

What's the Law

STATE PROFILES > PENNSYLVANIA

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, prospective foster and adoptive parents are barred by the commission or the attempt, solicitation, or conspiracy to commit other violent and sexual misdemeanor and felony offenses and must also exclude individuals based upon drug-related felony convictions within the 5 year period preceding application. The drug-felony bar goes further than the discretionary federal law because the state law is mandatory. 42 U.S.C. § 671(a)(20)(A), 23 Pa. Cons. Stat. Ann. § 6344(c) and 55 PA. Code § 3490.123(d)(2) .

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

The statute is silent on the length of the bars for both prospective foster and adoptive parents for the commission or the attempt, solicitation, or conspiracy to commit other violent and sexual misdemeanor and felony offenses, so they operate as lifetime bars. 23 Pa. Cons. Stat. Ann. § 6344(c) and 55 PA. Code § 3490.123(d)(2) .

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

In some cases, yes. Anyone over the age of 18 residing in the home must submit criminal history records every 24 months. 23 Pa. Cons. Stat. Ann. § 6344(d).

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

Yes. The state will consider the applicant's criminal record in addition to other criteria. 23 Pa. Cons. Stat. Ann. § 6344(d).

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?

Yes. Arrests more than three years old where no conviction occurred and there are no pending proceedings shall not be reported. 18 Pa. Cons. Stat. Ann. § 9121(b).

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

Non-criminal justice agencies and the public. 18 Pa. Cons. Stat. Ann. § 9121(b).

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

Arrest and conviction information except arrests more than three years old with no disposition or pending proceedings. 18 Pa. Cons. Stat. Ann. §§ 9102 and 9121.

4. Are there penalties for violating limitations on dissemination?

Yes, there are administrative and civil penalties. 18 Pa. Cons. Stat. Ann. §§ 9181 and 9183.

5. Are state criminal records available on the internet?

The records of persons currently incarcerated are available online at www.cor.state.pa.us.

Additionally, a person's criminal history may be found through "PATCH", the Pennsylvania Access to

Criminal History (www.psp.state.pa.us/patch/), a website maintained by the Pennsylvania State Police.

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

Arrests for which no disposition has been received or recorded within 18 months after the date of arrest may be expunged if the court certifies that no disposition is available and no action is pending. Such nonconviction data may also be expunged upon court order. 18 Pa. Cons. Stat. Ann. § 9122(a).

Certain drug-related charges that are withdrawn, dismissed, or for which the individual is acquitted may also be expunged pursuant to the Pennsylvania Controlled Substance, Drug, Device, and Cosmetic Act. Expungement is available as a matter of right only once. Individuals are thereafter required to petition for expungement. 35 Pa. Stat. Ann. § 780-119(a) and (c).

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

"Expunge" means to "remove information so that there is no trace or indication that such information existed." 18 Pa. Cons. Stat. Ann. § 9102.

Drug-related charges expunged pursuant to the Pennsylvania Controlled Substance, Drug, Device, and Cosmetic Act will not be treated as arrests for licensing or any other public or private purpose. No person shall be permitted to learn of an expunged record either directly or indirectly. 35 Pa. Stat. Ann. § 780-119(b).

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

In very limited circumstances, yes. With the exception of certain sex offenders, records of individuals 70 years of age who have not been arrested or prosecuted for 10 years following final release from confinement or supervision may be expunged. 18 Pa. Cons. Stat. Ann. § 9122(b). Juvenile records may be expunged if a complaint is unsubstantiated or dismissed, after final discharge following certain waiting periods ranging from 6 months to five years, or once the individual reaches age 18 after weighing individual's circumstances, adverse consequences of not expunging, and protection of public safety. 18 Pa. Cons. Stat. Ann. § 9123.

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

"Expunge" means to physically remove the records such that they never existed. 18 Pa. Cons. Stat. Ann. § 9102.

DRIVERS' LICENSES

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

Yes, Pennsylvania suspends drivers' licenses for drug-related offenses. 75 Pa. Cons. Stat. Ann. §§ 1532(b)(3) and (c)(1) and 3804.

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

Driving under the influence and a range of controlled substance offenses, including possession, sale, and delivery. 75 Pa. Cons. Stat. Ann. §§ 1532(b)(3) and (c)(1), 3802 and 3804.

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

Six months for first offense, 1 year for second offense, and 2 years for third and subsequent offenses. 75 Pa. Cons. Stat. Ann. §§ 1532(b)(3) and (c)(1).

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

Driver's licenses limited to occupational purposes are not available to individuals convicted of driving under the influence or other drug-related offenses until the period of suspension or revocation has been served. 75 Pa. Cons. Stat. Ann. § 1553(d)(6) and (10).

