

# AFTER PRISON: ROADBLOCKS TO REENTRY

## A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

### What's the Law

#### STATE PROFILES > CALIFORNIA

##### ADOPTIVE AND FOSTER PARENTING

#### **1. Does the state consider other criminal history records beyond the federal list of convictions barring people from becoming foster and/or adoptive parents?**

Yes, for foster parents. Conviction of a crime other than a minor traffic violation bars foster care license applications, unless an exemption is granted by the director. Cal. Health & Safety Code §§ 1522(a)(4)(A), (g)(1). Additionally, any arrests for sexual offenses requiring registration pursuant to Section 290 of the Penal Code, assault with a deadly weapon or force likely to produce greater bodily injury, willful infliction of corporal injury, or willful harm or injury to child, may be considered if the department secures evidence that the person arrested may pose a risk to the health or safety of the child. Cal. Health & Safety Code §§ 1522(a)(1), (e).

Yes, for adoptive parents. Conviction of a crime other than a minor traffic violation will be taken into consideration in assessing an applicant's ability to provide "adequate and proper care and guidance to the child." However, while these convictions may be considered, they will not necessarily bar an applicant from becoming an adoptive parent. Cal. Fam. Code § 8811.

#### **2. Does the state restrict people from becoming foster and/or adoptive parents for longer than required by federal law?**

Yes, for foster parents. The statute is silent on the length of the bars for foster care so they appear to operate as lifetime bars unless the state exercises its discretion. Cal. Health & Safety Code §§ 1522(a)(1), (a)(4)(A), (d), and (g)(1). No automatic bars exist for prospective adoptive parents. Cal. Fam. Code § 8811.

#### **3. May applicants be barred by the convictions of other household members?**

Yes, for foster care. Applicants for foster parent licensure may be barred if other household members have any of the convictions that would disqualify the applicant if s/he were the one convicted. No, for adoption. Cal. Fam. Code App. § 8712; Cal. Fam. Code § 8811; and Cal. Health & Safety Code §§ 1522(b)(1)(B) and (d)(4)(A).

#### **4. Does the state make individual determinations about an applicant's eligibility based on the criminal record?**

Yes, for foster care. Upon substantial and convincing evidence to support a reasonable belief that the applicant is of such good character as to justify issuance of the license, the director may grant exemptions for arrests or convictions, including arrests involving sexual offenses requiring registration, assault with a deadly weapon, willful infliction of corporal injury, child endangerment, or any prior criminal arrests or convictions for any crime against a child, spouse, or cohabitant. Exemptions for foster care may also be granted for certain violent offenses with the district attorney's recommendation and demonstration of at least 10 years good moral character or a Certificate of Rehabilitation. Cal. Health & Safety Code § 1522(g).

Individualized determinations are made for adoption. Cal. Fam. Code App. § 8712.

#### **ACCESS TO CRIMINAL RECORDS**

##### **1. Is there a time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes?**

Yes, most misdemeanor and felony convictions more than 10 years old will not be disseminated. However, there does not appear to be a time limit for certain sexual offenses and for registered sex offenders. Cal. Penal § 11105.3(a)(h), Cal. Wel. & Inst. Code 15660(b)(1).

##### **2. Other than the subject and criminal justice agencies, who can obtain records?**

Public utilities (including nuclear power plants and entities whose employees enter private residences), statutorily-authorized public agencies, peace officers, probation/parole officers, district attorneys, prosecuting attorneys, public defenders representing the subject, the subject of the record, courts, managing correctional officers, child support and welfare agencies, and others with statutory authorization. Cal. Penal §§ 13300(b)(1)-(15), (c)(1)-(10).

##### **3. What types of records can be disclosed to non-criminal justice agencies?**

Most misdemeanor and felony convictions within the 10-year period preceding application may be disclosed. Specific serious felony convictions over 10 years old will also be reported. Under certain circumstances, arrests pending adjudication for sexual, drug-related, and violent crimes will also be reported. However, two types of arrests generally will not be released: those for which diversion was ordered and it is unknown whether the program was successfully completed; or those followed by dismissal, release, or no disposition and it is unknown whether the individual was exonerated. Cal. Penal §§ 13125; 13300(a)(1) and (2), (m), (l); and 11105.3(a),(h).

