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# Statutory Limitations on Civil Rights of People with Criminal Records

## **Cover Page Footnote**

The Authors gratefully acknowledge Terri Stevens who conducted the majority of the legal research underlying this project.

# STATUTORY LIMITATIONS ON CIVIL RIGHTS OF PEOPLE WITH CRIMINAL RECORDS

*Debbie A. Mukamal\**  
*and Paul N. Samuels\*\**

A host of state and federal laws limit the civil rights of individuals with criminal records in a wide variety of settings. This Article describes statutory limitations in eight areas: ability to obtain employment, eligibility for public housing, eligibility for public assistance and food stamps, eligibility for student loans, access to records for non-criminal justice purposes, voting rights, drivers' license privileges, and rights to be foster and adoptive parents.<sup>1</sup>

These restrictions each have a significant impact on the lives of people with criminal records; together they create a formidable set of barriers to their ability to reenter and participate in society. The number of people with histories of arrest or conviction in the United States subject to limitations on their civil rights—often for the rest of their lives—is large and growing.<sup>2</sup> More than 600,000 people are released from state and federal prisons every year, a population equal to that of Baltimore or Boston.<sup>3</sup> The United

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1. The research for this project was conducted from the summer of 2001 through the fall of 2002. State laws could have been amended since the completion of the research. We researched relevant state and federal laws and regulations pertaining to civil legal barriers facing people with past criminal records, including how states exercised the latitude allowed by most of the federal laws. When statutes or regulations do not directly address a particular issue, we researched case law to determine if the courts provided further clarification. In the absence of statute, regulation, or case law, we spoke with officials from the relevant state agency to determine whether there was any applicable administrative policy.

2. PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, NCJ 195189, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 2001, at 2 (July 2002), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/p01.pdf> (last visited July 15, 2003).

3. Bureau of Justice Statistics, U.S. Dep't of Justice, Compendium of Federal Justice Statistics, *at* <http://www.ojp.usdoj.gov/bjs/fed.htm> (last visited July 15, 2003); Bureau of Justice Statistics, U.S. Dep't of Justice, Reentry Trends in the U.S.: Releases from State Prison, *available at* <http://www.ojp.usdoj.gov/bjs/reentry/releases.htm> (last visited July 15, 2003); Demographia, 2000 Census: US Municipalities Over 50,000: Ranked by 2000 Population, *available at* <http://www.demographia.com/db-uscity98.htm> (last visited July 15, 2003).

States Department of Justice (“DOJ”) estimates that nearly seven million people are under criminal justice supervision, incarcerated in state and federal prisons and local jails, on probation, or on parole.<sup>4</sup> Tens of millions more have a criminal history record on file with state or federal governments.<sup>5</sup> This means that about twenty-five percent of the nation’s adult population lives a substantial portion of their lives with a criminal record.<sup>6</sup>

Incarceration rates are significantly higher for young men of color.<sup>7</sup> DOJ found that eleven percent of all African-American males in their twenties and early thirties are in prison or jail, compared to four percent of Hispanics and 1.5 percent of whites.<sup>8</sup> Indeed, 560,000 young African-American men constitute more than a quarter of the nation’s entire incarcerated population.<sup>9</sup> African-Americans are at least seven times more likely than whites, and two times more likely than Hispanics, to be incarcerated.<sup>10</sup>

Government can and should have legitimate concerns about protecting the public safety from people who might do the public harm and about allowing employers and others to disqualify those whose criminal records demonstrate their unsuitability. At the same time, government also has an obligation to ensure fairness and opportunity for people who were arrested but never convicted or, if convicted, satisfied or are complying with their sentences, so they can obtain employment, housing, food, and other necessities of life.

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4. LAUREN E. GLAZE, U.S. DEP’T OF JUSTICE, NCJ 195669, BUREAU OF JUSTICE STATISTICS BULLETIN: PROBATION AND PAROLE IN THE UNITED STATES, 2001, at 1 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus01.pdf> (last visited July 15, 2003); HARRISON & BECK, *supra* note 2, at 1.

5. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, USE AND MANAGEMENT OF CRIMINAL HISTORY RECORD INFORMATION: A COMPREHENSIVE REPORT 25 (1993), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cchuse.pdf> (last visited July 15, 2003). The survey found that 47.3 million individuals had state criminal histories; the FBI also maintains criminal history information on about twenty-five million individuals, with no data available about how many are duplicative of state files. *Id.*

6. The adult (eighteen and over) population of the U.S. in 1992 was 188,868,000. U.S. CENSUS BUREAU, RESIDENT POPULATION ESTIMATES OF THE UNITED STATES BY AGE AND SEX: APRIL 1, 1990 TO NOVEMBER 1, 1999 (Dec. 1999), available at <http://eire.census.gov/popest/archives/national/nation2/intfile2-1.txt> (last visited July 15, 2003).

7. ALLEN J. BECK, U.S. DEP’T OF JUSTICE, NCJ 1816643, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISON AND JAIL INMATES AT MIDYEAR 1999, at 1 (Apr. 2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim99.pdf> (last visited July 15, 2003).

8. *Id.* at 1.

9. *Id.* at 1, 10.

10. *Id.* at 10.

## I. ABILITY TO OBTAIN EMPLOYMENT

Legal standards for employment of people with criminal records are predominately created by state laws. While there is no explicit federal law, the Equal Employment Opportunity Commission ("EEOC") has ruled that employment policies excluding people based upon arrests or convictions unrelated to the job sought may violate Title VII of the Civil Rights Act of 1964 because of their disproportionate impact on minorities, who are arrested and convicted at a significantly higher rate than their percentage in the population.<sup>11</sup>

Under the EEOC's Title VII guidelines, employers may not exclude people based upon arrests that did not lead to conviction unless there is a business justification.<sup>12</sup> A "business justification" must show that the applicant engaged in the conduct for which he or she was arrested, and that the conduct is both job-related and fairly recent. The EEOC guidance requires employers to give applicants a chance to explain their arrest records before they are disqualified from employment.<sup>13</sup>

Similarly, the EEOC has stated that an employer only may exclude a person because of a criminal conviction if there is a business necessity.<sup>14</sup> To establish business necessity, the employer must consider: 1) the nature and gravity of the offense(s); 2) the time that has elapsed since the conviction and/or completion of the sentence; and 3) the nature of the job held or sought.<sup>15</sup> For example, business necessity exists where the applicant has a fairly recent conviction for a serious offense that is job-related.

Thirty-eight states permit all employers (public and private) and occupational licensing agencies to inquire about and rely upon ar-

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11. EQUAL EMPLOYMENT OPPORTUNITY COMM'N POLICY GUIDANCE NO: N-915, POLICY STATEMENT ON THE USE OF STATISTICS IN CHARGES INVOLVING THE EXCLUSION OF INDIVIDUALS WITH CONVICTION RECORDS FROM EMPLOYMENT (July 29, 1987) [hereinafter EXCLUSION OF INDIVIDUALS]; EQUAL EMPLOYMENT OPPORTUNITY COMM'N POLICY GUIDANCE NO: N-915, POLICY STATEMENT ON THE ISSUE OF CONVICTION RECORDS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Feb. 4, 1987).

12. EQUAL EMPLOYMENT OPPORTUNITY COMM'N POLICY GUIDANCE NB915-061, POLICY STATEMENT ON THE CONSIDERATION OF ARREST RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* (1982), at 2 (Sept. 7, 1990).

13. *Id.* at 9 n.23.

