



EDUCATION

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Hidden or “collateral consequences” are additional penalties that may result from criminal convictions. They have a direct impact on critical areas of life such as: employment, housing, education, public benefits, parental rights, and voting, and can hinder an individuals’ ability to successfully reintegrate. Understanding the relevant legal and regulatory framework that creates these sanctions can be helpful to criminal defense attorneys, other advocates, and all residents of New Jersey affected by incarceration. Please note that these laws can and do change, and you should inquire about updates before relying on this information. [June 2006]

SUMMARY: One way an individual can move beyond a criminal conviction to improve the quality of his or her life is through education. However, access to higher education for those with criminal records has become increasingly difficult. Public and private colleges have wide discretion to admit or deny admissions based on criminal convictions.¹

Moreover, financial aid for those with convictions has been restricted.² Of particular concern is the federal law, known as the Souder Amendment, which denies financial aid to students who are convicted of drug offenses while receiving aid. (It is important to note that *only* drug convictions trigger federal aid ineligibility.) Applicants are required to self-report drug convictions on applications for federal aid, and

New Jersey, along with many other states, uses federal forms to also deny state aid.³

- A Freedom of Information Act request revealed that since 2000, when the Souder Amendment took effect, 189,065 students have been denied financial aid.⁴
- A February 2006 amendment made the law applicable only to currently enrolled students with drug convictions. Previously, it applied to anyone who had *ever* had a drug conviction.⁵

This fact sheet lists barriers arising from criminal convictions, including federal education aid and eligibility for work release and vocational training programs. You can find the enabling statutes, and identify specific convictions triggering a sanction, its consequences, and remedies where they exist.

Federal Student Financial Aid

| STATUTE OR REGULATION | CONVICTION OR OFFENSE | CONSEQUENCES | REMEDIES |
|--|--|--|--|
| Higher Education Act of 1965 (see 1992 reauthorization) (20 U.S.C. § 1091(b)(5)) | Incarceration. | Eliminates prisoners’ rights eligibility for Pell Grants, which largely supported post-secondary education in correctional facilities. | None. |
| Souder Amendment to the Higher Education Act of 1965 (1998) (20 U.S.C. § § 1001, 1002) | Possession of a Controlled Substance: First time offenders convicted of illegal drug possession under any State or Federal law. | One year of ineligibility for financial aid assistance. ⁶ | Satisfactory completion of a drug rehabilitation program that includes two unannounced drug tests; or, the conviction is set aside or reversed. (2005 Amendment limits ineligibility to those with drug convictions <i>during</i> enrollment in school). ⁷ |

| STATUTE OR REGULATION | CONVICTION OR OFFENSE | CONSEQUENCES | REMEDIES |
|---|---|---|---|
| Souder Amendment to the Higher Education Act of 1965 (1998) (20 U.S.C. § § 1001, 1002) | Possession of a Controlled Substance: Second time offenders convicted of illegal drug possession under any State or Federal law. | Two years of ineligibility for financial aid assistance. | Satisfactory completion of a drug rehabilitation program that includes two unannounced drug tests; or, the conviction is set aside or reversed. (2005 Amendment limits ineligibility to those with drug convictions <i>during</i> enrollment in school). |
| Souder Amendment to the Higher Education Act of 1965 (1998) (20 U.S.C. § § 1001, 1002) | Third time offenders convicted of illegal drug possession under any Federal or State law. | Indefinite eligibility for financial aid assistance. ⁸ | None. (2005 Amendment limits ineligibility to those with drug convictions <i>during</i> enrollment in school). |
| Souder Amendment to the Higher Education Act of 1965 (1998) (20 U.S.C. § § 1001, 1002) | Sale of a Controlled Substance: First time offenders convicted of illegal drug sales under any State or Federal law. | Two years of ineligibility for financial aid assistance. | Satisfactory completion of a drug rehabilitation program that includes two unannounced drug tests; or, the conviction is set aside or reversed. (2005 Amendment limits ineligibility to those with drug convictions <i>during</i> enrollment in school). |
| Souder Amendment to the Higher Education Act of 1965 (1998) (20 U.S.C. § § 1001, 1002) | Sale of a Controlled Substance: Second time offenders convicted of illegal drug sales under any State or Federal law. | Indefinite eligibility for financial assistance. | None. (2005 Amendment limits ineligibility to those with drug convictions <i>during</i> enrollment in school). |

