

A REPORT ON THE
COLLATERAL CONSEQUENCES OF
CRIMINAL CONVICTIONS IN MARYLAND

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INTRODUCTION	3
EXECUTIVE SUMMARY	7
COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN MARYLAND	12
A. GOVERNMENT BENEFITS	12
1. <i>Denial of Federal Benefits to Drug Traffickers and Possessors (21 U.S.C. § 862)</i>	12
a. Distribution of Controlled Substances	12
b. Possession of Controlled Substances	12
c. Waiver and Suspension of Ineligibility	13
2. <i>Ineligibility for Federal Health Care Programs (42 U.S.C. § 1320a-7)</i>	14
3. <i>Eligibility for Student Grants and Loans (20 U.S.C. § 1091)</i>	15
B. HOUSING BENEFITS	16
1. <i>Federal Framework</i>	16
2. <i>Examples of Local Application</i>	17
C. EMPLOYMENT AND LICENSING	22
1. <i>Explicit Statutory and Regulatory Prohibitions</i>	23
a. Education	23
b. Health and Mental Hygiene	23
c. Corrections	24
2. <i>Licensing and Statutorily Required and Optional Background Checks</i>	24
a. Statutorily Required Background Checks	25
b. Optional Background Checks and the Negligent Hiring Doctrine	25
D. FAMILY LIFE	27
1. <i>Impact of Incarceration on Marriage</i>	27
2. <i>Parental Rights</i>	27
3. <i>Child Support</i>	29
E. CIVIL DISABILITIES	32
1. <i>Jury Service</i>	32
2. <i>Driver's Licenses</i>	33
3. <i>Firearm Possession</i>	34
4. <i>Voting Rights</i>	36
5. <i>Military Service</i>	37
F. SEX OFFENDER REGISTRATION	37
1. <i>Statutory Requirements</i>	38
2. <i>Repercussions of Failure to Register</i>	39
3. <i>Notice to the Community</i>	40
4. <i>Possible Relief from Registration Requirements</i>	40
CONCLUSION	42
SUBSECTION A – SYNOPSIS OF FEDERAL HOUSING BENEFITS	
STATUTES	A-1
1. 42 U.S.C. § 13661: Screening of Applicants for Federally Assisted Housing	A-1
2. 42 U.S.C. § 13662: Termination of Tenancy and Assistance for Illegal Drug Users and Alcohol Abusers in Federally Assisted Housing	A-2

3.	42 U.S.C. § 13663: Ineligibility of Dangerous Sex Offenders for Admission to Public Housing	A-3
4.	42 U.S.C. § 1437f(d)(1)(B)(iii): Criminal Activity as Cause for Termination of Low-Income Housing Assistance	A-3
	SUBSECTION B – EMPLOYMENT AND LICENSING	A-4
	PART I	A-4
1.	MD. CODE REGS. 10.07.14.02(B)(10): Assisted Living Program	A-4
2.	MD. CODE REGS. 12.10.01.17(A): Disqualifying Criminal Convictions for Uniformed Correctional Officers	A-4
3.	MD. CODE ANN., FAM. LAW § 5-561. Required; facilities requiring criminal history records check	A-5
4.	MD. CODE ANN., HEALTH-GEN. § 19-1901(b): Adult Care Programs ...	A-6
	PART II	A-7
	EMPLOYMENT AND LICENSING EMPLOYMENT CHART	A-7
	Examples of Absolute Prohibitions	A-7
	Examples of Statutory Required Background Checks	A-8
	Examples of Optional Background Check	A-9
	Licensing	A-11

INTRODUCTION*

In August 2003, the American Bar Association (ABA) adopted criminal justice standards on collateral sanctions for convicted persons. These standards address the wide-ranging prohibitions and disqualifications that convicted persons often face upon the completion of their criminal sentences.¹ These sanctions include, but are not limited to, access to government benefits and housing benefits; restrictions on employment; voting and other forms of participation in civic life; and issues affecting family life.