14. Equal Employment Opportunity Comm'n, Policy Guidance No. N-915, *supra* note 11, at 1.

15. *Id.*

rests that did not result in a conviction. Nine states—California,<sup>16</sup> Hawaii,<sup>17</sup> Massachusetts,<sup>18</sup> Michigan,<sup>19</sup> New York,<sup>20</sup> Ohio,<sup>21</sup> Rhode Island,<sup>22</sup> Utah,<sup>23</sup> and Wisconsin<sup>24</sup>—prohibit any use by public and private employers and occupational licensing agencies of arrests that never led to conviction. Arkansas<sup>25</sup> and New Mexico<sup>26</sup> restrict both public employers and occupational licensing agencies from considering arrests and New Hampshire<sup>27</sup> prohibits only public employers. All three states allow private employers to use arrests that did not lead to conviction.

Thirty-one states have no standards governing the relevance of conviction records of applicants for occupational licensure, nineteen do.<sup>28</sup> Thirty-six states have no standards governing public employers' consideration of applicants' criminal records; fourteen do.<sup>29</sup> Forty-five states have no standards governing private em-

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16. CAL. CODE REGS. tit. 2, § 7287.4(d)(1)(A)-(B) (2003); CAL. LAB. CODE §432.7(f)(1)-(2) (West 1989); CAL. PENAL CODE § 13203 (West 1982).

17. HAW. REV. STAT. §§ 378-2(1)(A), 831-3.2(e) (1993).

18. MASS. REGS. CODE tit. 804, §§ 3.01-3.02 (2003).

19. MICH. COMP. LAWS § 37.2205a(1) (2001).

20. N.Y. EXEC. LAW § 296(16) (McKinney 2003).

21. OHIO REV. CODE ANN. § 2953.55(A) (West 2002).

22. R.I. GEN. LAWS §§ 28-5-6(7), -7(7) (2003).

23. UTAH ADMIN. CODE 606-2-2(U), (V) (2003).

24. WIS. STAT. §§ 111.325, 111.335(1)(a)-(b) (2002).

25. ARK. CODE ANN. § 17-1-103(c)(1), (i) (Michie 2003).

26. N.M. STAT. ANN. §§ 28-2-2, -3(b)(1) (Michie 2000).

27. N.H. REV. STAT. ANN. § 21-I:51 (2003).

28. ARIZ. REV. STAT. § 13-904(E) (2001); ARK. CODE ANN. § 17-1-103(c)-(e), (i); COLO. REV. STAT. ANN. § 24-5-101 (2002); CONN. GEN. STAT. § 46a-80(d) (1995); HAW. REV. STAT. § 831-3.1 (1993); IND. CODE § 25-1-1.1-1 (1993); KY. REV. STAT. ANN. § 335B.020 (Banks-Baldwin 2001); MICH. COMP. LAWS § 338.43(1) (1992); MINN. STAT. § 364.03 (1991); MO. REV. STAT. § 314.200 (2001); MONT. CODE ANN. § 37-1-203 (2001); N.J. STAT. ANN. §§ 2A:168A-2, 2C:51-2 (West 1985); N.M. STAT. ANN. §§ 28-2-3(b)(2), 28-2-4, 28-2-6, 23-2-5; N.Y. CORRECT. LAW §§ 750-754 (McKinney 1987); N.D. CENT. CODE § 12.1-33-02.1 (1997); OR. REV. STAT. § 670.280 (1991); 18 PA. CONS. STAT. §§ 9124 (c)-(d), 9125(c) (2000); WASH. REV. CODE §§ 9.96A.020, 9.96A.030, 9.96A.060 (1998); WIS. STAT. §§ 111.325, 111.335(1)(c).

29. ARIZ. REV. STAT. § 13-904(E); COLO. REV. STAT. ANN. § 24-5-101; CONN. GEN. STAT. §§ 31-51i, 46a-80(d); FLA. STAT. ch. 112.011, 775.16 (2002); HAW. REV. STAT. §§ 378-2.5, 831-3.1; KAN. STAT. ANN. § 22-4710(f) (1995); KY. REV. STAT. ANN. § 335B.020; LA. REV. STAT. ANN. § 37:2950 (West 2000); MINN. STAT. § 364.03; N.M. STAT. ANN. §§ 28-2-3(b)(2), -2-4, -2-5, -2-6; N.Y. CORRECT. LAW §§ 750-54; 18 PA. CONS. STAT. §§ 9124(d), 9125(b), 9125(c); WASH. REV. CODE §§ 9.96A.020, 9.96A.060, 9.96A.030; WIS. STAT. §§ 111.325, .335(1)(c).

ployers; five do: Hawaii,<sup>30</sup> Kansas,<sup>31</sup> New York,<sup>32</sup> Pennsylvania,<sup>33</sup> and Wisconsin.<sup>34</sup>

Five states—Arizona,<sup>35</sup> California,<sup>36</sup> Nevada,<sup>37</sup> New Jersey,<sup>38</sup> and New York<sup>39</sup>—offer certificates of rehabilitation that lift or limit the restrictions imposed on people with criminal records in obtaining occupational licenses or employment.

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30. HAW. REV. STAT. § 378-2.5.

31. KAN. STAT. ANN. § 22-4710(f).

32. N.Y. CORRECT. LAW §§ 750-754.

33. 18 PA. CONS. STAT. § 9125(b).

34. WIS. STAT. §§ 111.325, 111.335(1)(c).

35. Restoration of civil rights is available to individuals convicted of two or more felonies upon completion of probation or discharge from prison. The date of the order and the fact that the individual's civil rights have been restored will appear on the individual's record. ARIZ. REV. STAT. §§ 13-905 (1999), 13-906 (2001). The civil rights of first-time felony offenders are restored automatically upon completion of criminal sentence. *Id.* § 13-912. Once an individual's civil rights have been restored, public employment or occupational licensure may be denied on the basis of a conviction only if a "reasonable relationship" exists between the conviction and employment or license sought. *Id.* § 13-904(E).

36. A certificate of rehabilitation that declares that an individual convicted of a felony is rehabilitated and may relieve an individual of registering as a sex offender. Civil liberties, however, are generally only restored by both a certificate and a pardon. In addition, while a certificate alone generally cannot remove occupational bars, it is a prerequisite to obtaining a pardon, which may relieve such a bar. CAL. PENAL CODE §§ 4852.01(a)-(d), .17 (West 2000); see Office of the Governor, State of California, The California Board of Prison Terms: How to Apply for a Pardon, available at <http://www.bpt.ca.gov/pardon.html> (last visited July 15, 2003).

37. An individual may apply for restoration of his civil rights once he has served his sentence and been released from prison. NEV. REV. STAT. § 213.157 (2002). In addition, an individual may apply for restoration of civil rights six months after being granted an honorable discharge from probation or parole. *Id.* §§ 213.157, 176A.860. A person who has been honorably discharged from probation and had his civil rights restored may vote, hold office, serve as a juror, and deny the existence of the conviction to most employers. *Id.* § 176A.850. In addition, an individual may apply for a pardon which may or may not include restoration of civil rights. *Id.* § 213.090.

38. If not incompatible with the welfare of society, the parole board may grant certificates of good conduct to assist an individual's rehabilitation that preclude licensing authorities from disqualifying or discriminating against an applicant based upon a criminal conviction. To be eligible, the applicant must be previously paroled by the board and two years must have elapsed since any similar application was denied. N.J. ADMIN. CODE tit. 10A, §§ 70-8.1 to 70-8.6 (2002). Restoration of rights and pardons are also available. N.J. STAT. ANN. § 2A:167.5 (West 1985).

39. Certificates of relief from disabilities and certificates of good conduct are offered and automatically lift occupational bars. Certificates of relief from disabilities are available to individuals with any number of misdemeanor convictions but no more than one felony conviction. Separate certificates are necessary for each conviction. Temporary certificates are available while on probation or parole, and become permanent unless revoked. N.Y. CORRECT. LAW § 700-03 (McKinney Supp. 2003).

