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“We change laws.”

Federal Collateral Consequences for Marijuana Convictions

Collateral consequences are restrictions placed on those convicted of a crime that affect the actions of the person after they are released from prison. These consequences range from the inability to apply for certain jobs or licenses to the denial of certain government benefits or the inability to participate in other activities available to those without a criminal conviction. Governments aren't the only institutions that continue to punish after a criminal sentence has been served. Many corporations require applicants to disclose any criminal history, and some will outright prohibit hiring an employee due to a previous conviction.

Given that marijuana consumption is a victimless activity that most Americans believe should be legal — and that about half of Americans have engaged in — collateral consequences for marijuana are especially pernicious. Under federal law, it is a misdemeanor to possess marijuana for a first or second offense involving any quantity. This is punishable by up to one year in jail and a \$1,000 fine for first-time offenders and a minimum of 15 days in jail and a \$2,500 fine for second-time offenders. Federal law also considers misdemeanor offenses in any state a misdemeanor for purposes of federal collateral consequences.

Travel and Immigration Restrictions

The United States imposes severe restrictions on those looking to come into the country with marijuana-related offenses, even if the offenses occurred in another country. A conviction for possession over 30 grams (just over an ounce) disqualifies an applicant for naturalization¹ or a visa.² It also disqualifies an immigrant for temporary protected status³ and is grounds for deportation.⁴ Immigrants may also be denied access to the PORTPASS program, which allows accelerated border crossing for low-risk aliens.⁵ In addition, a minor drug conviction can prevent entry into the United States for life. According to U.S. Customs and Border Protection, any conviction of drug possession, no matter how minor, is grounds for refusal. An individual may apply for a waiver to be allowed into the United States, but they are not guaranteed entry.

Similarly, Americans with marijuana convictions face other countries' policies barring citizenship or even entry for those with certain convictions. In Canada, a conviction for possession of marijuana or other drugs makes a person “criminally inadmissible.” In order

¹ 8 C.F.R. § 316.2,10

² 8 USCS § 1182

³ 8 USCS § 1254a

⁴ 8 USCS § 1367

⁵ 8 CFR 235.7

to gain entry, individuals with a history of drug charges must be “deemed rehabilitated,” which requires a certain amount of time to have elapsed since the end of a sentence.

Similarly, a person must wait five years to enter the United Kingdom after a conviction for a minor drug conviction resulting in less than twelve months of imprisonment.

Licensing Restrictions

The United States requires a government-issued license to participate in certain industries. Licensing agencies evaluate candidates based on certain criterion set by either by law or by a licensing agency. Misdemeanor offenders may not serve as non-attorney representatives before the Federal Maritime Commission,⁶ be licensed to serve as an ocean transport intermediary,⁷ receive merchant seaman license within 10 years of a conviction,⁸ or own or operate a motor passenger carrier.⁹

The federal government also has the discretionary power to restrict licenses for pilots,¹⁰ merchant marines,¹¹ nuclear power plant operators,¹² flight engineers,¹³ ERISA-enrolled actuaries,¹⁴ and wholesale prescription drug distributors.¹⁵

Employment Restrictions

Those convicted of misdemeanors, particularly drug offenses, are barred from various professions. The government does not allow anyone convicted of a drug-related offense to transport or ship firearms¹⁶ or explosive materials.¹⁷ Offenders punished for crimes carrying a sentence of at least year in prison may not be employed as TSA airport screeners.¹⁸ Employment in NIH traineeships may be also be denied.

Government Benefits

Many states deny those convicted of misdemeanor drug offenses access to government-provided benefits or services. These collateral consequences are directed at those most likely to receive government benefits — the least well-off in society and those most vulnerable to return to crime if they are denied essential benefits and the employment opportunities listed above.

⁶ 46 CFR 502.27, 49 CFR 1103.3

⁷ 46 CFR 515.12

⁸ 46 USCS § 7704

⁹ 49 CFR 1182.2, 49 CFR 391.15

¹⁰ 14 CFR 61.15

¹¹ 46 USCS § 7503, 46 CFR 10.211

¹² 10 CFR 55.61, 10 CFR 707.10

¹³ 14 CFR 63.12, 14 CFR 65.12

¹⁴ 20 CFR 901.12

¹⁵ 21 CFR 205.8

¹⁶ 27 CFR 478.32

¹⁷ 27 CFR 555.26

¹⁸ 49 USCS § 44935

Students convicted of drug violations are ineligible to receive student loans or grants for one year after their first conviction and two years after their second conviction, and are indefinitely disqualified after a second conviction.¹⁹ They are also ineligible for National Service Trust awards.²⁰

Public Housing Authorities (PHAs) for various states shall terminate the lease of anyone who has engaged in drug-related criminal activities,²¹ and offenders may not reside in public housing.²² PHAs may also deny households whose members have been convicted of a drug offense from participating in a multi-family housing loan property lease.²³ Owners, officers, or managers of food wholesalers or retailers may not participate in food stamp programs²⁴ and unlawful users of controlled substances or addicts may not purchase firearms.²⁵ The government can also deny a passport to an individual convicted of a drug offense if a passport was used to commit the offense.²⁶

Private Discrimination

Because marijuana possession is a crime at both the federal and state levels, many firms use criminal history and drug tests to deny job applicants. Some states have passed “ban the box” laws, which would deny employers from asking about an applicant’s criminal history in the first stages of the hiring process. Of the 20 largest employers in the United States, Wal-Mart, Yum! Brands, UPS, Target, United Technologies, Sears, Berkshire Hathaway, FedEx, GE, Lowes, Walgreens, and Aramark have drug tested their employees or applicants. These companies also run criminal background checks on applicants.

¹⁹ 20 USCS § 1091

²⁰ 42 USCS § 12602

²¹ 24 CFR 966.4

²² 24 CFR 966.4

²³ 24 CFR 982.553, 7 CFR 3560.159

²⁴ 7 CFR 278.1

²⁵ 27 CFR 478.99

²⁶ 22 USCS § 2714