

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > INDIANA

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 care. Applicants are barred based upon convictions of violent and weapons-related felonies, and misdemeanors relating to the health and safety of children according to Indiana state law and the equivalent crimes in other states. Ind. Code §§ 31-27-4-5; 31-27-4-6; 31-27-4-13. Criminal record checks are included in pre-adoption investigations, but do not create automatic bars for prospective adoptive parents. Ind. Code § 31-19-2-7.5.

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

Yes, because the statute is silent on the length of the bars for foster care so they operate as lifetime bars unless the state exercises its discretion. For this reason, the state law bars for battery, aggravated battery, and drug-related felony offenses exceed the federal five-year bars for the same offenses. Ind. Code §§ 31-27-4-1 – 16. No automatic bars exist for prospective adoptive parents. Ind. Code § 31-19-2-7.5.

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

No, for both foster care and adoption. Ind. Code §§ 31-17-4-1 - 16 and 31-19-2-7.5.

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

Yes, for foster care. Applicants are entitled to a written explanation of the reasons for denial and must be granted an administrative hearing upon written request made within 30 days of the notice. Ind. Code § 31-27-4-13(b) - (f). No automatic bars exist for prospective adoptive parents. Ind. Code § 31-19-2-7.5.

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?

With few exceptions, arrests less than one year old (with or without a disposition) will not be reported to noncriminal justice agencies. Ind. Code § 10-13-3-11. Convictions more than 15 years

old also will not be disclosed if the state police department limits access to an individual's criminal record (see question #8 in this section pertaining to expunging/sealing for more information.) Ind. Code § 35-38-5-5.

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

Noncriminal justice agencies and individuals can obtain records only if the subject of the request: (1) has applied for employment or a license; (2) is a candidate for public office or is a public official; (3) is being apprehended or placed under arrest by a law enforcement agency; (4) has charged criminal justice agencies with civil rights violations; (5) is the subject of a proceeding regarding setting a bond, plea bargaining, sentencing, or probation; (6) has volunteered services with a social services or nonprofit agency involving contact with children; (7) is employed by an entity seeking to contract with a public or private school and his/her duties will entail contact with children (or is volunteering to provide such services); (8) is being investigated for welfare fraud; (9) is sought for unpaid child support; (10) has been required to register as a sex and violent offender; or (11) has been convicted of certain sexual offenses.

Law enforcement agencies will also release records to the following noncriminal justice agencies: federally chartered or insured financial institutions; state and local governments for employment and licensing purposes; and certain segments of the securities industries. Ind. Code § 10-13-3-27.

3. What types of records can be disclosed to noncriminal justice agencies?

Noncriminal justice agencies and individuals have access to limited criminal history information, including arrests and dispositions for all felonies and Class A misdemeanors that the superintendent may designate. Arrests less than one year old (with or without a disposition) will not be generally be reported and convictions more than fifteen years old will generally not be disclosed if sealed. Ind. Code §§ 10-13-3-18, 10-13-3-11, and 35-38-5-5.

4. Are there penalties for violating limitations on dissemination?

Yes, any person who uses limited criminal history for any purpose not specified commits a Class A misdemeanor. Ind. Code 10-13-3-27(c).

5. Are state criminal records available on the internet?

Yes, records of currently incarcerated and discharged individuals are available at:
http://www.IN.gov/serv/indcorrection_ofs.

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

Yes, individuals can petition for expungement if no criminal charges are filed or a case is dismissed because of mistaken identity, no offense was committed or an absence of probable cause was found, provided there are no prior arrests other than minor traffic offenses and no proceedings are pending against the person. Ind. Code § 35-38-5-1.

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

Expunged arrests are not reported by the state criminal justice repository but remain in court records and any record made at the time of the arrest (such as a police blotter entry). Ind. Code § 35-38-5-3.

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

Yes, conviction records can be sealed if 15 years have passed since the date of discharge from probation, imprisonment or parole for the last conviction of a crime. Ind. Code § 35-38-5-5.

Unless the individual is subsequently arrested for a felony, juvenile records will be sealed when the subject reaches 22 years of age. Ind. Code § 10-13-4-13.

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

If sealed, conviction records more than 15 years old will remain available if the subject has volunteered to provide services to a social services or nonprofit agency involving contact with children or is being sought for unpaid child support. However, the state police department may not otherwise release the information to noncriminal justice agencies. Ind. Code § 35-38-5-5.

Sealed juvenile records will not be released to anyone other than the subject of the record. A court may not order release of the record unless the subject challenges its existence. Ind. Code § 10-13-4-13.

DRIVERS' LICENSES

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

Yes, the state suspends or revokes driver's licenses for drug-related offenses. Ind. Code Ann. §§ 9-30-4-6 and 35-48-4-15.

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

A range of controlled substance-related offenses. Possession, distribution, manufacture, cultivation, transfer, use, or sale of a controlled substance or counterfeit substance, or attempting or conspiring to possess, distribute, manufacture, cultivate, transfer, use, or sell a controlled substance or counterfeit substance. Ind. Code Ann. § 9-30-4-6(b)(6).

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

Six months to 2 years, depending on the order of the sentencing court. Ind. Code §§ 9-30-4-6 and 35-48-4-15.

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

Yes, restricted driving permits may be available for the sole purpose of driving to and from work if

the suspension would work an undue hardship and burden on the individual's family and dependents. Ind. Code § 9-24-15-2(2).

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?

Yes. An occupational license may not be denied, revoked or suspended solely because of conviction record. The conviction record may be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity. However, a license may be revoked or suspended if the holder has been convicted of certain drug-related offenses, including possession, manufacture and distribution, and must be revoked if the holder has been convicted of more serious drug-related offenses, including dealing in a controlled substance . Ind. Code § 25-1-1.1-1, 1.2 and 1.3.

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, individuals convicted of theft within the last ten years, rape, criminal deviate conduct, exploitation of an endangered adult, or failure to report battery, neglect, or exploitation of an endangered adult may not be employed by home health care agencies. The state relies on an F.B.I. national criminal history background check. Ind. Code § 16-27-2-5.

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

Only governor-granted pardons are available in Indiana. Ind. Const. art. 5 § 17. A five-year waiting period and evidence of rehabilitation are required. The effect of a pardon is largely to reduce the stigma associated with the conviction. A pardon does not expunge the conviction and the information remains available to prospective employers. In recent years, only an estimated 10-20 pardons have been granted annually. A pardon does not automatically lift occupational bars. Telephone interview with employee of the Indiana Parole Board, 317-232-5715, May 14, 2007.

PUBLIC ASSISTANCE AND FOOD STAMPS

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

No, Indiana adopted the federal drug-felon ban. However, the state opted out of the ban for individuals participating in re-entry drug courts. Ind. Code § 12-14-29-4.

PUBLIC HOUSING

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

Yes, the Indianapolis Housing Authority considers arrests.

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

Yes.

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

A 3-year bar exists for individuals evicted from public housing based upon drug-related criminal activity. However, that period may be shortened if the Housing Authority determines that the evicted household member successfully completed a drug rehabilitation program or the reasons relating to the eviction no longer exist (i.e., the evicted household member has died or is in prison).

VOTING

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

Yes, but not while individuals are incarcerated following a criminal conviction. Individuals may vote upon their release from incarceration and while on probation and parole. Ind. Code § 3-7-46-2.