## II. ELIGIBILITY FOR PUBLIC HOUSING

In determining eligibility for Section 8 and other federally assisted housing, the Housing Opportunity Program Extension Act of 1996<sup>40</sup> and the Quality Housing and Work Responsibility Act of 1998<sup>41</sup> require local housing authorities to permanently bar individuals convicted of certain sex offenses and methamphetamine production on public housing premises.<sup>42</sup> The federal laws also give local public housing agencies discretion to deny eligibility to virtually anyone with a criminal background, including: 1) people who have been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity for three years; and 2) anyone who has engaged in any drug-related criminal activity, any violent criminal activity, and other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises.<sup>43</sup> Local housing agencies have the authority to: 1) identify which crimes make an applicant ineligible for public housing; 2) decide whether they will consider arrests not leading to conviction in eviction proceedings; 3) decide how long to deny housing assistance to people with criminal records; and 4) determine what, if anything, qualifies as rehabilitation for purposes of lifting the bars to public housing. Thus, local authorities have wide discretion in determining how restrictive, or inclusive, their policies regarding admission of people with criminal records will be.

## III. ELIGIBILITY FOR PUBLIC ASSISTANCE AND FOOD STAMPS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>44</sup> permanently prohibits from receiving federally-funded cash assistance (“Temporary Assistance for Needy Families” or “TANF”) and food stamps anyone convicted of a drug-related felony after the enactment of the statute.<sup>45</sup> This lifetime ban applies only to drug-related felonies, not to any other types of convictions.<sup>46</sup> The federal law allows states to pass legislation “opting out” of or modifying this ban. Nineteen states have adopted

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40. Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (1996).

41. Veteran Affairs and HUD Appropriations Act, Pub. L. No. 105-276, tit. V, 112 Stat. 2461 (1998).

42. 42 U.S.C. § 13663(a) (2003); 42 C.F.R. § 960.204(a)(3)-(4) (2003).

43. 42 U.S.C. § 13661; 24 C.F.R. § 960.204 (2002).

44. Pub. L. No. 104-193, 110 Stat. 2105 (2002)

45. 21 U.S.C. § 862a(a) (1999).

46. *Id.* § 862a(d).



the federal drug felon ban in its entirety.<sup>47</sup> Eleven states “opted out” entirely; the lifetime ban on cash assistance and food stamps for drug felony convictions does not apply in those states.<sup>48</sup> Eight states modified the ban by requiring recipients with drug felony convictions to seek or participate in alcohol and drug treatment to keep their eligibility.<sup>49</sup> One of those states, Connecticut,<sup>50</sup> also restores eligibility once a person has completed his or her criminal justice sentence. Ten states modified the ban in other ways, providing benefits to those who submit to drug tests, wait a certain period of time, were convicted of possession offenses only, or meet other conditions.<sup>51</sup> Two states, Illinois<sup>52</sup> and Massachusetts,<sup>53</sup> eliminated

47. ALASKA STAT. § 47.05.040 (Michie 2002); ARIZ. REV. STAT. § 13-3418 (2001); CAL. WELF. & INST. CODE §§ 11251.3, 18901.7 (West 1998); GA. CODE ANN. § 49-4-184 (2002); MISS. CODE ANN. § 43-17-1(1) (1999); MO. REV. STAT. §§ 205.965, 208.040 (1996); MONT. CODE ANN. § 53-4-231(3)(j) (2001); N.D. CENT. CODE § 50-09-02(10) (1999); 62 PA. CONS. STAT. ANN. § 432(1) (1996); S.D. CODIFIED LAWS § 28-12-1 (Michie 1999); VA. CODE ANN. §§ 63.1-25.2, 63.1-86.1 (repealed) (Michie 2002); ALA. ADMIN. CODE r. 660-2-2.36(3)(g), -4-1-.03(1)(m) (2002); CODE DEL. REGS. § 40.800.005.2027; INDIANA CLIENT ELIGIBILITY SYSTEM (ICES) PROGRAM POLICY MANUAL, ch. 3200, § 3210.25.20, *available at* <http://www.in.gov/fssa/families/pdf/3200.pdf> (last visited July 15, 2003); KAN. ADMIN. REGS. 30-4-50(d); NEB. ADMIN. CODE § 022.03 (2002); N.D. ADMIN. CODE § 75-02-11-02 (1995); S.D. ADMIN. R. 67:10:01:13 (2002); 40 TEX. ADMIN. CODE §§ 3.103, 3.501(b)(3)(x) (West 2002); W. VA. INCOME MAINTENANCE MANUAL §§ 9.1,A,2,f (2002), 9.21,A,3 (1999); WYO. DEP’T OF FAMILY SERVICES RULES § 6(a)(ii)(G)(IV); WYO. DEP’T OF FAMILY SERV. CHILD CARE FOOD STAMPS, MED. AND POWER POL’Y MANUAL, ch. 507.

48. IDAHO CODE § 56-202(g) (Michie 2002); ME. REV. STAT. ANN. tit. 22, §§ 3104(14) (West 1992), 3762(17) (West 2002); N.H. REV. STAT. ANN. § 167:81-a (2002); N.Y. SOC. SERV. LAW § 95 (McKinney 1992); OHIO REV. CODE ANN., §§ 5101.821, 5101.84 (West 2000); 1997 Okla. Sess. Law Serv. 414 (West); OR. REV. STAT. § 411.119 (1987); UTAH CODE ANN. § 35A-3-311(2) (2001); N.M. ADMIN. CODE tit. 8, § 102.410.1-102.410.18 (2002); MICH. FAMILY INDEPENDENCE AGENCY, CASELOAD REDUCTION REPORT: TWO-PARENT FAMILY CASELOAD-FY 2001 (2000), *available at* [http://www.michigan.gov/documents/FIA-TANF-2001twopar\\_14219\\_7.pdf](http://www.michigan.gov/documents/FIA-TANF-2001twopar_14219_7.pdf) (last visited July 15, 2003). Vermont has opted out of the federal drug felon ban in budget language annually.

49. COLO. REV. STAT. ANN. § 26-2-706(3) (West 2002); CONN. GEN. STAT. § 17b-112d (2002); HAW. REV. STAT. § 346-53.3 (1993); IOWA CODE § 239B.5(3) (2000); KY. REV. STAT. ANN. § 205.2005 (Michie 1998); NEV. REV. STAT. § 422.29316 (1997); S.C. CODE ANN. §§ 43-5-1190, 114-1300(A)(C) (Law. Co-op. 1985); TENN. COMP. R. & REGS. 1240-1-1-.02(10)(b)(8), 1240-1-2-.02 (2002); 2002 Tenn. Pub. Acts 264 (West 2003).

50. CONN. GEN. STAT. § 17b-112d (2003).

51. ARK. CODE ANN. § 20-76-409(b) (Michie 2003); FLA. STAT. ch. 414.095(1) (2002); LA. REV. STAT. ANN. § 46:233.2 (West 1999); MINN. STAT. § 256J.26 (1998); N.J. STAT. ANN. §§ 44:10-48(b)(7), 44:10-48.1(a), (c) (West 1993); N.J. ADMIN. CODE tit. 10, § 90-2.8(a)(8)(ii) (2003); N.C. GEN. STAT. § 108A-25.2 (2001); R.I. GEN. LAWS §§ 40-5.1-8, 40-6-8 (1997); WASH. REV. CODE § 74.08.025(4) (2001); WIS. STAT. §§ 49.148(4), 49.79(5) (2002); MD. REGS. CODE 88A, § 65A (2003).

