

NEW MEXICO

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

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

New Mexico requires a criminal records check of prospective adoptive parents, N.M. STAT. ANN. § 32A-5-14 (2006), but there does not appear to be any specific bar concerning drug-related convictions. See N.M. ADMIN. CODE tit. 8, § 26.2.11 (2005). However, if an applicant for a foster care license has been convicted of a marijuana-related felony within five years preceding his or her application, the application will be denied. N.M. ADMIN. CODE tit. 8, § 27.2.16 (2005).

Eligibility for Public Housing

Albuquerque Housing Services does not consider marijuana arrests not leading to conviction as part of its admission criteria, but a conviction will result in a general bar that may be lifted with proof of rehabilitation. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, NEW MEXICO (hereinafter "LAC REPORT"), <http://www.lac.org/lac/main.php?view=profile&subaction1=NM> (last modified 2004).

Eligibility for Food Stamps and other Public Assistance

New Mexico opted out of the federal ban. N.M. STAT. ANN. § 27-2B-11(C) (2006). Therefore, individuals with felony marijuana convictions are eligible to receive TANF benefits and food stamps.

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

Public employers and licensing agencies may consider any marijuana conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. N.M. STAT. ANN. §§ 28-2-3 (2006). Furthermore, public employers may not consider records of arrest not followed by a valid conviction or misdemeanor marijuana convictions. *Id.* These restrictions do not apply to law enforcement agencies. N.M. STAT. ANN. §§ 28-2-5 (2006).

Felony convictions may disqualify an applicant from public employment or a license only if directly related to the position or license, or if the individual is not deemed rehabilitated sufficiently enough to warrant the public trust. N.M. STAT. ANN. § 28-2-4 (2006). After three years have passed since release from incarceration, the person is presumed rehabilitated. This presumption can be rebutted. Convictions for drug distribution may disqualify an individual for a teaching certificate, child-care facility employment, or child-care facility licensure regardless of rehabilitation. *Id.* In all cases, the applicant is entitled to a written explanation for the denial. *Id.*

There do not appear to be any restrictions on private employers inquiring about and discriminating on the basis of an applicant's criminal history including his or her arrest record.

Eligibility for Educational Loans

The New Mexico Governor has authorized the creation of an additional financial aid application that can be filled out for students who cannot fill out the FAFSA. 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). One of the purposes of the form is to allow students with a drug conviction to qualify for financial aid. *Id.* (CHEAR Green state)

Driver's License

In its discretion, the Department of Motor Vehicles may issue a driver's license to any person sixteen years and six months of age or older who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license; who has complied with restrictions on that license; who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application. N.M. STAT. ANN. § 66-5-5(A)(3) (2006). A person "who is an habitual user of narcotic drugs or alcohol or an habitual user of any drug to a degree that renders the person incapable of safely driving a motor vehicle" will be denied a driver's license. N.M. STAT. ANN. § 66-5-5(C) (2006).

Limited driving privileges are offered for purposes of employment, education and court-ordered treatment. N.M. STAT. ANN. § 66-5-35 (2006).

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION

Right to Vote

A person convicted of a felony marijuana offense may not vote until that person has completed his or her sentence, including probation or parole.. N.M. STAT. ANN. § 31-13-1 (2006).

Right to Sit on a Jury

A felony marijuana conviction bars jury service until the person has completed all conditions of the sentence, including probation or parole. N.M. STAT. ANN. § 38-5-1 (2006).

Right to Possess a Firearm

A felony marijuana conviction results in a ten-year bar on possessing a firearm. N.M. STAT. ANN. § 30-7-16 (2006).