

MONTANA

Collateral Punishments for Marijuana Offenses

COLLATERAL PUNISHMENTS THAT HINDER FAMILY LIFE

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

Prospective adoptive and foster parents must submit to criminal background checks, but no automatic bars exist. MONT. CODE ANN. §§ 42-3-203, 52-2-622 (2006).

Eligibility for Public Housing

According to the Legal Action Center, a "recent" marijuana conviction results in an automatic bar on public housing eligibility, but the length varies. A marijuana arrest that does not lead to conviction is not considered by the Billings Housing Authority. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, MONTANA (hereinafter "LAC REPORT"), <http://www.lac.org/lac/main.php?view=profile&subaction1=MT> (last modified 2004).

Eligibility for Food Stamps and other Public Assistance

A person who has been convicted of a felony marijuana offense, an element of which involves the possession, use, or distribution of marijuana, is eligible for state financial assistance under the Families Achieving Independence in Montana (FAIM) if the person is actively complying with the conditions of supervision or has discharged the sentence associated with the felony conviction and is actively participating in treatment, if required. MONT. CODE ANN. § 53-4-231(3) (2006). Note, however, that the same conviction will act as a bar to receiving federal Temporary Aid to Needy Families (TANF) assistance. MONT. ADMIN. R. 37.78.206(3)(g) (2006).

COLLATERAL PUNISHMENTS THAT HINDER PROFESSIONAL SUCCESS

Employment and Professional Licensing

Employers may not inquire about marijuana arrests not leading to conviction. Employers can obtain an applicant's conviction records, but only with the applicant's permission or in limited statutory circumstances. MONT. CODE ANN. §§ 44-5-103, 44-5-212, 44-5-301 (2006); MONT. ADMIN. R. 24.9.1406(2)(h) (2006). Employers may not inquire about arrests. MONT. ADMIN. R. 24.9.1406(2)(h) (2006).

Occupational licensing agencies may discriminate based on conviction records, but only if there is a relationship between the license sought and the criminal activity. MONT. CODE ANN. § 37-1-203 (2006).

Eligibility for Educational Loans

Montana adheres to the federal education loan guidelines, so students with past drug convictions are being denied state 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 16 (Coalition for Higher Educ. Reform 2006), <http://www.raiseyourvoice.com/statereport/fallingthrough.pdf> (last modified February 7, 2006).

Driver's License

If a person is under 18, he or she must present written certification from that person's parent or

legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations. MONT. CODE ANN. § 61-5-132(d) (2006).

If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's instruction permit or traffic education learner's license for an additional 1-year period or until the person's 18th birthday, whichever occurs first. *Id.*

Also, if one is a "drug addict," he or she cannot obtain a driver's license until (s)he has supplied satisfactory evidence that (s)he is no longer addicted to drugs. MONT. ADMIN. R. 23.2.210 (2006). The regulation is silent on how it is determined that one is a "drug addict" or how one would rebut that characterization.

COLLATERAL PUNISHMENTS THAT HINDER CIVIC PARTICIPATION

Right to Vote

A felony marijuana conviction results in a bar on voting, but only while incarcerated. MONT. CONST. art. IV, § 2; MONT. CODE ANN. § 13-1-111(2) (2006).

Right to Sit on a Jury

Conviction of any felony may result in the loss of the right to sit on a jury. MONT. CODE ANN. § 3-15-303 (2006). However, contrary Montana law provides that "except as provided in the Montana constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship." MONT. CODE ANN. § 46-18-801 (2006). Since the disqualification set forth in § 3-15-303 is not contained in the Montana Constitution, its effect in light of § 46-18-801 is unclear, but it may be that the right to serve as a juror may only be restored by pardon. OFFICE OF THE PARDON ATTORNEY, DEP'T OF JUSTICE, CIVIL DISABILITIES OF CONVICTED FELONS: A STATE-BY-STATE SURVEY 67 (1996), http://www.usdoj.gov/pardon/forms/state_survey.pdf (last visited Sept. 2, 2006).

Right to Possess a Firearm

A misdemeanor marijuana conviction results in the loss of the right to hold a concealed weapons permit until completion of all sentence terms including probation. MONT. CODE ANN. § 45-8-321(c) (2006). A felony marijuana conviction results in a lifetime bar on possession of a concealed weapon. (*Id.*)