52. 305 ILL. COMP. STAT. 5/1-10 (2002).

the ban on food stamps and modified, but did not eliminate, the ban on cash assistance.

#### IV. ELIGIBILITY FOR EDUCATIONAL ASSISTANCE

The Higher Education Act of 1998 makes students convicted of drug-related offenses ineligible for any grant, loan, or work assistance.<sup>54</sup> States cannot discard or alter this restriction. No other class of offense results in the automatic denial of federal financial aid eligibility.<sup>55</sup> The suspension begins on the date of the conviction.<sup>56</sup> The restriction applies even if the person is not receiving assistance at the time of the conviction. A person with a conviction record must wait until the end of the ineligibility period before being eligible to apply for student assistance.<sup>57</sup>

The length of the suspension depends on the type and frequency of the offense or offenses.<sup>58</sup> For first-time convictions of possession of a controlled substance, ineligibility lasts one year.<sup>59</sup> A second offense for drug possession results in two years of ineligibility and a third offense leads to indefinite ineligibility.<sup>60</sup> First-time convictions for sale of a controlled substance lead to two years of ineligibility.<sup>61</sup> The period of ineligibility is indefinite for subsequent offenses involving drug sale.<sup>62</sup> A student may resume eligibility before the end of the suspension period if he or she satisfactorily completes a drug rehabilitation program that complies with criteria set out by the Secretary of Education and includes two unannounced drug tests, or if the conviction is reversed, set aside, or otherwise struck down.<sup>63</sup>

#### V. AVAILABILITY OF CRIMINAL RECORDS FOR EMPLOYMENT, HOUSING, AND NON-CRIMINAL JUSTICE PURPOSES

Making information concerning arrest and conviction records widely available to the public, including employers, landlords, and

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53. MASS. REGS. CODE tit. 106, § 701 (2002).

54. 20 U.S.C. § 1091(r)(1) (1999).

55. *Id.* § 1091.

56. *Id.*

57. As of the submission of this Article, Congress is considering proposals to repeal or limit this provision but has taken no action.

58. 20 U.S.C. § 1091(r)(1).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* § 1091(r)(2).

housing agencies, and others with whom the subjects of those records may come in contact, is not per se a restriction of the subjects' civil rights. But, because easy access to that information for those who want to use it when they make decisions about applicants can often result in denial of the job, housing, or other opportunity or benefit sought, its availability has a significant, if indirect, impact on the ability of people with criminal records to reenter society successfully.

Most states allow or require "sealing" or "expungement" of juvenile records, and sometimes adult criminal records if the arrest did not result in conviction or the conviction is old or not considered serious. Forty states allow the expungement/sealing of records of some or all arrests that did not lead to conviction.<sup>64</sup> Of these, twenty-nine states permit the subject of the expunged/sealed records to deny their existence if asked about them on employment applications or similar forms.<sup>65</sup> Ten states—Iowa, Maine, Michi-

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64. ALASKA STAT. § 12.62.180 (Michie 2002); ALA. CODE § 41-9-625 (2000); ARK. CODE ANN. §§ 16-90-906, 16-93-303, 5-65-103, 5-65-108 (Michie 2002); ARIZ. REV. STAT. § 13-4051 (2001); CAL. PENAL CODE § 851.8(a), (i), (n) (West 1985); CAL. HEALTH & SAFETY CODE § 11361.5(b)(1)-(4) (West 1991); COLO. REV. STAT. ANN. § 24-72-308 (West 2002); CONN. GEN. STAT. § 54-142(a) (2001); DEL. CODE. ANN. tit. 11, § 4372 (2001); FLA. STAT. ch. 943.045, 943.0585(1), (2), 943.059(1), (2) (2002); GA. CODE ANN. §§ 17-8-6 (1997), 35-3-37(d)(3), (7), (9) (2000); HAW. REV. STAT. § 831-3.2 (1993); IDAHO CODE § 67-3004(10) (Michie 1997); 20 ILL. COMP. STAT. § 2630/5 (2003); IND. CODE § 35-38-5-1 (1998); KAN. STAT. ANN. § 22-2410(c) (1995); KY. REV. STAT. ANN. §§ 431.076, 510.300 (Michie 1999); LA. REV. STAT. ANN. §§ 44:9(A)-(C) (1982); MASS. GEN. LAWS ANN. ch. 276, § 100C (West 2002); MD. CODE ANN., CRIM. PROC. §§ 10-103(a)-(b), 10-104, 10-105(a), (c)(5) (2001); MINN. STAT. §§ 609A.02(3) (2003), 299C.11 (1999); MO. REV. STAT. §§ 610.105, 610.120, 610.122 (2000); MISS. CODE ANN. § 99-15-57 (1999); N.C. GEN. STAT. §§ 15A-146(a), 15A-147(a)-(b) (2001); N.H. REV. STAT. ANN. § 651:5(II) (1996); N.J. STAT. ANN. § 2C:52-6 (West 1995); NEV. REV. STAT. 179.255, 179A.160 (2001); N.Y. CRIM. PROC. LAW § 160.50(1) (McKinney 1992); OHIO REV. CODE ANN. § 2953.52(A)(1) (Anderson 2002); OKLA. STAT. ANN. tit. 22, § 18(1)-(4) (1992); OR. REV. STAT. § 137.225 (1)(b), (6), (7) (1991); 18 PA. CONS. STAT. ANN. § 9122(a) (2000); 35 PA. CONS. STAT. ANN. § 780-119(a), (c) (2003); R.I. GEN. LAWS §§ 12-1-12.1(a)-(c), 12-1.3-1(2) (2002); S.C. CODE ANN. § 17-1-40 (Law. Co-op. 2003); TENN. CODE ANN. § 40-32-101(a)(1), (3) (1997); TEX. CODE CRIM. PROC. ANN. art. 55.01 (Vernon 2002 & Supp. 2003); UTAH CODE ANN. § 77-18-10(1) (1999); VA. CODE ANN. § 19.2-392.2(A) (Michie 2000); WASH. REV. CODE § 10.97.060 (2002); WIS. STAT. § 165.84(1) (1998); W. VA. CODE ANN. § 15-2-24(h) (Michie 2000).

65. ALASKA STAT. § 12.62.180(d); ARK. CODE ANN. §§ 16-90-902, 903(a); CAL. CODE REGS. tit. 2 § 7287.4(B) (2003); CAL. HEALTH & SAFETY CODE § 11361.5(c); CAL. LABOR CODE § 432.7(f)(1), (2) (West 1989); CAL. PENAL CODE §§ 667(d)(3) (West 1999), 851.8(f) (West 1985), 13203 (West 2000); COLO. REV. STAT. ANN. § 24-72-308(1)(f)(I); DEL. CODE. ANN. tit. 11, § 4374(e); FLA. STAT. ANN. ch. 943.0585(4), 943.059(4) (2002); HAW. REV. STAT. § 831-3.2; 775 ILL. COMP. STAT. § 5/2-103(A); KAN. STAT. ANN. § 22-2410(f); KY. REV. STAT. ANN. §§ 431.076, 510.300; LA. REV. STAT. ANN. § 44:9(I); MASS. GEN. LAWS ch. 276, § 100C; MD. CODE ANN., CRIM.

gan, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Vermont, and Wyoming do not permit people to expunge or seal arrest records.

