

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > MARYLAND

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?

No, for foster care (only the federal bars). Yes, for adoption. Prospective adoptive parents may be barred by any crime if it creates serious concern for a child's safety. Md. Code Ann., Fam. Law § 5-561(c); Md. Regs. Code tit. 7, § 07.05.02.13(A) and § 07.02.12.10(F)(2)(c).

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

No, for foster care. Yes, the adoption statute is silent on the length of the bar for any crime so it operates as a lifetime bar unless the local Department of Social Services exercises its discretion. Md. Regs. Code tit. 7, § 07.02.12.10(F)(2)(c).

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

Yes, both applicants for foster care and adoption may be barred if other adult household members have any of the convictions. Md. Code Ann., Fam. Law § 5-561(c); Md. Regs. Code tit. 7, § 07.05.02.13(A) and 07.02.12.10(F)(2)(c).

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

Yes, for foster care. Yes, for adoption. The local Department of Social Services will consider whether the crime presents a "serious concern for the child's safety." Md. Regs. Code tit. 7, § 07.02.12.10(F)(2)(c).

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. Md. Code Ann., Pub. Saf. & Corr. §§ 12.15.01.03(B)(2), (3), and (8).

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

Noncriminal justice government agencies and private party petitioners, including nongovernmental employers, employment agencies, membership associations, landlords, including public housing

authorities, and duly designated agents. Md. Code Ann., Pub. Saf. & Corr. §§ 12.15.01.03(9) and 12.15.01.12-.13.

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

Depending upon the purpose of the dissemination, "conviction" and "nonconviction" criminal history record information (CHRI) may be disclosed. Conviction information includes findings of guilt, probations before judgment, and pleas of nolo contendere. Nonconviction information is defined as arrests without disposition after one year has elapsed from the date of arrest with no pending prosecution, charges wherein the prosecutor has elected not to begin criminal proceedings, proceedings that have been indefinitely postponed, acquittals, and dismissals. Md. Code Ann., Pub. Saf. & Corr. §§12.15.01.03(2) and (8). Noncriminal justice government agencies may obtain both conviction and nonconviction CHRI for certain employment purposes, security clearances, and for research, evaluation, and statistical analysis of criminal activity. Conviction CHRI is accessible if the dissemination is authorized by law and the law conditions a license, employment, or other right or privilege upon the possible existence of a conviction; "good moral character," "trustworthiness," and similar general requirements are sufficient to authorize dissemination if courts determine they include criminal conduct. Nonconviction CHRI is accessible if the dissemination is authorized by law and the law specifies consideration of nonconviction CHRI in licensing, employment, and other decisions affecting rights and privileges. Md. Code Ann., Pub. Saf. & Corr. § 12.15.01.12. Private party petitioners may obtain conviction CHRI if the subject may jeopardize individuals' life or safety, cause significant fiscal or nonfiscal loss or damage, or otherwise engage in criminal conduct. Nonconviction CHRI may be obtained if specifically authorized by law. Md. Code Ann., Pub. Saf. & Corr. § 12.15.01.13.

4. Are there penalties for violating limitations on dissemination?

No.

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)?

Individuals who are arrested and released without being charged may request expungement from law enforcement authority that may have a public record of that arrest. Unless the individual waives the right to a tort claim, the record may not expunged until the statute of limitations expires. Md. Code Ann., Crim. Proc. § 10-103(a) and (b). Arrests not leading to conviction including acquittals, dismissals, nolle proseques, indefinitely postponed trials, compromised cases, and probations before judgment (except for DUI's and aggravated DUI's) may also be expunged following a statutory waiting period or at any time based upon a showing of good cause. Md. Code Ann., Crim. Proc. § 10-105(a) and (c)(5). The court may also expunge a plea of nolle prosequi on its own motion. Md. Code Ann., Crim. Proc. § 10-104. The court shall grant expungement of the record following a juvenile court case that did not result in the filing of a delinquency petition or if there was a "facts-not-sustained" finding on the delinquency petition. Md. Code Ann., Crim. Proc.

§ 10-106(b) and (d).

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

“Expungement” means removal from public inspection by obliteration or removal to a secure area. Md. Code Ann., Crim. Proc. § 10-101. Criminal penalties exist for disseminating expunged records. Md. Code Ann., Crim. Proc. § 10-108(c)(2)(d). Occupational licensing authorities, employers (public and private) and educational institutions may not seek expunged records. Md. Code Ann., Crim. Proc. § 10-109.