EMPLOYMENT

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

Presumably yes, however, felony and misdemeanor convictions may only be considered to the extent they relate to the applicant's suitability for the position. 18 PA. Cons. Stat. Ann. § 9125.

2. Can employers consider arrests not leading to conviction?

No, employers may only consider felony and misdemeanor convictions to the extent they relate to the applicant's suitability for the position. (See above). 18 PA. Const. Stat. Ann. § 9125.

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

Yes. Public employers may consider only job-related felony and misdemeanor convictions. 18 Pa. Cons. Stat. Ann. § 9125(b). Occupational licensing agencies may consider any felony but only job-related misdemeanor convictions. 18 Pa. Cons. Stat. Ann. § 9124(c). The applicant is entitled to a written explanation if denied employment based upon a criminal history or licensure based upon a conviction. 18 Pa. Cons. Stat. Ann. §§ 9124(d) and 9125(c).

4. Does the state have standards prohibiting employment discrimination by private employers based on a conviction record?

No. However, courts have indicated that it is against public policy to summarily reject a person for employment on the basis of his or her criminal record. See e.g. *EV v. Southeastern Pennsylvania Transp. Authority*, 297 F.Supp. 758 (E.D. Pa 2003).

5. Does the state restrict people with criminal records from employment in the field of home health care?

State law currently bars applicants with certain violent, sexual, drug- and theft-related felony offenses or two or more theft-related misdemeanor offenses from home health care employment.. 35 P.S. §§ 10225.103 and 10225.503. However, Pennsylvania's Commonwealth Court held this bar to be an unconstitutional violation of the right to work because it lacks a rational relationship to the government's purpose of providing protection to older adults, it operates as a lifetime bar, and no procedure exists to assess work history or evidence of rehabilitation. *Nixon v. Commonwealth*, 576 Pa. 385, 839 A.2d 277 (Pa. 2003).

Following the *Nixon* decision, the Pennsylvania Department of Aging issued an interim policy permitting ex-offenders to work in long term care facilities if they have five years of caregiving experience since conviction or release from incarceration, whichever is later. This policy can be found on the Department's website, at

<http://www.aging.state.pa.us/aging/lib/aging/NIXON-InterimPolicy.pdf>.

The interim policy is expected to remain in effect until the legislature passes a revised law to comply with the *Nixon* decision. More information about the interim policy can be found on the website of Community Legal Services at http://www.clsphila.org/EX-OFFENDERS/Q_AND_A_about_OAPSA.htm.

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

Only pardons. PA. Const. art. 4, § 9. In Pennsylvania, a pardon is the only way to restore civil rights. Two hundred and seventy pardons were granted between 1995 and 2001 to individuals with both felony and

misdemeanor convictions. Since 2001, 639 pardons have been granted, generally to first-offenders. 7/14/06 Letter from John Heaton, Esq., Pennsylvania Board of Pardons. A pardon does not serve as evidence of rehabilitation or lift employment bars. However, pardoned individuals may apply for expungement of the criminal record. Telephone Interview with Jennifer Glass, Administrative Assistant, Pennsylvania Board of Pardons (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?

Yes, Pennsylvania has opted out of the federal drug felon ban. Effective February 21, 2004, people convicted of felony drug offenses are eligible for cash or food stamps. The Department of Public Welfare is required to assess an applicant for drug and/or alcohol problems and, if the services are appropriate, available and necessary, refer the applicant for assessment and treatment. Act 44 of 2003.

PUBLIC HOUSING

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

Yes, the Philadelphia Public 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)?

The Philadelphia Housing Authority imposes a three year applications bar for persons evicted from their previous residence due to drug-related criminal activity. The bar can be overcome in individual circumstances upon proof of rehabilitation.

VOTING

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

Yes. However, individuals currently incarcerated for a felony, and individuals in alternative correctional facilities, such as halfway houses, on pre-release for a felony conviction who will not be released before the next election, may not vote. 25 Pa. Cons. Stat. Ann. § 1301(a); see *Mixon v. Commonwealth*, 566 Pa. 616, 783 A.2d 763 (2001), http://www.dos.state.pa.us/dos/lib/dos/20/convicted_felon_brochure_website.pdf.

FINANCIAL AID FOR COLLEGE

1. Are individuals with criminal records eligible to receive state financial aid for college?

In some cases, no. Persons convicted of a felony or a misdemeanor of moral turpitude (such as fraud or breach of trust) may be denied financial aid. This also applies to persons convicted of interfering with, disturbing or preventing, or attempting to interfere with, disturb or prevent the orderly operations of a college campus. 24 P.S. § 5158.2(a)(1), (3).