At the time of sentencing, criminal defendants and their counsel are often unaware that collateral consequences will attach to the conviction. Recognizing the direct relationship between collateral consequences and the ability of those with criminal convictions to productively re-enter society, the ABA standards recommend that each jurisdiction collect its respective collateral consequences and codify those consequences in a centralized location,² implement mechanisms to inform defendants of these consequences as part of the guilty plea process,³ require sentencing courts to consider

* This report is largely the work of second and third-year students at the University of Maryland School of Law, who wrote the report as part of their experience in the law school's Reentry of Ex-offenders Clinic under the supervision of Professors Sherrilyn A. Ifill and Michael Pinard. These students (and former students) are Ademuyiwa Bamiduro, Matthew Breault, Damon Brown, Samanda Hawkins, Amy Lee, Michael LaFleur, Catherine Napjus, Phil Pierson, Jeffrey Rowe, Aja Southern, Lisandra Santiago and Jared Silberzahn. In addition, legal assistant Gynene Sullivan and library research fellow Susan McCarty provided invaluable expertise.

1. See generally ABA STANDARDS FOR CRIMINAL JUSTICE (THIRD EDITION): COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (2003) [hereinafter ABA STANDARDS ON COLLATERAL SANCTIONS]. On February 12, 2007, the ABA approved recommendations by the Commission on Effective Criminal Sanctions. The first recommendation instructs "federal, state, territorial and local governments to assist defense counsel in advising clients of the collateral consequences of criminal convictions during representation." See ABA COMMISSION ON EFFECTIVE CRIMINAL SANCTIONS, REPORT TO THE HOUSE OF DELEGATES 1 (2007), available at <http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Report.V.PDF.121306.pdf>

2. ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 1, at Standard 19-2.1.

3. *Id.* at Standard 19-2.3. Notification of collateral sanctions before plea of guilty
(a) The rules of procedure should require a court to ensure, before accepting a plea of guilty, that the defendant has been informed of collateral sanctions

these consequences as part of the sentencing process,⁴ and narrow the range of these consequences.⁵

The purpose of this report is to inform various stakeholders about the existence and scope of collateral consequences imposed on persons in Maryland as a result of their criminal convictions.⁶ In Maryland, as with other jurisdictions, the list of collateral consequences imposed upon a person when convicted of a crime is extensive, but not centralized in a single source.⁷ In most circumstances, neither a criminal defendant nor defense counsel is aware of the various collateral consequences associated with a conviction – whether reached by guilty plea or by a judge or jury verdict – because these various penalties, disabilities and disadvantages are not identified in the formal criminal process.⁸

In November 2003, Chief Justice Robert M. Bell of the Maryland Court of Appeals authorized the Reentry of Ex-Offenders Clinic at the University of Maryland

made applicable to the offense or offenses of conviction under the law of the state or territory where the prosecution is pending, and under federal law. Except where notification by the court itself is otherwise required by law or rules of procedure, this requirement may be satisfied by confirming on the record that defense counsel's duty of advisement under Standard 14-3.2(f) has been discharged.

(b) Failure of the court or counsel to inform the defendant of applicable collateral sanctions, should not be a basis for withdrawing the plea of guilty, except where otherwise provided by law or rules of procedure, or where the failure renders the plea constitutionally invalid.

4. *Id.* at Standard 19-2.4.

5. *Id.* at Standard 19-2.5(a) (allowing courts to waive, modify or grant relief from collateral sanctions); Standard 19-2.6 (recommending the prohibition of certain collateral sanctions).

6. *See Skok v. State*, 760 A.2d 647, 660, 361 Md. 52, 77 (2000) (observing that “serious collateral consequences of criminal convictions have become much more frequent in recent years”).

7. *See* ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 1, at Standard 19-2.1 cmt., at 21 (“Collateral sanctions have been promulgated with little coordination in disparate sections of state and federal codes, making it difficult to determine all of the penalties and disabilities applicable to a particular offense.”).

8. *See, e.g.*, Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 699 (2002) (highlighting that the majority of states and eleven federal circuits have declared that lawyers are not required to explain collateral consequences to their clients).

