

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > VERMONT

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, though there are no automatic bars. Foster care licenses are required and may be denied based upon any criminal charge or conviction. Vt. Stat. Ann. tit. 33, § 3501(b); Vt. Code R. 13 162 007 § 038.1. Pre-adoptive evaluations include criminal records checks, but the statute does not create automatic bars for prospective adoptive parents. Vt. Stat. Ann. tit. 15A, § 1-113(b).

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

Yes. Though there is no automatic bar for either foster care or adoption, a criminal record may be considered regardless of how many years have passed since the charge or conviction. Vt. Stat. Ann. tit. 15A, § 1-113(b) and tit. 33, § 3501(b); Vt. Code R. 13 162 007 § 038.1.

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

Yes, for foster care. The discretionary disqualification of individuals with a criminal charge or conviction applies to all members of the household. Vt. Code R. 13 162 007 § 038. No, for adoption. Vt. Stat. Ann. tit. 15A, § 1-113.

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

Yes, for both foster care and adoption because there are no automatic bars. Moreover, prospective foster parents who are denied because of a criminal record may file an appeal with the Human Services Board within 30 days of the decision. Vt. Code R. 13 162 007 §§ 035.043.

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.

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

Non-criminal justice agencies may obtain criminal records whenever a statute, executive order, municipal charter or ordinance denies licensing or other civil rights to a person convicted of a crime, or to facilitate international travel. Vt. Code R. 28 050 001, §§ 6.30(b) and 6.40. In addition, employers may obtain a criminal conviction record after the applicant or volunteer has been offered a position that is conditioned on the record check, with the subject's written authorization, full name and date of birth. The employer also must have filed a user's agreement with the central repository. Vt. Stat. Ann. tit. 20, § 2056c(c)(1).

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

Noncriminal justice agencies may obtain Vermont criminal history record information and nonconviction data, which includes arrest and conviction data, as well as arrests without dispositions, information that proceedings have been indefinitely postponed, acquittals, and dismissals. Vt. Code R. 28 050 001, §§ 4.10(o) and 6.30(b). Employers may only obtain information regarding convictions. Qualified entities providing care and services to vulnerable classes (children, the elderly, and persons with disabilities) may obtain out-of-state criminal conviction records. Vt. Stat. Ann. tit. 20, § 2056c(b)(2).

4. Are there penalties for violating limitations on dissemination?

Yes. Unauthorized disclosure can result in civil penalties of up to \$5,000 per disclosure, Vt. Stat. Ann. tit. 20, § 2056c(g), and administrative sanctions, such as disciplinary proceedings and/or dismissal. Vt. Code R. 28 050 001, § 13.

5. Are state criminal records available on the internet?

Only the records of currently incarcerated individuals are available at:
<http://doc.vermont.gov/offender-locator/>

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

No.

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

N/A

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

No, for the most part, though criminal contempt convictions based on violations

of orders of protection may be expunged when two years have passed since the conviction. Vt. Stat. Ann. tit. 15 § 1108(e). Moreover, all samples in the DNA databank shall be removed and destroyed after a reversed conviction is nolle prossed, dismissed, or pardoned. Vt. Stat. Ann. tit. 20, § 1940(a).

Juvenile records, including delinquency adjudications or guilty pleas to or convictions of crimes, may be sealed after two years if the individual has a limited criminal history and rehabilitation has been attained to the court's satisfaction. Vt. Stat. Ann. tit. 33, § 5538. Youthful offender records, including the criminal case and juvenile proceeding, shall be sealed upon proof of rehabilitation and dismissal of the criminal case. Vt. Stat. Ann. Tit. 33, § 5529e.

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

Individuals may deny the existence of sealed juvenile records. Vt. Stat. Ann. tit. 33, § 5538(e). The statutes do not state whether Youthful Offenders may deny the existence of sealed records or whether individuals may deny the conviction after the DNA samples have been destroyed and removed.

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 drug-related offenses. Vt. Stat. Ann. tit. 23, §§ 1201, 1206, and 1208.

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

Operating vehicle under the influence of intoxicating liquor or other substance. Vt. Stat. Ann. tit. 23, §§ 1201 and 1206.

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

For the first conviction, the license will be suspended for 90 days and until the individual successfully completes and alcohol and driving education program, followed by an assessment to determine whether therapy is needed. If it is determined that therapy is needed, an individual's license will not be reinstated until therapy is satisfactorily completed or substantial progress is shown. An individual's license will be suspended for a year upon a first conviction if a fatality occurs and s/he must meet the same conditions for reinstatement. For a second conviction, the license will be suspended for 18 months and until the person has successfully completed an alcohol and driving rehabilitation program and either successfully completed or shown progress in therapy. For a third conviction, the license will be revoked for life. Vt. Stat. Ann. tit. 23, §§ 1206, 1208 and 1209a.

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

No.

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?

No. Owners and operators of certified home health agencies may obtain conviction records upon written request and a release signed by the applicant. Vt. Stat. Ann. tit. 33, § 6914; Vt. Code R. 13 110 004 § IV. However, the statute does not impose any employment restrictions.

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

Yes, only gubernatorial pardons. Vt. Const. ch. II, Exec. Dep't, § 20. Although the Governor's office received approximately 40-50 applications during 2007, it did not grant any pardons. A pardon's effect, particularly on employment, is undetermined. However, a key factor in determining whether there is a "compelling reason" to grant a pardon is employment and whether the past conviction prevents participation in a particular profession. When a pardon is granted, it is reported to the Vermont Crime Information Center, the central repository, and will thereafter appear on an individual's rap sheet. Telephone Interview with Cheryl Mowell, Administrative Assistant, Governor's Office, May 1, 2008, 802-828-3333.

PUBLIC ASSISTANCE AND FOOD STAMPS

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

Yes, Vermont has opted out of the federal drug felon ban

PUBLIC HOUSING

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

No, the Burlington Public Housing Authority (PHA) will not consider 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, the Burlington PHA will consider evidence of rehabilitation.

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

The Burlington PHA does not have an explicit bar for individuals with criminal convictions, other than the federally required bars for those people on the lifetime sex offender registry or convicted of methamphetamine production.

VOTING

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

Yes, all individuals are eligible to vote, including those who are incarcerated. Vt. Stat. Ann. tit. 28, § 807.

Copyright © 2004 by the **Legal Action Center**. All Rights Reserved.

Updated May 1, 2008