Sixteen states provide for the expungement/sealing of some adult conviction records.<sup>66</sup> Thirteen of these states allow the subject to deny the existence of expunged/sealed conviction records if asked about them.<sup>67</sup>

Criminal record information is increasingly available on the Internet. While a number of private companies make this information available for a fee, some states post it on their official websites. Currently, twenty-eight states allow Internet access to criminal records.<sup>68</sup> Fourteen of these states make all conviction records available on the Internet.<sup>69</sup> Six states make available on

PROC. § 10-109; MISS. CODE ANN. § 99-15-57; MO. REV. STAT. § 610.110; N.C. GEN. STAT. §§ 15A-146(a), 15A-147(a)-(b); N.H. REV. STAT. ANN. § 651:5(X)(c); N.J. STAT. ANN. § 2C:52-27; NEV. REV. STAT. 179.285 (2001); N.Y. CRIM. PROC. LAW § 160.60; OHIO REV. CODE ANN. § 2953.55(A); OKLA. STAT. ANN. tit. 22, § 19(D); OR. REV. STAT. § 137.225 (3); 35 PA. CONS. STAT. ANN. § 780-119(b); R.I. GEN. LAWS § 12-1.3-4(b); UTAH CODE ANN. § 77-18-10(7); VA. CODE ANN. § 19.2-392.4 (2000); W. VA. CODE § 61-11-25(a),(e), (d) (2000); *see* *Cislo v. City of Shelton*, 692 A.2d 1255, 1256 (Conn. 1997).

66. ARIZ. REV. STAT. § 13-907; CAL. HEALTH & SAFETY CODE § 11361.5(b)(1)-(4); CAL. PENAL CODE § 1203.4(a), (b); IND. CODE § 35-38-5-5; KY. REV. STAT. ANN. § 431.078; MASS. GEN. LAWS ANN. ch. 276, §§ 100A, 127, 152; MICH. COMP. LAWS § 780.621 (1998); MISS. CODE ANN. § 99-19-71; N.H. REV. STAT. ANN. §§ 651:5(III)-(IV); N.J. STAT. ANN. §§ 2C:52-2, 52-3, 52-4 (West 1995); NEV. REV. STAT. 179.245, 179.259, 453.3365; OHIO REV. CODE ANN. §§ 2953.36, 2953.55(A), 2953.33(B); OKLA. STAT. tit. 22, § 18(6)(7) (1992); OR. REV. STAT. § 137.225 (1)(a), (6); R.I. GEN. LAWS §§ 3-8-12, 12-1.3-2 (2002); UTAH CODE ANN. § 77-18-12(1); WASH. REV. CODE §§ 9.94A.637, 9.94A.640.

67. KY. REV. STAT. ANN. § 431.078(5); MASS. GEN. LAWS ch. 276, § 100A; MICH. COMP. LAWS § 780.622; MISS. CODE ANN. § 99-19-71; N.H. REV. STAT. ANN. § 651:5(X)(c); N.J. STAT. ANN. § 2C:52-27; NEV. REV. STAT. 179.285, 62.370; OHIO REV. CODE ANN. § 2953.32(C)(2); OKLA. STAT. tit. 22, § 19(D); OR. REV. STAT. § 137.225 (3); R.I. GEN. LAWS § 12-1.3-4(a), (b); UTAH CODE ANN. § 77-18-13(3); WASH. REV. CODE § 9.94A.640(3).

68. Many states have created registries of people convicted of certain sex offenses in order to comply with federal mandates. We did not include those registries in our research.

69. Colo. Bureau of Investigation, Records Check, *at* <https://www.cbirecordscheck.com/Index.asp> (last visited July 15, 2003); Fla. Dep't of Corr., Offender Search, *at* <http://www6.myflorida.com/inmateinfo/inmateinfomenu.asp> (last visited July 15, 2003); Ga. Dep't of Corr., Offender Query, *at* <http://www.dcor.state.ga.us/Offender-Query/asp/offenderQueryForm.asp?Institution=> (last visited July 15, 2003); Ind. Dep't of Corr., Offender Search, *at* [http://www.IN.gov/serv/indcorrection\\_ofs](http://www.IN.gov/serv/indcorrection_ofs) (last visited July 15, 2003); Kan. Dep't of Corr., *at* [http://docnet.dc.state.ks.us/site\\_map.htm](http://docnet.dc.state.ks.us/site_map.htm) (last visited July 15, 2003); Mich. Dep't of Corr., Offender Tracking Information System (OTIS), *at* <http://www.state.mi.us/mdoc/asp/otis2.html> (last visited July 15, 2003); Mont. Dep't of Corr., Convicted Offender Network, *at* <http://app.discoveringmontana.com/walkthrough/conweb/> (last visited July 15, 2003); N.C. Dep't of Corr.—In-

the Internet records of those who are currently serving criminal justice sentences, whether in prison or not, including people on probation and parole.<sup>70</sup> Eight states place only the records of those who are currently incarcerated on the Internet.<sup>71</sup> Unlike other means of obtaining criminal records which require a fee, information on the Internet is usually available free of charge.

## VI. VOTING RIGHTS

States have absolute power to decide whether someone with a criminal record may vote. No state permanently disenfranchises everyone convicted of any crime. One state—Kentucky<sup>72</sup>—has a lifetime bar for all felony convictions, and four others prohibit vot-

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mate Releases, at <http://webapps.doc.state.nc.us/release> (last visited July 15, 2003); N.C. Dep't of Corr., Public Access Information System, at [http://webapps.doc.state.nc.us/apps/offender\\_servlets/search1](http://webapps.doc.state.nc.us/apps/offender_servlets/search1) (last visited July 15, 2003); Neb. Dep't of Corr. Servs., Inmate Population Search, at [http://www1.nexnet.state.ne.us:9380/ne/html/Corrections/COR\\_input.html](http://www1.nexnet.state.ne.us:9380/ne/html/Corrections/COR_input.html) (last visited July 15, 2003); N.Y. State Dep't of Corr. Servs., Inmate Population Information Search, at <http://nys-docs.docs.state.ny.us/kinqw00> (last visited July 15, 2003); Ohio Dep't of Rehab. & Corr., Offender Search, at <http://www.drc.state.oh.us/search2.htm> (last visited July 15, 2003); S.C. Law Enforcement Div., SLED State Criminal Records Check, at <http://www.sled.state.sc.us/SLED/default.asp?Category=SLEDCRC&Service=CRC> (last visited July 15, 2003); Wash., at <https://WTCHCOMMERCE.WSP.WA.GOV/WTCHCOMMERCE/query.asp>; Wis. Criminal History Record Check, at <http://wi-recordcheck.org/> (last visited July 15, 2003).

70. Ill. Dep't of Corr., Inmate Search, at <http://www.idoc.state.il.us/subsections/search/default.shtml> (last visited July 15, 2003); La. Dep't of Pub. Safety & Corr., Corr. Servs., Parole Board Dockets, at <http://www.corrections.state.la.us/Offices/paroleboard/paroledockets.htm> (last visited July 15, 2003); Dep't of Corr., State of Minn., Offender Locator, at <http://info.doc.state.mn.us/publicviewer/main.asp> (last visited July 15, 2003); N.J. Dep't of Corr., at <http://www.state.nj.us/corrections> (last visited July 15, 2003); Okla. Pardon & Parole Bd., at <http://www.ppb.state.ok.us/> (last visited July 15, 2003); Tex. Dep't of Pub. Safety, Crime Records Service, at <http://records.txdps.state.tx.us/> (last visited July 15, 2003).