School of Law, under the supervision of Professors Sherrilyn Ifill and Michael Pinard, to begin the process of collating the list of collateral sanctions in Maryland. This is the first of the ABA recommendations for each jurisdiction. Accordingly, this revised report details some of the most pertinent collateral consequences that attach to criminal convictions in Maryland.⁹

This report is not an exhaustive study of collateral consequences in Maryland.¹⁰ Instead, it is designed to highlight the scope of this issue and to provoke a dialogue among judges, defense attorneys, prosecutors, legal services organizations, correctional officials, public policy experts, community groups and other concerned stakeholders about how to effectuate the ABA's recommendations here in Maryland.

9. The Reentry of Ex-offenders Clinic issued a draft report in March, 2004. *See* A REPORT ON COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN MARYLAND (Mar. 19, 2004) (on file at the University of Maryland School of Law). The Clinic updated the report in November, 2005 and added a section that details some of the collateral consequences that potentially impact family life. This revised report includes recent legislative changes regarding some of these consequences.

Organizations in several other jurisdictions, including public defender offices, have begun to collect their respective collateral consequences. *See* Kimberly R. Mossoney & Cara A. Roecker, *Ohio Collateral Consequences Project*, 36 U. TOL. L. REV. 611 (2005) (amassing the collateral consequences of criminal convictions in Ohio); CIVIL ACTION PROJECT, THE BRONX DEFENDERS, *THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE: A GUIDE FOR CRIMINAL DEFENSE ATTORNEYS AND OTHER ADVOCATES FOR PERSONS WITH CRIMINAL RECORDS* (2005) [hereinafter *THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK*], *available at* http://www.nlada.org/DMS/Documents/1110924022.69/Consequences%20of%20Criminal%20Proceedings_Mar05.pdf; PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA COMMUNITY RE-ENTRY PROGRAM, *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN THE DISTRICT OF COLUMBIA: A GUIDE FOR CRIMINAL DEFENSE LAWYERS* (2004), *available at* <http://www.pdsdc.org/communitydefender/collateral%20consequences%20to%20criminal%20convictions%20in%20DC.pdf>; WASHINGTON DEFENDER ASS'N, *BEYOND THE CONVICTION: WHAT DEFENSE ATTORNEYS IN WASHINGTON STATE NEED TO KNOW ABOUT COLLATERAL AND OTHER NON-CONFINEMENT CONSEQUENCES OF CRIMINAL CONVICTIONS* (2004, updated July 2005), *available at* <http://www.defensenet.org/SN/UpdatedBeyondtheConviction.pdf>; Nancy Fishman, *New Jersey Institute for Social Justice, Briefing Paper: Legal Barriers to Prisoner Reentry in New Jersey* (2003), *available at* http://www.njsj.org/reports/barriers_report.pdf.

10. This report does not set forth all of the collateral consequences that attach to criminal convictions in Maryland. For instance, it does not describe consequences relating to deportation. The report does not detail deportation because “the court, the State’s Attorney, the attorney for the defendant, or any combination thereof shall advise” defendants of this consequence as part of the guilty plea process. MD. R. § 4-242(e)(1).

Specifically, this report identifies and describes collateral consequences relating to government benefits, housing, employment and licensing, family life, civic life and sex offender registration. In addition to describing these consequences, the report identifies those circumstances in which judges or agencies independent of the criminal justice system have discretion to impose these sanctions. Finally, this report highlights the fact that no mechanism currently exists that requires defendants in Maryland to be informed of the majority of consequences that attach to criminal convictions. The report's overarching aim is to begin a conversation about the ABA standards and collateral consequences, and to devise ways to ensure that information about these consequences are incorporated into the formal criminal conviction and sentencing processes.

EXECUTIVE SUMMARY

The ABA divides collateral consequences into two categories: collateral sanctions and discretionary disqualifications. A collateral sanction is defined as “a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.”¹¹ A discretionary disqualification is defined as a “penalty, disability, or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction.”¹²

Collateral consequences generally outlast the direct sentences imposed upon defendants. As a result, these disabilities often impose harsher and more sustained penalties than the actual criminal sentence.¹³ Despite the lasting and sometimes permanent effects that collateral consequences impose upon ex-offenders and their families, no formal mechanism exists for defendants in Maryland, or any other state, to be informed of these consequences prior to their convictions. Because these consequences are not considered part of the formal criminal process, defense attorneys and judges are largely unaware of their existence and breadth.