##### **4. Are there penalties for violating limitations on dissemination?**

Yes, criminal penalties exist. Anyone who violates limitations on dissemination is guilty of a misdemeanor. Cal. Penal §§ 11142; 11143.

##### **5. Are state criminal records available on the internet?**

No.

##### **6. Can state criminal records of arrests not leading to conviction be sealed (including expunged, erased, or purged)?**

Yes. Most arrest records can be sealed, except for infractions. Certain minor marijuana arrests can be purged. Cal. Penal § 851.8(a), (i), and (n) and Cal. Health & Safety § 11361.5(b)(1)-(4).

##### **7. If so, what is the effect of having an arrest sealed?**

When “sealed,” the arrest record is removed from the rap sheet. Most records are destroyed three years after the arrest and the individual is deemed exonerated and may generally answer questions as if the arrest had not occurred. However, individuals are required to reveal arrests when applying for employment with law enforcement and health care facilities. Cal. Labor § 432.7(f)(1), (2); Cal. Penal §§ 851.8(f) and 13203.

##### **8. Can criminal conviction records be sealed (including expunged, erased, or purged)?**

Yes, many adult misdemeanor and felony convictions can be expunged, except for certain

serious felonies, specific misdemeanor motor vehicle offenses, and infractions. Certain minor marijuana convictions may be purged. Cal. Health & Safety § 11361.5(b)(1)-(4) and Cal. Penal § 1203.4(a) and (b).

Unless subsequently convicted of a felony or misdemeanor of moral turpitude, individuals may apply for sealing of many juvenile wards of the court adjudications upon reaching 18 years of age or 5 years after disposition, whichever comes first. Cal. Wel. & Inst. § 781(a).

**9. If so, what is the effect of having a conviction sealed?**

Under most circumstances, private employers may not inquire regarding expunged adult convictions. However, the expunged conviction still appears on the individual's rap sheet with a notation that the conviction has been "set aside and dismissed." (Per central repository.) Expunged conviction records must be revealed for public employment, public office, occupational licensure, and health care employment if the position requires patient contact or access to medication. Cal. Code Regs. tit. 2 § 7287.4(d)(1)(B); Cal. Labor § 432.7(f)(1) and (2); and Cal. Penal § 1203.4(a).

Purged conviction records are removed from the rap sheet and the records are destroyed. Except for law enforcement agencies, most employers and occupational licensing agencies may not inquire regarding purged records. Cal. Code Regs. tit. 2 § 7287.4(d)(1)(B); Cal. Health & Safety § 11361.5(c); and Cal. Penal § 13203.

Individuals may deny the existence of sealed juvenile records. Most juvenile records will be destroyed five years after sealing. Cal. Wel. & Inst. § 781(a) and (d).

**DRIVERS' LICENSES**

**1. Does the state revoke or suspend the drivers' licenses of people convicted of drug-related offenses?**

Yes, the state revokes drivers' licenses for drug-related offenses. Cal. Vehicle §§ 13202 and 13352.

**2. If so, what crime(s) result in suspension or revocation?**

Driving under the influence of alcohol or drugs and a range of drug-related offenses involving the use of a motor vehicle. Cal. Vehicle §§ 13202 and 13352.

**3. If so, what is the length of the suspension or revocation?**

The court shall determine the period of revocation or suspension for drug-related offenses. Drivers' licenses will be revoked or suspended for 6 months to 5 years following a conviction for driving under the influence, depending upon the status of the offender, i.e., the number of times s/he has been convicted. Cal. Vehicle §§ 13202 and 13352.

**4. Does the state offer restricted drivers' licenses for purposes of employment, education, and/or medical care?**

Yes. If enrolled in a driving-under-the-influence program, an individual 21 years of age or older at the time of the offense and convicted once within a 10-year period of driving under the influence may obtain a restricted license for transportation to and from employment and/or activities required by the program. Cal. Vehicle § 13353.7(a). Additionally, the individual may petition for a restricted license upon a showing of a critical need to drive. Critical need can be

shown when transportation facilities are inadequate for education, medical, and/or employment purposes. Cal. Vehicle §§ 13353.8(a), (c), 12513(a).