71. Ala. Dep't of Corr., Inmate Search, at <http://www.doc.state.al.us/inmsearch.asp> (last visited July 15, 2003); Ark. Dep't of Corr., Inmate Population Information Search, at [http://www.state.ar.us/doc/inmate\\_info](http://www.state.ar.us/doc/inmate_info) (last visited July 15, 2003); Ariz. Dep't of Corr., Inmate Datasearch, at <http://www.adc.state.az.us/ISearch.htm> (last visited July 15, 2003); Iowa Dep't of Corr., at <http://www.doc.state.ia.us> (last visited July 15, 2003); Commonwealth of Ky. Dep't of Corr., Kentucky Offender Online Lookup System, at <http://www.cor.state.ky.us/~kool/ioffsrch.asp> (last visited July 15, 2003); Nev. Dep't of Corr., Inmate Search Form, at <http://www.ndoc.state.nv.us/ncis/lookup.php?btnReset=TRUE> (last visited July 15, 2003); Pa. Dep't of Corr., Inmate Locator, at <http://www.cor.state.pa.us/locator.asp> (last visited July 15, 2003); Vt. Dep't of Corr., Offender Locator, at <http://www.doc.state.vt.us:81/cgi-bin/public.cgi> (last visited July 15, 2003).

72. KY. CONST. § 145.

ing by those convicted of certain classes of crimes.<sup>73</sup> Seven states have a lifetime bar that may be lifted with restoration of civil rights.<sup>74</sup> Seventeen states bar people from voting while they are completing a criminal justice sentence.<sup>75</sup> Seven states restrict people who are incarcerated or serving parole sentences from voting.<sup>76</sup> Twelve states disenfranchise only people who are incarcerated.<sup>77</sup> Only two states—Vermont<sup>78</sup> and Maine<sup>79</sup>—place no restrictions on the right to vote for people who have been convicted.

## VII. RIGHTS TO BE ADOPTIVE AND FOSTER PARENTS

The Federal Adoption and Safe Families Act of 1997 (“ASFA”)<sup>80</sup> bars people with certain convictions from being foster

73. DEL. CONST. art. V, § 2; MISS. CONST. art. V, § 124, art. XII, §§ 241, 253; DEL. CODE ANN. tit. 15, § 1701 (2002); MD. REGS. CODE tit. 33, § .05.06.05(c) (2003); MISS. CODE ANN. §§ 99-19-35, -37(1) (1991); TENN. CODE ANN. §§ 40-29-105(2) (1997).

74. ALA. CONST. art. VIII, § 182; VA. CONST. art. 2, § 1; ALA. CODE § 17-3-10 (1995); IOWA CODE § 48A.6(1) (1999); NEB. REV. STAT. §§ 29-112 (1995) 32-313(1) (1998); NEV. REV. STAT. 213.157, 176A.860 (2001); WASH. REV. CODE §§ 9.94A.637, 885(2) (2003); WYO. STAT. ANN. §§ 6-10-106, 7-13-105, 7-13-801 (Michie 2001); *Williams v. Lide*, 628 So. 2d 531, 533 (Ala. 1993).

75. ARIZ. CONST. art. VII, § 2(c); ARK. CONST. amend. 51, § 11(a)(4); FLA. CONST. art. VI, § 4; GA. CONST. art. II, § 1; KAN. CONST. art. V, § 2; LA. CONST. art. I, §§ 10, 20; MINN. CONST. art. VII, § 1; MO. CONST. art. VIII, § 2; N.C. CONST. art. VI, § 2(3); R.I. CONST. art. II, § 1; TEX. CONST. art. VI, § 1; ARIZ. REV. STAT. §§ 13-904, 13-905, 13-906, 13-912, 16-101 (2001); FLA. STAT. ch. 940.05 (2002); GA. CODE ANN. § 21-2-216 (2002); IDAHO CODE § 18-310(1), (2) (1997); KAN. STAT. ANN. § 21-4615(2003); MINN. STAT. § 609.165 (2003); MO. REV. STAT. §§ 115.133, 561.026 (1997); N.J. STAT. ANN. §§ 2C:51-3, 19:4-1(6)-(8) (West 1995); N.C. GEN. STAT. §§ 13-1, 163-55(2) (2001); OKLA. STAT. ANN. tit. 26, § 4-120(4) (1997); 25 PA. CONS. STAT. ANN. § 2602(14) (1994), 25 PA. CONS. STAT. 1301 (2003) (repealing 25 PA. CONS. STAT. § 961.501(a)); S.C. CODE ANN. § 7-5-120(b)(3) (Law. Co-op. 1985); TEX. ELEC. CODE ANN. § 11.002(4) (Vernon Supp. 2002).

76. CAL. CONST. art. II, § 4; ALASKA STAT. §§ 12.55.185, 15.05.030, 33.30.241 (Michie 2002); COLO. REV. STAT. § 1-2-103(4) (2000); CONN. GEN. STAT. § 9-46(a) (2002); N.Y. ELEC. LAW § 5-106(2) (McKinney 1998); W. VA. CODE § 3-2-2(b) (2002); WIS. STAT. §§ 6.03(1)(b) (1996), 304.078 (1999); *Flood v. Riggs*, 145 Cal. Rptr. 573, 583 (Ct. App. 1978).

77. ILL. CONST. Art. 3, § 2; MASS. CONST. art. III; S.D. CONST. art. VII, § 2; HAW. REV. STAT. § 831-2(a) (1993); IND. CODE § 3-7-46-2 (1997); 730 ILL. COMP. STAT. § 5/5-5-5; MICH. COMP. LAWS §§ 168.492, 168.758 (1989); MONT. CODE ANN. § 13-1-111(2) (2001); N.H. REV. STAT. ANN. § 607-A:2(1)(a) (1986); N.D. CENT. CODE § 12.1-33-01(1)(a) (1997); OHIO REV. CODE ANN. §§ 2961.01, 5120:1-1-14(A), (B) (West 2000); OR. REV. STAT. § 137.281(1), (3)(d) (1991); S.D. CODIFIED LAWS § 23A-27-35 (Michie 1998); UTAH CODE ANN. §§ 20A-2-101(2), 20A-2-101.5(2) (1998).

78. VT. STAT. ANN. tit. 28, § 807 (2000).

79. ME. REV. STAT. ANN. tit. 21-A, § 112(14) (West 1993).

80. Adoption of Children—Foster Care, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

or adoptive parents unless states elect otherwise.<sup>81</sup> In order to receive federal social security payments for foster and adoptive parenthood, a state must perform criminal record checks for prospective parents, and bar for life people convicted of felonies for child abuse or neglect, spousal abuse, a crime against children (including child pornography), or violent crime, including rape, sexual assault, or homicide (but not other types of physical assault or battery), and bar for five years people convicted of physical assault, battery, or drug-related felonies.<sup>82</sup>

States may elect to make these provisions inapplicable and substitute their own standards. The governor can do so by notifying the Secretary of Health and Human Services in writing or the state legislature may pass a law.<sup>83</sup>

Thirty-five states elected to substitute their own eligibility standards that include individualized determinations about an applicant's suitability to be an adoptive or foster parent based upon his or her criminal record.<sup>84</sup> Fifteen states have implemented ASFA's flat bars for people with criminal records becoming adoptive or foster parents: Alaska,<sup>85</sup> Colorado,<sup>86</sup> Connecticut,<sup>87</sup> Idaho,<sup>88</sup> Illi-

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81. 42 U.S.C. §§ 671(a)(20)(A), (B)(2003).

82. *Id.* § 671(a)(20)(A).

83. *Id.* § 671(a)(20)(B).