As a result, criminal defendants in Maryland, as in other states, often plead guilty to criminal offenses completely unaware of the range of consequences that will attach to their pleas. Although defendants in Maryland are made aware of possible deportation

11. ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 1, at Standard 19-1.1(a).

12. *Id.* at Standard 19-1.1(b).

13. See, e.g., Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER, RACE & JUST. 253, 253 (2002) (noting that “collateral consequences may be the most significant penalties resulting from a criminal conviction”); Rodney J. Uphoff, *The Criminal Defense Lawyer as Effective Negotiator: A Systemic Approach*, 2 CLINICAL L. REV. 73, 100-01 (1995) (noting that such consequences “may be considerably more important to the defendant than the punishment meted out by the judge at sentencing . . .”).

consequences¹⁴ and possible lifetime registration in instances that qualify,¹⁵ they are not informed about the range of other consequences that can, and often do, affect their daily lives upon reentry or otherwise upon the conclusion of their criminal sentence.

Principles of fairness and justice dictate that defendants be fully advised of the ramifications of their convictions, particularly before they enter guilty pleas. The collateral consequences described in this report affect important aspects of the ex-offender's daily life, such as living in affordable housing, being properly licensed and employable, and being able to vote. Indeed, these consequences can last a lifetime and affect not only the individual ex-offender, but also his or her family.

There is also a professional responsibility component to informing criminal defendants of collateral consequences. Criminal defense attorneys are required to provide competent and zealous representation.¹⁶ This includes advising their clients of the full effects of a guilty plea – not only the immediate effect of a fine or prison term, but also the ways in which such a conviction could shape their futures. The Maryland Rules of Professional Conduct support this norm, asserting that lawyers “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions”¹⁷ Yet, despite these requirements, decisions by Maryland defendants to plead guilty are often woefully uninformed, as they are left unaware of both the existence and the extent of the various consequences that attach to their pleas. Accordingly, the ABA has for several years called for defense counsel to fully inform their clients of these

14. *See supra* note 10.

15. *See infra* Part F (discussing sex offender registration).

16. *See generally* MD. R. PROF'L CONDUCT, Preamble.

17. MD. R. PROF'L CONDUCT 1.4(b).

consequences,¹⁸ and its recently adopted standards call for judges to ensure that counsel has done so.¹⁹

The ABA resolution raises important concerns and questions. One concern is that a guilty plea could later be withdrawn by a defendant, or overturned by an appellate court, because of the judge's failure to ensure that the defendant had been properly advised of collateral consequences. So one potential issue that arises from the ABA resolution is whether defendants would have a basis to have their pleas vacated or convictions overturned in instances where defense counsel advised them of most, but not all, of the possible consequences. However, the ABA's recommendations account for this concern. The standards adopted by the ABA clearly indicate that "[f]ailure of the court or counsel to inform the defendant of applicable collateral sanctions should not be a basis for withdrawing the plea of guilty, except where otherwise provided by law or rules of procedure, or where the failure renders the plea constitutionally invalid."²⁰

Another possible concern is that properly informing defendants of all collateral consequences would further drain judicial and court resources by exacerbating already overcrowded dockets. As the ABA has recognized, however, the responsibility for imparting the information falls first and foremost on defense attorneys. In most cases, a lengthy discussion about collateral consequences will not take place in the courtroom. Indeed, the judge's role should be limited to ensuring that the defense attorney has conveyed such information to the defendant. The ABA standards reflect that this can be

18. ABA STANDARDS FOR CRIMINAL JUSTICE (THIRD EDITION): PLEAS OF GUILTY, at Standard 14-3.2(f) (1997) ("To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.").

19. ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 1, at Standard 19-2.3(a) (the sentencing court may satisfy this requirement "by confirming on the record that defense counsel's duty of advisement . . . has been discharged.").

