

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > NORTH CAROLINA

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 both foster care and adoption. Applicants must submit to a criminal records check that includes a wide range of violent, sexual offenses, and drug-related offenses and crimes against children. N.C. Gen. Stat. §§ 131D-10.3A and 48-3-309.

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

No for both foster care and adoption because automatic bars do not exist.

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

Yes, for foster care applicants may be barred by the criminal charge(s) or conviction(s) of other household members. N.C. Gen. Stat. § 131D-10.3A(a). No, for adoption. N.C. Gen. Stat. § 48-3-309(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 a determination is made as to the applicant's fitness to have the responsibility for the "safety and well-being of children." N.C. Gen. Stat. §§ 131D-10.3A and 48-3-309.

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?

Criminal history record information is purged upon the subject's death or when s/he reaches 80 years of age. N.C. Admin. Code tit. 12, r. 4F.0502.

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

Occupational licensing authorities, noncriminal justice employers, and researchers may get access to records only after following strict procedures, including submission of a written request. Access will be granted only if the specific request is authorized by the Division of Criminal Information

(the central repository). N.C. Admin. Code tit. 12, r. 4F.0405-.0408.

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

Arrest and conviction information. N.C. Admin. Code tit. 12, r. 4E.0104(7).

4. Are there penalties for violating limitations on dissemination?

Yes, administrative and criminal. N.C. Admin. Code tit. 12, r. 4G.0102.

5. Are state criminal records available on the internet?

Yes, records dating from 1972 relating to incarcerated individuals, probationers and parolees and records dating from 1998 for released individuals are available at <http://webapps.doc.state.nc.us>

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

Arrests that did not lead to conviction may be expunged if the individual had not previously been convicted of a felony or granted expungement. Arrests that did not lead to conviction resulting from identity fraud may also be expunged. N.C. Gen. Stat. §§ 15A-146(a) and -147(a)-(b).

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

If expunged, the individual can deny the existence of the arrest. N.C. Gen. Stat. §§ 15A-146(a) and -147(a)-(b).

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

No, for the most part. Adult convictions resulting from identity fraud that are set aside may be expunged. N.C. Gen. Stat. § 15A-147(a)-(b).

After 18 months have elapsed without a subsequent delinquency adjudication or adult criminal conviction (other than a traffic violation), an individual who has reached 18 may petition for expungement of most juvenile delinquency adjudications. Juveniles adjudicated undisciplined may apply for expungement of the entire record upon reaching age 18. Acts that would constitute Class A, B1, B2, C, D, or E felony offenses if committed by an adult may not be expunged. N.C. Gen. Stat. §§ 7B-3200 and -3201.

After 2 years have elapsed without a subsequent criminal conviction, first offenders under age 18 not previously convicted of a misdemeanor or felony other than a traffic violation may apply for expungement of misdemeanor convictions (except for traffic offenses). First offenders under age 21 not previously convicted of a misdemeanor or felony other than a traffic violation may apply for expungement of certain misdemeanor alcohol possession offenses after 2 years have passed without a subsequent criminal conviction. N.C. Gen. Stat. § 15A-145(a)-(b).

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

If adult convictions resulting from identity fraud are expunged, the individual can deny the existence of the record. N.C. Gen. Stat. § 15A-147(a)-(b).

If juvenile records are expunged, the juvenile and his or her parent(s) can deny the existence of the record. N.C. Gen. Stat. §§ 7B-3201. If records of first offenders under age 18 are expunged, the individual can deny the existence of the conviction. N.C. Gen. Stat. § 15A-145(b).

DRIVERS' LICENSES

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

Yes, the state does revoke drivers' licenses for some drug-related offenses. N.C. Gen. Stat. §§ 20-17(a)(2) and -19(c1), (d) and (e).

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

Driving while impaired by alcohol or other impairing substance and use of a car during the commission of any felony, including drug-related felonies. N.C. Gen. Stat. §§ 20-17(a)(2) and -19(c1), (d) and (e).

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

One year for the first conviction, four years for a subsequent offense within three years, and permanently for two or more previous offenses when the most recent offense occurred within the past five years. N.C. Gen. Stat. § 20-19(c1), (d) and (e).

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

Limited driving privileges may be granted by the court for purposes of employment, maintenance of household, education, court-ordered treatment, assessment, or community-service, or emergency medical care. N.C. Gen. Stat. § 20-179.3(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?

Applicants convicted of "relevant" offenses may be disqualified, but are not absolutely barred,

from home health care employment. Relevant misdemeanor and felony offenses, including drug-related offenses and those that bear upon the applicant's ability to care for aged and disabled individuals, as well as other factors such as rehabilitation and employment records, must be considered in determining an applicant's fitness for employment. N.C. Gen. Stat. §§ 131D-40 and 131E-265.

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

Only pardons. N.C. Const. art. III, § 5(6). However, receipt of a pardon is rare. A pardon's effect upon employment is dependent on the individual employer because a pardon does not serve as evidence of rehabilitation or automatically lift occupational bars. Telephone Interview with Barry Jenkins, Governor's Clemency Administrator, North Carolina (August 14, 2002).

PUBLIC ASSISTANCE AND FOOD STAMPS

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

Individuals convicted of drug-related felony offenses may be eligible 6 months after release (or 6 months after date of conviction if not committed to custody) if no subsequent felony offenses and enrolled in or successfully completed required substance abuse treatment. N.C. Gen. Stat. § 108A-25.2.

PUBLIC HOUSING

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

Yes, the Raleigh Public Housing Authority will consider arrests for drug-related crimes and violent felonies.

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

Yes, the Raleigh Public Housing Authority will consider rehabilitation in its appeals process.

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

A 3-5 year bar exists for drug-related and violent arrests and convictions.

VOTING

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

Individuals convicted of felony offenses may vote following release from incarceration or completion of probation or parole or if pardoned by the Governor. Individuals incarcerated for felony offenses and those on felony probation or parole may not vote. N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. § 13-1 and 163-55(2).