to confirm or deny the accuracy of any information contained in the criminal history record. *Id.* Although arrests not leading to conviction may be considered, as a practical and legal matter, a person is presumed

innocent of any pending charges or arrests for which there are no final dispositions indicated on the record. *See id.*

Public employers may not deny employment based on a criminal conviction unless the conviction is reasonably related to the duties or responsibilities of the position. (N.J. STAT. ANN. § 2C:51-1(a)-(4). (2006).

Typically, an occupational licensing authority cannot deny an applicant a license based solely on a marijuana-related conviction. Instead, the criminal conviction must “relate adversely” to the occupation, trade, vocation, profession or business for which the license or certificate is sought. N.J. STAT. ANN. §§ 2A:168A-1, 2A:168A-2 (2006).

Eligibility for Educational Loans

Only those eligible for federal aid may receive state aid in New Jersey. 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 17 (Coalition for Higher Educ. Reform 2006), <http://www.raiseyourvoice.com/statereport/fallingthrough.pdf> (last modified February 7, 2006). Students with past marijuana convictions are therefore not receiving state aid. (CHEAR red state.)

Driver’s License

Individuals convicted of any marijuana-related offense including simple possession forfeit their driving privileges for anywhere from six months to two years contingent upon a determination by the court. N.J. STAT. ANN. § 2C: 35-16 (2006). Although the statute does not indicate the qualifying circumstances under which an exception may be granted and how that exception may be obtained, it does state that “compelling circumstances warranting an exception exist if the forfeiture of the person's right to operate a motor vehicle over the highways of this State will result in extreme hardship and alternative means of transportation are not available.” *Id.*

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION

Right to Vote

A felony marijuana conviction bars a person from voting while incarcerated or on probation or parole. N.J. STAT. ANN. §§ 2C:51-3, 19:4-1(8) (2006).

Right to Sit on a Jury

A felony marijuana conviction bars a person from serving on a jury while incarcerated or on probation or parole. N.J. STAT. ANN. §§ 2C:51-3, 2B:20-1 (2006).

Right to Possess a Firearm

A felony or misdemeanor marijuana conviction results in a lifetime bar on possessing a firearm. N.J. STAT. ANN. §§ 2C:39-7, 2C:58-3 (2006). *See, In re Sbitani*, 216 N.J. Super. 75, 522 A.2d 1041, 1987 N.J. Super. LEXIS 1082 (N.J. Super. Ct. 1987). [Person convicted of possession of marijuana, was barred under N.J. Stat. Ann. § 2C:39-7 from obtaining a firearm purchaser identification card and was prohibited from possessing a firearm.]