20. *Id.* at Standard 19-2.3(b).

accomplished with a question by the judge as to whether defense counsel has properly informed the defendant of the possible collateral consequences, followed by an affirmative answer.²¹

As this report makes clear, convicted persons in Maryland face numerous post-release sanctions that may hinder their ability to become productive, self-sufficient members of their communities. A criminal defendant convicted of a felony drug offense, for example, may find upon completing her sentence that she is ineligible for public housing. She may be ineligible for jobs for which her educational background would otherwise make her qualified; for example, working as a cosmetologist, driving a taxi, working in a hospital, or providing day care. She also may be ineligible to serve on a jury. In short, many convicted persons in Maryland are disqualified from the safety net provided by many social service programs. Yet this is often precisely the safety net many of these individuals need when they are first released to avoid further contact with the criminal justice system. This problem affects a large proportion of individuals with criminal records because the Maryland communities to which they most often return are already struggling with a lack of affordable housing and meaningful employment opportunities.²²

In sum, this report is a first step towards compliance with the ABA's recommendations in Maryland. It identifies the range of collateral consequences that can attach to criminal convictions for a wide range of crimes. The results of this preliminary

21. *Id.* at Standard 19-2.3(a).

22. *See, e.g.*, NANCY G. LA VIGNE ET AL., URBAN INSTITUTE JUSTICE POLICY CENTER, A PORTRAIT OF PRISONER REENTRY IN MARYLAND 39 (2003), *available at* http://www.urban.org/UploadedPDF/410655_MDPorraitReentry.pdf (observing that the “community context of prisoner reentry can have an important influence on postrelease success or failure . . . [as] ex-prisoners returning to communities with high unemployment rates, limited affordable housing options, and few services are more likely to relapse and recidivate”).

work clearly indicate that further study is needed in Maryland to properly address this complex and important concern.

COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN MARYLAND

A. GOVERNMENT BENEFITS

In many instances, criminal convictions or guilty pleas resulting from narcotics-related offenses can and/or will render the offender ineligible for government benefits. This section examines federal statutes that provide for such ineligibility, and explains how Maryland implements these statutes.

1. Denial of Federal Benefits to Drug Traffickers and Possessors (21 U.S.C. § 862)

This federal statute mandates the denial of federal benefits to drug traffickers and possessors convicted in either state or federal court. The statute distinguishes traffickers from possessors, but does not differentiate felony convictions from misdemeanors.

a. Distribution of Controlled Substances

For any individual convicted of a federal or state offense consisting of the distribution of controlled substances,²³ the trial judge has the discretion to impose ineligibility for all federal benefits for the first and second convictions.²⁴ Ineligibility for the first conviction can be up to five years following the conviction, and ineligibility for the second offense can be up to ten years following the conviction. Upon the third or subsequent conviction, the offender is automatically and permanently ineligible to receive federal benefits.²⁵

b. Possession of Controlled Substances

23. The controlled substances are defined in 21 U.S.C. § 802(6) (2000), and listed in 21 U.S.C. § 812(c) (2000). The drugs and other substances in schedules I, II, III, IV, and V include, but are not limited to: anabolic steroids, cocaine, codeine, heroin, marijuana, opium, and phenobarbital.

24. 21 U.S.C. § 862(a)(1)(A)-(B) (2000). The statute defines these benefits as “the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States” § 862(d)(1)(A). The statute “does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility” § 862(d)(1)(B).

25. § 862(a)(1)(C).

For any individual convicted of a federal or state offense involving the possession of a controlled substance, the trial judge has the discretion to impose ineligibility for all federal benefits. Upon the first conviction the judge may: (i) impose ineligibility for all federal benefits up to one year;²⁶ (ii) require the offender to successfully complete “an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;”²⁷ (iii) require the offender to perform community service;²⁸ or (iv) choose any combination of the above.²⁹ For a second or subsequent conviction the judge may impose ineligibility for up to five years along with any or all of the requirements mentioned above.³⁰ In addition, the court may condition the reinstatement of benefits upon the successful completion of an approved drug treatment program or upon completion of community service.³¹

c. Waiver and Suspension of Ineligibility

The benefits that are denied to those convicted of distributing controlled substances do not include those “relating to long-term drug treatment programs” for an individual “who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated”³² However, all of the public benefits-related penalties imposed upon those convicted of possessing controlled

26. § 862(b)(1)(A)(i).