New Jersey Based Financial Aid

| STATUTE OR REGULATION | CONVICTION OR OFFENSE | CONSEQUENCES | REMEDIES |
|---|--|--|----------|
| Work Release/ Vocational Training Programs N.J.S.A. 30:8-44.1 | Sexual offenders/child molesters. | Prohibited from participating in any county work release or vocational training release program. | None. |
| Work Release/ Vocational Training Programs N.J.S.A. 30:8-44.1 | Crimes endangering the welfare of children or the incompetent. | Prohibited from participating in any county work release or vocational training release program. | None. |
| Work Release/ Vocational Training | Any crime involving the manufacture, | Prohibited from participating in any | None. |

| STATUTE OR REGULATION | CONVICTION OR OFFENSE | CONSEQUENCES | REMEDIES |
|---|--|--|----------|
| Programs N.J.S.A. 30:8-44.1 | transportation, sale or possession with the intent to sell or distribute, or a “controlled substance” or a dangerous controlled substance analog. | county work release or vocational training release program. | |
| Work Release/Vocational Training Programs N.J.S.A. 30:8-44.1 | Any crime involving the use of force, or threat of force (i.e. armed robbery, aggravated assault, kidnapping, arson, manslaughter, and murder). | Prohibited from participating in any county work release or vocational training release program. | None. |
| HOPE Scholarship Credit 26 U.S.C. 25A(b)(2) 9D5 | Conviction of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or, within, such period ends. | A student convicted of these crimes cannot claim the HOPE Scholarship Tax Credit. | None. |

¹ Some state schools, including Rutgers University, will not provide State assistance to students who are on probation or parole. To determine eligibility, students should call the local college or university they plan to apply to for State financial aid assistance criteria. Although New Jersey law doesn’t speak to the issue directly, federal cases suggest the standard for denial or revocation of admission is “reasonableness”; whether the college’s decision is not arbitrary, unreasonable or capricious; and whether it is consistent with the standards of professional judgment” (citing Regents of University of Michigan v. Ewing, 474 U.S. 214, 225 (1985)).

² “Financial Assistance” includes the following: Perkins Loans, Federal Direct Loans, Federal Family Education Loans, Federal Pell Grants, Federal Early Outreach and Student Services Programs, Federal Supplemental Educational Opportunity Grants, Leveraging Educational Assistance Partnership Program, and others.

³ The New Jersey Higher Education Assistance Authority follows the federal guidelines when awarding state financial aid. (See below footnote 6). Therefore students with drug convictions are being denied state financial aid. New Jersey does not appear to have statutory obstacles to restoring state aid to people with drug convictions. N.J.S.A. 18A:71B-2. See also “*Falling Through the Cracks: Loss of State-Based Aid Eligibility for Students Affected by the Federal Higher Education Act Drug Provision*”, Coalition for Higher Education Reform, Washington D.C., pp 17.

⁴ See “Harmful Drug Law Hits Home,” a publication of Students for a Sensible Drug Policy (SSDP) at <http://www.ssdp.org/states/ssdp-state-report.pdf>.

⁵ In March 2006, the ACLU and Students for a Sensible Drug Policy (SSDP) filed a federal lawsuit to challenge the constitutionality of the remaining “Aid Elimination Penalty,” claiming that it violates the Constitution’s double jeopardy clause by punishing people twice for the same offense, and that it irrationally designates a class of people – those with drug convictions – as unworthy of aid. See www.ssdp.org/lawsuit.

⁶ These periods of ineligibility begin after the date of conviction and only apply to “convictions” on record (excluding expunged and juvenile records). In order to receive State or Federal aid, a student must fill out a Free Application for Federal Student Aid (FAFSA) form, available at www.fafsa.ed.gov. Question 35 on the form asks whether the student has a drug conviction that will affect eligibility for aid. If the student’s response is “yes,” then he or she will be asked to fill out a Drug Conviction worksheet to determine eligibility for assistance.

⁷ Amended: 20 USCA § 1091 (c) SUSPENSION OF ELIGIBILITY FOR DRUG OFFENSES.--Section 484(r)(1) (20 U.S.C. 1091(r)(1)) is amended by striking everything preceding the table and inserting the following: “(1) IN GENERAL.--A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance **for conduct that occurred during a period of enrollment** for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table [table of timelines for ineligibility remains the same]”

⁸ The United States Department of Education’s defines the term “indefinitely” as meaning permanently ineligible for financial aid assistance.