

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > GEORGIA

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?

Prospective foster parents must submit to a criminal records check for a determination as to whether the applicant is satisfactory or unsatisfactory. The applicant will be notified of the results of the determination in writing. If unsatisfactory, the applicant's home may not be used as a foster home. There is no limitation on offenses that can disqualify or standards for determining relevance of criminal record and no mechanism to lift this bar. Ga. Code Ann. § 49-5-69.1. Criminal records checks are included in pre-adoption investigations but do not seem to create automatic bars for prospective adoptive parents. Ga. Code Ann. § 19-8-16.

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

Yes, for foster care. The statute is silent on the length of the bar for prospective foster parents so it operates as a lifetime bar unless the state exercises its discretion. No automatic bars exist for prospective adoptive parents. Ga. Code Ann. §§ 19-8-16 and 49-5-69.1.

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

Yes, for foster care. Foster parent applicants will be barred by the criminal records of other adult household members as if s/he were the one arrested or convicted. No, for adoption. Ga. Code Ann. § 49-5-69.1(a).

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

Yes, for both foster care and adoption. Ga. Code Ann. §§ 19-8-16 and 49-5-69.1.

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?

No. GA. Code Ann. § 35-3-34.

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

Private individuals and businesses, criminal defense counsel, public agencies and political subdivisions including state and federal occupational licensing agencies, and county boards of registrars or registration and elections. GA. Code Ann. §§

35-3-34 and -35.

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

Private individuals, businesses, public agencies, and political subdivisions may access entire criminal records for most individuals (including arrests and convictions) with fingerprints and signed consent, or solely felony convictions with sufficient identifying information to recognize the subject. Records of first offenders exonerated following probation without a guilty verdict will not be disclosed in most situations. However, records of arrest, charges or sentences of first time offenders exonerated on or after July 1, 2004 may be disclosed if the offender was prosecuted for certain sex-related crimes and is seeking employment with a school, child welfare agency, a day care or after school care program, nursing home, personal care home, elder day care program, or certain facilities providing services to the mentally ill or mentally retarded. The county boards of registrars or registration and elections are entitled to an individual's entire criminal record after an individual registers to vote because an application to vote is deemed to consent to a criminal records check. Criminal defense attorneys are entitled to their clients' records upon submission of the client's name and identifying information and data regarding the style of the case. GA. Code Ann. §§ 35-3-34 and -35.

4. Are there penalties for violating limitations on dissemination?

Yes, criminal and administrative. GA. Code Ann. §§ 35-3-38 and -39.

5. Are state criminal records available on the internet?

Yes, records of Department of Corrections inmates dating from 1984 are available at <http://www.dcor.state.ga.us/GDC/OffenderQuery/jsp/OffQryForm.jsp?Institution=>

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

Individuals whose arrest did not result in prosecution because matter was either not referred to prosecuting attorney or charge dismissed without seeking indictment or indictment was dismissed, nolle prossed or dead docketed may request expungement of arrest record. Expungement granted if charge not prosecuted, no other criminal charges are pending, and individual had not been convicted of same or similar charge within past five years (other factors also apply for post-indictment or post-accusation expungement). Ga. Code Ann. §§ 35-3-37(d)(3), (d)(7) and (d)(9). Arrests for criminal matters brought in municipal courts may be expunged if the charges were dismissed on arresting officer's motion or for lack of prosecution or were subject to a pretrial disposition and the conditions were satisfied. Ga. Code Ann. § 17-8-6.

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

Expunged records shall not be disclosed to the public. Ga. Code Ann. § 35-3-37(10).

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

Adult criminal convictions may not be sealed.

Juvenile delinquency adjudications shall be sealed by the court upon dismissal or if handled through informal adjustment or may be sealed upon application if two years have elapsed since final discharge, no subsequent pending charges, delinquency adjudication, or conviction for a misdemeanor involving moral turpitude or felony and person has been rehabilitated. Ga. Code Ann. § 15-11-79.2.

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

If sealed, the individual may deny the existence of the juvenile record. Ga. Code Ann. § 15-11-79.2(c).

DRIVERS' LICENSE PRIVILEGES

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

The state suspends drivers' licenses for drug-related offenses. Ga. Code Ann. § 40-5-75.

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

Driving under the influence and a range of drug-related offenses. Ga. Code Ann. § 40-5-75(a).

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

At least 180 days for first conviction, with longer suspensions for subsequent convictions occurring within five years. Ga. Code Ann. § 40-5-75(a).

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

Yes, following a two-year waiting period an individual convicted for the third time may apply for a three-year driving permit for purposes of transportation to and from school, work, medical care, or addiction support groups. Ga. Code Ann. § 40-5-75(a).

EMPLOYMENT

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

Yes.

2. Can employers consider arrests not leading to conviction?

Yes.

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

No.

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?

No.

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

Restoration of civil and political rights (automatically granted to felony parolees upon discharge from supervision if no other sentence or pending charges; can apply if complete sentence or serve specified number of years on parole with

satisfactory adjustment in society) and pardons. Ga. Code Ann. § 42-9-42 and Ga. Comp. R. & Regs. r. 475-3-.10(6). Neither restoration of rights nor a pardon automatically lifts occupational bars. State of Georgia, Board of Pardons and Paroles: Other forms of clemency, available at http://www.pap.state.ga.us/other_forms_clemency.htm (last accessed Nov. 20, 2002).

PUBLIC ASSISTANCE AND FOOD STAMPS

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

No, Georgia adopted the drug-felon ban. Ga. Code Ann. § 49-4-184.

PUBLIC HOUSING

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

Yes, the Atlanta Housing Authority considers violent and drug-related felony arrests, as well as arrests for other criminal offenses.

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

Yes. There is also a dispute process available to denied applicants and terminated residents.

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

Arrests, convictions and outstanding warrants for violent and/or drug-related crimes have no durational limitation and may always be considered. For non-violent and non-drug related criminal offenses, any arrests, convictions and outstanding warrants occurring during the period of tenancy may be considered. For new applicants, any arrests, convictions or outstanding warrants for non-violent and non-drug related criminal offenses occurring within the past 5 years may be considered. Bar commences from the date of the arrest or conviction.

VOTING

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

Persons convicted of a felony involving moral turpitude are disqualified from voting and registering to vote until completion of the sentence. Ga. Const. Art. 2, § 1; Ga. Code Ann. § 21-2-216.

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