27. § 862(b)(1)(A)(ii).

28. § 862(b)(1)(A)(iii).

29. § 862(b)(1)(A)(iv).

30. § 862(b)(1)(B).

31. *Id.*

32. § 862(a)(2).

substances can be waived under the same conditions as those convicted of drug trafficking.³³

In addition, the period of ineligibility for a person convicted of trafficking or possession shall be suspended if: (i) the person completes a supervised drug program after becoming ineligible;³⁴ (ii) the person has otherwise been rehabilitated;³⁵ or (iii) the person “has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.”³⁶

2. *Ineligibility for Federal Health Care Programs (42 U.S.C. § 1320a-7)*

This statute mandates that individuals convicted of a felony offense “relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance,” and which occurred after August 21, 1996, are ineligible to participate in any federal health care program.³⁷ The disqualifying conviction can be under federal or state law.

In addition, individuals convicted under federal or state law of a misdemeanor relating to these controlled substance offenses can be ineligible to participate in these health programs. In such instances, the Secretary of Health and Human Services has the discretion to exclude these individuals.³⁸

33. § 862(b)(2).

34. § 862(c)(A).

35. § 862(c)(B).

36. § 862(c)(C).

37. 42 U.S.C. § 1320a-7(a)(4) (2000).

38. § 1320a-7 (b)(3).

The length of exclusions under this statute varies. Individuals convicted of a qualifying drug offense shall be excluded for a minimum of five years.³⁹ However, individuals with one prior conviction of a felony offense “for which an exclusion may be effected” will be excluded for a minimum of ten years.⁴⁰ Individuals with two or more such prior felony convictions shall be permanently excluded.⁴¹

Individuals convicted of one of the misdemeanor drug offenses noted above shall be excluded for three years. However, this exclusionary period can be modified “if the Secretary [of Health and Human Services] determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.”⁴²

3. *Eligibility for Student Grants and Loans (20 U.S.C. § 1091)*

This statute restricts student eligibility for federal grants, federally subsidized loans, and federal work-study programs.⁴³ Specifically,

[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 . . . from the date of that conviction for the period of time specified in the following table:

The possession of a controlled substance:	Ineligibility period is:
First offense	1 year

39. 42 U.S.C. § 1320a-7(c)(3)(B) (Supp. III 2003). The Secretary may waive the exclusion if the exclusion would impose a hardship to the individual or the community. *Id.*

40. 42 U.S.C. § 1320a-7(c)(3)(G)(i) (2000).

41. § 1320a-7(c)(3)(G)(ii).

42. § 1320a-7(c)(3)(D).

43. 20 U.S.C.A. § 1091 (West Supp. 2007). The law was recently amended to limit ineligibility for federal grants, loans and work-study programs to students who were convicted of an offense during a period when they were enrolled and receiving a federal grant, loan or work-study. Previously, the law applied to any student convicted of a drug offense, regardless of whether the student was enrolled on these financial aid programs at the time of conviction.

Second offense	2 years
Third offense	Indefinite
The sale of a controlled substance:	Ineligibility period is:
First offense	2 years
Second offense	Indefinite ⁴⁴

A student who has been suspended as set forth immediately above may regain eligibility before the end of the specified period by satisfactorily completing a drug rehabilitation program, part of which includes two unannounced drug tests.⁴⁵ A student may also regain eligibility if his or her conviction is reversed or otherwise set aside.⁴⁶

B. HOUSING BENEFITS

The federal government has created a massive and complex system to provide low-cost housing to needy individuals and families. There is a vast network of federal law and state and local policy that regulates eligibility for public housing and housing assistance. Because the federal government funds and organizes these housing programs, it also determines the eligibility requirements for these programs. With regard to criminal convictions, federal laws set up the general ineligibility structure. These laws, however, allow local housing authorities to expand upon this general structure by broadening the types of convictions that would render residents or applicants ineligible for public housing and housing assistance.

1. Federal Framework

44. § 1091(r)(1). Controlled substances are defined in 21 U.S.C. § 802(6) (2000). Among the narcotic drugs included within this definition are heroin, see 21 U.S.C. § 812(c), Schedule I (b)(10), and marihuana. § 812(c), Schedule I (c)(10).