84. ARK. CODE ANN. § 9-28-409(e)(2) (Michie 2002); CAL. HEALTH & SAFETY CODE § 1522(g) (West 1991); CAL. FAM. CODE § 222.40 (West 1994); FLA. STAT. §§ 435.04, 435.07 (2002); GA. CODE ANN. §§ 19-8-16, 49-5-69.1 (2002); HAW. REV. STAT. §§ 346-19.6, -19.7 (1993); IOWA CODE § 237.8(2); IND. CODE §§ 12-17.4-4-11, 31-19-2-7.5 (2002); KY. REV. STAT. ANN. §§ 199.462(1), 199.510 (Michie 1998); LA. REV. STAT. ANN. § 46:282(A) (West 1999); MICH. COMP. LAWS § 710.23f(5)(i) (2002); MICH. ADMIN. CODE r. 400.9025(1) (2002); MINN. STAT. § 245A.04(3b), (3e) (1998); MO. REV. STAT. §§ 210.486, 453.070 (1996); MONT. CODE ANN. §§ 42-3-203, 52-2-622 (2001); N.C. GEN. STAT. §§ 131D-10.3(a), 48-3-309 (2001); N.D. CENT. CODE §§ 50-11.3-02 (1999); NEB. REV. STAT. § 43-107(1)(b)(vii) (1998); N.Y. SOC. SERV. LAW § 378-a(2)(e) (McKinney 1992); OHIO REV. CODE ANN. § 2151.864 (West 2002); OKLA. STAT. tit. 10, § 7003-8.1(D)-(E) (2003); R.I. GEN. LAWS §§ 14-1-34 (2002) 15-7-11 (2000); TENN. CODE ANN. § 71-3-507(f) (1995); UTAH CODE ANN. § 78-30-3.5(2)(a) (2002); VT. STAT. ANN. tit. 15A, § 1-113 (2002); WASH. REV. CODE. §§ 74.15.030(2)(b) (2000), 26.33.190(1)-(3) (1997); W. VA. CODE §§ 48-22-701(b)(5), 49-2B-8(c) (2001); WYO. STAT. ANN. §§ 1-22-104, 14-4-104 (2001); ALA. ADMIN. CODE r. 660-5-22-.03(6) (repealed Aug. 12, 2002); ARIZ. ADMIN. CODE R6-5-5819(E), R6-5-6606 (2002); CODE DEL. REGS. § 45.300.011.6, 7; MASS. REGS. CODE tit. 102, § 14.11 (2002); MAINE CHILD & FAMILY SERVICES MANUAL, §VIII, subsec. A, p. 5 (2000); NEB. ADMIN. CODE tit. 474, ch. 6, §003.25A (2003); NEV. ADMIN. CODE ch.127 § 240(3) (2003), ch. 424 § 195(3) (2002); OR. ADMIN. R. 413-120-0450(4)-(6), (9) (2002); TEX. ADMIN. CODE tit. 40, § 700.1504 (West 2002); VT. CODE R. 13 162 007 §§ 035, 043 (2002); WIS. ADMIN. CODE § HFS 12.06 (2002).

85. Alaska requires individual determinations for applicants to be adoptive parents. The worker responsible for the home study will assess the prospective adoptive parent's capacity to parent children, but a criminal record is an absolute bar except in

nois,<sup>89</sup> Kansas,<sup>90</sup> Maryland,<sup>91</sup> Mississippi,<sup>92</sup> New Hampshire,<sup>93</sup> New Jersey,<sup>94</sup> New Mexico,<sup>95</sup> Pennsylvania,<sup>96</sup> South Carolina,<sup>97</sup> South Dakota,<sup>98</sup> and Virginia.<sup>99</sup>

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emergency situations. ALASKA ADMIN. CODE tit. 7, §§ 56.660(c), 56.210 (2003). Individualized determinations are not required for applicants to be foster parents. ALASKA STAT. § 47.35.023(b) (Michie 2002).

86. COLO. REV. STAT. §§ 19-5-207(2.5), -210(4) (2001), 26-6-104(8)(b), -107(1)(a)(I)(A) (2002).

87. CONN. AGENCIES REGS. § 17a-150-110 (2003).

88. Idaho does not require individualized determinations for either foster care or adoptive parent applicants for the specified violent, sexual, drug-related, theft, and fraud convictions. For other crimes, however, the Department of Health and Welfare may grant exemptions after considering the following factors: the severity or nature of the crime; time elapsed since the incident; number of incident(s); surrounding circumstances of the incident; relationship of the incident child or adult care; evidence of rehabilitation; receipt of a pardon; and falsification or omission of information on forms submitted to the Department. IDAHO ADMIN. CODE § 16.05.06.033 (2002).

89. 20 ILL. COMP. STAT. 505/7 (2001); 750 ILL. COMP. STAT. 50/6 (2003).

90. Kansas does not require individualized determinations for foster care applicants. KAN. STAT. ANN. § 65-516 (2002). Convictions are considered but does not automatically bar prospective adoptive parents. *Id.* § 59-2132.

91. Maryland does not require individualized determinations for foster care parents. The local Department of Social Services will consider whether an adoptive parent applicant's crime presents a "serious concern for the child's safety." MD. REGS. CODE tit. 7, § .02.12.10(F)(2)(C) (2003).

92. Mississippi does not make individualized determinations about a foster care parent applicant's eligibility based on the criminal record. MISS. CODE ANN. § 43-15-6(3) (1999). Individualized determinations are required for adoptive parent applicants because no automatic bars exist. Miss. Reg. 11-111-001 (2002).

93. For foster care, when the applicant is subject of a founded complaint of child abuse or neglect or has been convicted of a felony, crime against a child, or a violent or sexually related crime against an adult, New Hampshire does not make individual determinations. N.H. CODE ADMIN. R. ANN. He-C 6446.27 (2003). Because no automatic bars exist, individualized determinations are required for applicants to be adoptive parents. N.H. REV. STAT. ANN. §§ 170-B:14 (2001).

94. N.J. STAT. ANN. § 30:4C-26.8(d) (West 1997).

95. N.M. ADMIN. CODE tit. 8, §§ 26.2.11(C); 27.2.16(B) (2002).

96. 23 PA. CONS. STAT. § 6344(c) (2001); 55 PA. CODE § 3490.123(d)(2) (2003).

97. South Carolina does not require individualized determinations for foster care applicants, but does require them for adoptive parents as no automatic bars exist. S.C. CODE ANN. § 20-7-1642 (Law. Co-op. 1985); S.C. CODE ANN. REGS. 114-4980(E) (2002).

98. South Dakota does not require individualized determinations for foster care applicants, but does require them for adoptive parent applicants. S.D. CODIFIED LAWS § 26-6-14.10 (Michie 1999); S.D. ADMIN R. 67:14:32:11.01 (2002).

99. VA. CODE ANN. § 63.2-1721 (Michie 2002).



### VIII. DRIVER'S LICENSE PRIVILEGES

In the Department of Transportation and Related Agencies Appropriation Act of 1992,<sup>100</sup> Congress required the withholding of ten percent of certain federal highway funds unless a state either: 1) enacts and enforces a law revoking or suspending for at least six months the driver's license of an individual who is convicted of any drug offense; or 2) the governor submits written certification to the Secretary of the Department of Transportation that he or she opposes the revocation/suspension, and that the state legislature has adopted a resolution expressing its opposition to this law.<sup>101</sup> This law defines "drug offense" as any criminal offense involving the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance (the possession of which is prohibited by the Controlled Substances Act) or the operation of a motor vehicle under the influence of such a substance.<sup>102</sup>

Thus, unless states formally express their opposition to the federal law, they must suspend or revoke for at least six months the driver's license of anyone convicted of a drug offense.<sup>103</sup> If they do express their opposition, they are free to limit suspension or revocation only to offenses involving driving or other more limited categories of offenses. Twenty-three states automatically suspend or revoke drivers' licenses for conviction of some or all drug offenses, in addition to driving-related offenses;<sup>104</sup> the other twenty-seven states do not.