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

No, for the most part. First-time nonviolent offenders who have been pardoned may apply for expungement following a statutory waiting period or at any time based upon a showing of good cause. Md. Code Ann., Crim. Proc. § 10-105(a)(8).

Individuals age 21 or over may request expungement of juvenile delinquency adjudications. Md. Code Ann., Crim. Proc. § 10-106(c).

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

“Expungement” means removal from public inspection by obliteration or removal to a secure area. Md. Code Ann., Crim. Proc. § 10-101. Criminal penalties exist for disseminating expunged records. Md. Code Ann., Crim. Proc. § 10-108(c)(2)(d). Occupational licensing authorities, employers (public and private) and educational institutions may not seek expunged records. Md. Code Ann., Crim. Proc. § 10-109.

DRIVERS' LICENSES

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

Maryland passed a resolution on 2/8/2001 in opposition to enacting a law called for by the federal statute in order to receive certain federal highway funds. However, the state does revoke and suspend drivers' licenses for drug-related offenses. Md. Code. Ann., Trans. §§ 16-205(a) and (b)(2).

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

Driving while impaired under the influence of alcohol and/or controlled substances. Md. Code. Ann., Trans. §§ 16-205(a) and (b)(2).

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

From revocation to suspension for sixty to one hundred and twenty days, depending upon the offense and the number of times s/he has been convicted. Md. Code. Ann., Trans. §§ 16-205(a) and (b)(2).

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

Yes, if individual participates in Ignition Interlock System Program. Md. Code. Ann., Trans. § 16-205(e).

EMPLOYMENT

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

Yes. However, employers or prospective employers may not require individuals to inspect or challenge their CHRI. Criminal penalties exist for violations. "Employer" is not defined in this chapter or section. Md. Code Ann., Crim. Proc. § 10-228.

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?

Yes. Home health providers must be licensed registered nurses. Individuals convicted of or who plead guilty or nolo contendere to felony offenses or misdemeanors of moral turpitude may be barred from registered nurse licensure. Individuals may appeal adverse licensing decisions. Md. Code Ann., Health & Men. §§ 10.09.04.03(A) and (B); Md. Code Ann., Health Occ. §§ 8-301, -316, -317, and -318.

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

No, only pardons. Md. Code Ann., Corr. Serv. § 7-601. To apply for a pardon, individuals convicted of misdemeanors must wait five years following completion of the sentence and those convicted of felonies must wait ten to twenty years, depending on the crime committed. Applicants must demonstrate rehabilitation in order to be considered for a pardon. A pardon may allow an individual to seal a conviction or a second-time felony offender to restore the right to vote. However, a pardon will not serve as evidence of rehabilitation or lift occupational bars. Telephone interview with Ms. Barthlowe of the Parole Commission, 410-585-3200, August 15, 2002.

PUBLIC ASSISTANCE AND FOOD STAMPS

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

Maryland has modified the drug felon ban. Individuals convicted of drug-related felony offenses must submit to drug testing and treatment for two years from release from incarceration or

completion of probation or parole, whichever is later, and, if convicted after July 1, 2000 will be ineligible for cash assistance and food stamps until one year has elapsed from the date of conviction. A positive test result or failure to comply with required testing or treatment could result in sanctions. Md. Regs. Code art. 88A, § 65A.

PUBLIC HOUSING

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

Yes, the Baltimore Public Housing Authority considers arrests not leading to conviction.

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

Yes, rehabilitation will be considered to lift bars disqualifying individuals based upon drug-related and violent crimes.

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

Because the length of the policy is unspecified, the bars for drug-related and violent crimes may operate as lifetime bars.

VOTING

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

Individuals convicted of theft or other infamous crimes may not vote while incarcerated or on probation or parole but may vote if pardoned, upon completion of the sentence following the first offense, or three years after completion of the sentence for subsequent offenses. Infamous crimes include treason, perjury, offenses involving deceit, fraud, or corruption, and other felony offenses. Individuals convicted of a second or subsequent violent crime may not vote. Md. Regs. Code art. 33, §§ 1-101(u) and 3-102 as amended by 2002 Maryland Laws H.B. 535.

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