## **EMPLOYMENT**

### **1. Can employers ask job applicants about arrests not leading to conviction?**

No, employers may not ask job applicants about arrests not leading to conviction, with the two exceptions of law enforcement authorities and health care facilities (re: certain crimes), Cal. Labor Code § 432.7, Cal. Penal Code § 13203

### **2. Can employers consider arrests not leading to conviction?**

No. An employer is prohibited from seeking or utilizing any record of an arrest not leading to conviction for purposes of a hiring decision. Cal. Labor Code § 432.7(a).

### **3. Does the state have standards prohibiting employment discrimination by public employers and occupational licensing agencies based on a conviction record?**

No, a board may deny a license regulated by the California Business and Professional Code based on a conviction record. Cal. Bus. & Prof. Code § 480.

### **4. Does the state have standards prohibiting employment discrimination by private employers based on a conviction record?**

No.

### **5. Does the state restrict people with criminal records from employment in the field of home health care?**

Yes, applicants are barred from home health care employment for certain violent, sexual, and theft-related convictions. However, individuals with felony convictions can lift the bar with a certificate of rehabilitation and expungement, while the bar for misdemeanor convictions may be removed by expungement alone. Additionally, the State Department of Health Services may also make an independent determination of eligibility in spite of the criminal record. The department makes individual determinations considering factors such as rehabilitation and the nature and seriousness of the offense before barring an individual for a substantially related or alcohol-or drug-related conviction. If an individual has a conviction “substantially related” to employment as a home health aide, it is within the state’s discretion to determine that an individual is not sufficiently rehabilitated. In the interest of public safety, alcohol- and drug-related convictions may also operate as a lifetime bar to employment as a home health care aide. Cal. Health & Safety § 1736.5(a),(b), and (c).

### **6. After an individual has been convicted, does the state offer any mechanism to demonstrate that an individual has been rehabilitated?**

Yes, an individual convicted of a felony who has served his or her sentence or is released on parole may petition for a certificate of rehabilitation and pardon. Individuals convicted of certain sex offenses may also petition for a certificate of rehabilitation and pardon which may relieve them of having to register as a sex offender, if they do not pose a continuing threat to minors. If the court grants the petition, it will declare the petitioner rehabilitated, the certificate of rehabilitation will be ordered and the court will recommend that the Governor grant a full pardon to the petitioner. If the Governor grants a full pardon, civil rights are restored, including the right to vote. Cal. Penal §§ 4852.01(a)-(d), 4852.13 and 4852.17.

#### **PUBLIC ASSISTANCE AND FOOD STAMPS**

##### **1. Are people with drug-felony convictions dated after 1996 eligible to receive TANF benefits and food stamps?**

Generally, because California has opted out of the federal drug felon ban, a convicted drug felon is eligible to receive food stamps. However, the ban remains in place for individuals convicted of offenses involving transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purposes of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled substance, or cultivating, harvesting, or processing marijuana or procuring a minor's participation in any of these activities. Cal. Wel. & Inst. Code § 18901.3(a), (b), (c). Additionally, eligibility of persons convicted of possession is contingent upon their completion of, participation in, enrollment in or placement on a waiting list for a government-recognized drug treatment program or "other evidence that the use of controlled substances has ceased". Cal. Wel. & Inst. § 18901.3(d).

#### **PUBLIC HOUSING**

##### **1. Does the Housing Authority consider arrests that did not lead to conviction in its admission criteria?**

No, the Housing Authority of the City of Los Angeles (HACLA) does not consider arrests.

##### **2. Does the Housing Authority make individual determinations about an applicant's eligibility based upon the relevance of the criminal record?**

Yes, evidence of rehabilitation, such as the prospective resident's participation in, or willingness to participate in, counseling or another program will be considered if "unfavorable information" is revealed by HACLA's criminal history request. Unfavorable information suggests that the applicant poses a risk to children under age 18, and the aged, blind, and disabled.

##### **3. How long is the conviction bar(s)?**

The HACLA has no additional conviction bars beyond the federal regulations.

#### **VOTING**

##### **1. Does the state grant people with criminal records the right to vote?**

Yes, people who have completed their sentences or who are on probation have the right to vote. However, people who are incarcerated or on parole following felony convictions are ineligible to vote. Cal. Const. Art. 2, § 4; Flood v. Riggs, 80 Cal.App.3d 138, 155 (1978). A certificate of rehabilitation and/or pardon also restores the right to vote. Cal. Penal Code § 4852.17