45. 20 U.S.C.A. § 1091(r)(2)(A)(i)-(ii) (West Supp. 2007).

46. § 1091(r)(2)(B).

Public housing benefits are generally dispensed in one of two forms: public housing projects or government vouchers paid to private landlords (commonly referred to as Section 8 vouchers).⁴⁷ Under the first form, a state or municipality constructs government-owned housing units, fills vacancies and manages the units. Under the second form, the government contracts with private landlords to pay a portion of the rent of eligible families. Thus, the government pays part of the tenants' rent, but the private landlord retains control of the property and manages the units.

The rules governing eligibility for these benefits originate in federal statutes. These rules are largely codified at 42 U.S.C. sections 13661, 13662, and 13663, and 42 U.S.C. section 1437f(d)(1)(B)(iii).⁴⁸ The cumulative effect of these statutes is that the federal government provides a basic framework within which the local authority (whether the local housing agency or a private landlord/property owner) exercises its own judgment and discretion. Issues such as whether the “criminal activity” must be triggered by an actual conviction (as opposed to an arrest), the level and nature of the criminal act that can result in the denial or revocation of such benefits, and the permanence or transience of such a consequence are decided by the local authority.

In Maryland, these particular applications are not codified per se, but rather exist as a collection of local policies. The next subsection provides some examples of how local housing authorities in Maryland exercise the discretion afforded by these Federal statutes.

2. *Examples of Local Application*

47. The “Section 8” program is fully codified at 42 U.S.C.A. § 1437f (West Supp. 2007). A particular sub-section of that statute, cited in the Appendix, provides one of the rules regarding termination of this assistance. *See infra* App., subs. A at iv.

48. For detailed descriptions of these particular statutes, see Appendix subs. A.

Until a few years ago, the Baltimore City Housing Authority had long adhered to a “zero-tolerance” policy with regard to criminal activity and eligibility for public housing assistance. Essentially, any criminal conviction—whether a felony or misdemeanor—resulted in the denial of housing benefits to individuals and, by extension, their families. These denials were permanent and could not be waived. Some convictions that resulted in exclusion from public housing included shoplifting and riding the Light Rail without a ticket.⁴⁹ Moreover, such an exclusion could have resulted even when the conviction was ten years old.⁵⁰

However, in June 2003, the Housing Authority of Baltimore City agreed to modify its zero-tolerance policy. This modification was the result of an agreement reached with various Baltimore-area advocacy groups, through which ex-offenders could retain the possibility of receiving housing benefits. As a result, under the Housing Authority’s current policy, a person will be “den[ied] eligibility for admission based upon felony or misdemeanor convictions for a period of no more than 18 months for a misdemeanor offense and three years for a felony offense beginning on the date of conviction or the release from incarceration, whichever date is later.”⁵¹

The Baltimore County Housing Office likewise evicts participants and rejects applicants for housing benefits on the basis of criminal conduct. Its current policy states that “[a]pplicants will be denied admission and participants will be terminated if they have engaged in or are engaged in drug related or [violent] criminal activity within the

49. J. Peter Sabonis Jr., *Don’t Deny Housing to City’s Ex-Offenders*, BALT. SUN, Dec. 16, 2002, at 15A.

50. *Id.*

51. Housing Authority of Baltimore City, MTW Annual Plan for FY 2007 and FY 2008, Admissions and Continued Occupancy Policies for the Public Housing Program, 2-7 (submitted to the U.S. Dep’t. of Housing & Urban Dev., May 1, 2007), available at http://www.baltimorehousing.org/index/pdfs/annualplan_vol3.pdf.

past [sixty] months.⁵² The Baltimore County Housing Office also enforces life time denial for a registered sex offenders.