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100. Dep't of Transp. & Related Agencies Appropriations Act, Pub. L. No. 102-388, 106 Stat. 1520 (1992).

101. 23 U.S.C. § 159 (2003).

102. *Id.* § 159(c)(2).

103. *Id.* § 159(a)(3).

104. ALA. CODE §§ 13A-12-290-291 (1993); ARK. CODE ANN. § 27-16-915(b)(1)(A) (1993); COLO. REV. STAT. §§ 42-2-125(1)(b), (1)(k)(I) (2002); DEL. CODE ANN. tit. 21, § 4177K (1995); FLA. STAT. § 322.055 (2002); GA. CODE ANN. § 40-5-75 (2003); IOWA CODE §§ 901.5(10) (1994 & Supp. 2003), 321.212(1)(d) (1997); IND. CODE §§ 9-30-4-6, 35-48-4-15 (1992 & Supp. 2002); LA. REV. STAT. ANN. § 32:430 (2002); MASS. REGS. CODE tit. 540, § 20.03; MICH. COMP. LAWS § 257.319e(2) (2002); MO. STAT. §§ 577.500, 577.510 (2003); MISS. CODE ANN. §§ 63-11-30, 63-1-71(1) (1999); N.J. STAT. ANN. § 2C:35-16 (West 1995); N.Y. VEH. & TRAF. LAW §§ 510(2)(b)(v) (McKinney 1996), 1192(1)-(4) (McKinney 1996); OHIO REV. CODE ANN. § 4507.169(A) (2001); OKLA. STAT. tit. 47, §§ 6-205(2), (6) (2003); 75 PA. CONS. STAT. §§ 1532(b)(3), (c)(1) (2002); S.C. CODE ANN. §§ 56-1-745(A), 56-5-2951(A) (2002); TEX. TRANSP. CODE ANN. §§ 521.341, 521.372 (1999); UTAH CODE ANN. § 53-3-220 (2002); VA. CODE ANN. §§ 18.2-271, 46.2-390.1 (2002); WIS. STAT. § 961.50 (2003); WYO. STAT. ANN. § 31-7-128 (2002).

Of the twenty-three states that automatically revoke or suspend drivers' licenses for conviction of some or all drug offenses in addition to driving-related offenses, seventeen impose a six-month penalty for the first offense.<sup>105</sup> Four states—Colorado,<sup>106</sup> Delaware,<sup>107</sup> Massachusetts,<sup>108</sup> and South Carolina<sup>109</sup>—revoke or suspend drivers' licenses for longer than six months for non-driving drug convictions. Two states—Louisiana<sup>110</sup> and Missouri<sup>111</sup>—have shorter periods of revocation or suspension for the first non-driving drug offense.

### IX. PUBLIC POLICY RECOMMENDATIONS

This catalogue of the myriad of state and federal law restrictions on the civil rights of people with criminal records demonstrates concretely how difficult it is for people who were arrested or convicted to reenter society successfully. They face substantial roadblocks as they seek to find sustainable employment, secure housing, rely on public assistance during the process of becoming “job ready,” or overcoming drug and alcohol dependence, become or remain a foster or adoptive parent, drive a car, obtain a student loan, or vote.

The following are the steps we believe the federal government and states must make so that the process of reentry is more just and easier to accomplish. None require any compromise in the public's safety reduction in the ability of employers and others to

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105. Ohio, which imposes a penalty of six months and twenty-one days, was included in this category. ALA. CODE § 13A-12-290 (2003); ARK. CODE ANN. § 27-16-915(b)(1)(A) (2002); FLA. STAT. ch. 322.055 (2002); GA. CODE ANN. § 40-5-75(a) (2002); IOWA CODE §§ 901.5(10), 321.212(1)(d); IND. CODE ANN. 35-48-4-15; MICH. COMP. LAWS § 257.319e(2) (2002); MISS. CODE ANN. § 63-1-71(1) (1999); N.J. STAT. ANN. § 2C:35-16 (West 2001); N.Y. VEH. & TRAF. LAW § 510(2)(b)(v); OHIO REV. CODE ANN. § 4507.169(A); OKLA. STAT. ANN. tit. 47, §§ 6-205.1(A), (B) (2003); 75 PA. CONS. STAT. § 1532(b)(3), (c)(1); TEX. TRANSP. CODE ANN. §§ 521.312, 521.341, 521.372; UTAH CODE ANN. § 53-3-220(1)(c); VA. CODE ANN. §§ 18.2-271(A)-(C), 46.2-390.1(A); WIS. STAT. § 961.50.

106. COLO. REV. STAT. § 42-2-125(2).

107. DEL. CODE ANN. tit. 21, § 4177K (2002); tit. 16, § 4764(b)(1).

108. MASS. REGS. CODE tit. 540, § 20.03.

109. S.C. CODE ANN. §§ 56-1-745(A) (2002), 56-5-2951(K) (2002) (requiring that revocation and suspension periods be imposed for six months for violations involving hashish or marijuana and one year for convictions involving other controlled substances).

110. LA. REV. STAT. ANN. § 32:430 (West 2003) (imposing suspension or revocation periods of ninety days to one year).

111. MO. REV. STAT. § 577.500(5) (2003) (suspending licenses for ninety days for the first offense).

screen out those whose criminal records render them a threat to safety or otherwise unsuitable.

State and federal laws should forbid employers, landlords, government agencies, and others from considering arrests that did not lead to conviction when making decisions about a person's eligibility.

- State and federal laws should require individualized determinations about suitability based on the relationship between the person's conviction history and the opportunity or benefit sought, and prohibit blanket, across-the-board bans based upon a conviction.
- The federal government should repeal laws that require or allow denial of opportunities or benefits to entire classes of people with criminal records without regard to the individual's suitability.
- States should support the successful reentry of qualified people with criminal records by providing a way they can demonstrate rehabilitation and lift statutory bars to jobs or licenses that result from a conviction history.
- Congress should eliminate the ban on federally-funded cash assistance and food stamps for people convicted of drug felonies. In the absence of federal change, states should pass legislation to opt out of the federal ban, or at a minimum, restrict it so those people who seek or participate in treatment, complete their criminal justice sentences, or meet other criteria remain eligible.
- The Higher Education Act of 1998's ban on student loans for people with drug-related convictions should be repealed.
- States should enact legislation to provide for the automatic sealing or expungement of any arrest that does not lead to conviction for non-criminal justice purposes, and also seal or expunge for non-criminal justice purposes conviction records after the passage of an appropriate amount of time.
- State agencies should not make conviction information (other than what is required to be available in sex offender registries) publicly accessible on the Internet.
- The right to vote should not be linked in any manner to a person's involvement with the criminal justice system.
- All local public housing agencies should adopt admission and eviction policies that balance public safety and the needs of people with criminal records to find safe, affordable housing by: 1) making individual determinations about an applicant's eligibility for public housing; 2) adopting reasonable time frames for ineligibility for applicants with conviction

records; and 3) considering only conviction records, not arrests that did not lead to conviction.

- To protect the best interests of children, the federal Adoption and Safe Families Act and corresponding state laws should be amended to require state agencies to make individualized determinations about an applicant's suitability to be an adoptive or foster parent that focus on applicant's current fitness for parenting.
- The federal highway law and any state laws that adopted its provisions should be amended so that revocation or suspension of drivers' licenses is not automatically imposed upon everyone convicted of a drug-related offense unrelated to the individual's ability to drive safely.

### CONCLUSION

In keeping with our national heritage and ideals, the United States must ensure that people with criminal records are given a fair chance to succeed in becoming productive members of society, judged on their merits and not on stereotypes or prejudice.