

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > MINNESOTA

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 and adoption. Applicants must be barred for certain felony, gross misdemeanor, and misdemeanor convictions (including juvenile adjudications and convictions in other jurisdictions) for the attempt, conspiracy, or commission of other violent, sexual, theft- and weapons-related offenses. Minn. Stat. §§ 245A.04(3) and (3d).

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

Yes, for foster care and adoption. Lifetime bars exist for convictions for the attempt, conspiracy, or commission of other violent and sexual offenses, regardless of the level of the conviction; 15-year bars exist for felony convictions for the attempt, conspiracy, or commission of other violent, sexual, drug-, theft- and weapons-related offenses (this 15-year state law bar for drug-related offenses goes beyond the federal 5-year bar); 10-year bars exist for gross misdemeanor convictions for the attempt, conspiracy, or commission of other violent, sexual, theft- and weapons-related offenses; and 7-year bars exist for misdemeanor convictions for the attempt, conspiracy or commission of other violent, sexual, theft- or weapons-related offenses. Minn. Stat. § 245A.04(3d). These are the minimum disqualification periods and the commissioner may disqualify an individual at any time if s/he believes the applicant poses a risk of harm. Minn. Stat. § 245A.04(3b).

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

Yes, applicants for foster care and adoption may be barred if other household members age 13 years or older have any of the convictions that would disqualify the applicant if s/he were the one convicted. Applicants may seek reconsideration when the other household member no longer resides within the home. Minn. Stat. §§ 245A.04(3) and (3b).

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

Yes, for both foster care and adoption. Disqualified individuals may request reconsideration based upon inaccuracy of the record or lack of risk of harm. If the commissioner does not set aside the disqualification but the risk of harm may be minimized, the applicant may request a variance. Individuals convicted of certain offenses are ineligible for either reconsideration or a variance. Minn. Stat. §§ 245A.04(3b) and (3e).

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?

Conviction information will not be disseminated 15 years following discharge of the sentence. Minn. Stat. § 13.87(1)(b).

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

The public. Minn. Stat. § 13.87(1)(b).

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

Conviction records less than 15 years old. Minn. Stat. § 13.87(1)(b).

4. Are there penalties for violating limitations on dissemination?

No.

5. Are state criminal records available on the internet?

Yes, but only the records of people currently incarcerated or under supervision are available at <http://info.doc.state.mn.us/publicviewer/main.asp>.

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

Yes, actions resolved in favor of an individual (dismissals, acquittals) can be sealed. Minn. Stat. §§ 609A.02(3) and 299C.11

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

If sealed, an adult record is prohibited from being disclosed except under court order or statutory authority. Minn. Stat. § 609A.01.

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

No, for the most part. Minor marijuana misdemeanor convictions can be expunged. Minn. Stat. § 152.18(3).

In addition, conviction records of juveniles prosecuted as adults can be sealed following discharge. Minn. Stat. § 609A.02(2). Also, Minnesota courts have inherent authority to expunge records of convictions in very particular cases. *State of Minnesota v. C.A.*, 304 N.W.2d 353, 358 (Minn. Ct. App. 1981). If a petitioner's constitutional rights are infringed because of the retention of a conviction record, the court may order expungement. However, in doing so, the court must not overstep its authority and infringe upon the powers of the executive and legislative branches. *State of Minnesota v. T.M.B.*, 590 N.W.2d 809, 811 (Minn. Ct. App. 1999).

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

A person may deny the existence of minor marijuana conviction if the record is expunged. Minn. Stat. § 152.18(3).

If sealed, the record of a juvenile charged as an adult cannot be disclosed except under court order or statutory authority. Minn. Stat. § 609A.01. Case law does not address the effect of common law expungement.

DRIVERS' LICENSES

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

Yes, the state revokes driver's licenses for drug related offenses, including driving while impaired. Minn. Stat. §§ 152.0271, 169A.54(1) and 171.172.

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

Drug sale or possession while driving a vehicle and driving while impaired. Minn. Stat. §§ 152.0271 and 169A.54(1).

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

Thirty days to two years, depending upon time elapsed since prior offenses. Minn. Stat. §§ 152.0271, 169A.54(1) and 171.172.

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

Yes, a limited license may be issued for purposes of chemical dependency treatment, a family's needs, or education. Minn. Stat. § 171.30(1).

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?

Public employers and occupational licensing agencies may not disqualify an applicant unless there is a "direct" relationship between the occupation or license and conviction history and the individual has not shown evidence of sufficient rehabilitation. Minn. Stat. § 364.03.

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?

Applicants for home health care employment may be barred for 15 years or indefinitely for certain felony convictions, ten years for certain other felony convictions and certain gross misdemeanor convictions, or seven years for misdemeanor convictions (or an attempt or conspiracy to commit any of these offenses). Disqualified individuals may request reconsideration based upon inaccuracy of the record or lack of risk of harm. If the commissioner does not set aside the

disqualification but the risk of harm may be minimized, the applicant may request a variance. Minn. Stat. §§ 245A.04(3b), (3c) and (3e).

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

Only pardons, which do not automatically lift occupational bars. Minn. Const. art. 5, § 7.

PUBLIC ASSISTANCE AND FOOD STAMPS

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

Yes, Minnesota has modified the federal drug felon ban. Individuals convicted of a drug felony after July 1997 must agree to random drug testing and will be sanctioned for a positive test result. A recipient's cash benefits will be reduced 30% for failing a drug test the first time. After failing a drug test the second time, the participant is permanently ineligible for cash benefits but remains eligible for food stamps. For individuals receiving only or requesting only food stamps, a recipient's food stamps will be reduced 30% for failing a drug test the first time. After failing a drug test the second time, the participant is permanently ineligible for food stamps. Minn. Stat. § 256J.26.

PUBLIC HOUSING

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

Yes, the Public Housing Authority of Minneapolis considers arrests if there is a pattern of 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)?

The bar varies depending on the date and nature of the crime, and the length of the period of parole or probation.

VOTING

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

Individuals may vote upon restoration of civil rights, which is automatic upon completion of the sentence. Incarcerated individuals and those on probation and parole may not vote. Minn. Const. art. 7, § 1 and Minn. Stat. § 609.165.