The Howard County Housing Authority conducts a ten-year background check of all applicants as well as household members who are at least eighteen years old.⁵³ The length of exclusions for criminal convictions varies depending upon the nature of the offense. For instance, drug possession convictions will render applicants ineligible for one year. While the housing authority mainly looks to convictions, it will also deny housing to applicants who have repeatedly been charged for the same type of crime. In these instances involving “a continuing course of conduct,” the housing authority will review charging documents and/or police records.⁵⁴ Applicants are likely to be denied if they have repeated charges relating to assault, battery or malicious destruction of property.⁵⁵

The Housing Opportunities Commission of Montgomery County “is not required or obligated” to assist applicants when there is

a history of criminal activity by any household member involving crimes of physical violence against persons or property and any criminal activity including drug-related criminal activity that would adversely affect the healthy, safety, or well-being of other tenants or staff or cause damage to the property.⁵⁶

The commission will also look to the applicant’s history or pattern of criminal activity, and *may* deny the applicant on the basis of such activity, irrespective of convictions.⁵⁷

52. Baltimore County Department of Social Services Housing Office, Administrative Plan, Section 8 Housing Choice Voucher Program, 15-10 (Mar. 31, 2004).

53. Telephone Interview with Perry Collins, Investigator, Howard County Housing Authority (Mar. 26, 2007).

54. *Id.*

55. *Id.*

56. ADMISSIONS AND CONTINUED OCCUPANCY POLICY, HOUSING OPPORTUNITIES COMM’N OF MONTGOMERY COUNTY § 8.4(F) (2003), available at <http://www.hocmc.org/Housing/Docs/acop.pdf>.

No assistance will be given to registered sex-offenders or to those convicted for the production of methamphetamines.⁵⁸

The Prince George's County Housing Authority also rejects applicants on the basis of criminal conduct. Its current policy will disqualify an offender for seven years after one criminal conviction—felony or misdemeanor—or after three criminal charges (even with no finding of guilt).⁵⁹ This policy looks back seven years prior to the date of the application. As a result, any criminal conviction renders an individual ineligible for public housing benefits for seven years.⁶⁰

The Housing Authority of Washington County adheres to a policy of denying housing benefits based on criminal activity. Specifically, this housing authority will deny housing assistance to applicants when there is a household member who is currently engaged in, or has engaged in drug related criminal activity; violent criminal activity; other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or by the owner, property management staff or Housing Authority employees.⁶¹

The Hagerstown Housing Authority may deny housing to an applicant who has criminal convictions or has been involved in criminal activity. Specifically, an applicant who has been charged within the previous twelve months for drug possession will be denied, even if the charge did not result in conviction.⁶² Hagerstown conducts criminal

57. Telephone Interview with Doug Ryan, Fair Housing and Equal Opportunity Officer, Housing Opportunities Commission of Montgomery County Housing Authority (Mar. 28, 2007).

58. *Id.*

59. Telephone interview with Alvin Coley, Housing Management Specialist, Prince George's County Housing Authority (Oct. 5, 2005).

60. *Id.*

61. The Housing Authority of Washington County, Section 8 Administrative Plan § 4.8(L) (2007).

62. Telephone Interview with Mary Becraft, Housing Manager, Hagerstown Housing Authority (Mar. 28, 2007).

background checks on all applicants; applicants who have a criminal background will be fingerprinted. An applicant who has any violent offense on his or her record will be denied. If the applicant does not fit these criteria for automatic denial, he or she may still be denied if his or her criminal record shows a general pattern of criminal charges that did not result in guilty findings, such as stets and nol prosses.⁶³

The Cecil County Housing Authority conducts a background check that looks back three years. Applicants are mainly denied if they have a history of violent criminal activity, convictions for drug offenses, or are registered sex offenders. While applicants with convictions for these offenses will automatically be denied, applicants can also be denied if they have had a pattern of criminal charges that did not result in convictions.⁶⁴

The St. Mary's Housing Authority conducts a criminal background check on all applicants.⁶⁵ Applicants who have been convicted of violent or drug-related crimes within the five years prior to their application are rejected.⁶⁶

The Wicomico County Housing Authority adheres to a criminal and drug activity policy. Applicants who have been convicted of any offense involving drugs or assaults with a deadly weapon are permanently denied.⁶⁷

As the above discussion illustrates, any felony or misdemeanor conviction – and, in some instances, contact with the criminal justice system – imposes significant and longstanding hurdles to securing public housing or housing assistance in Maryland.

63. *Id.*

64. Telephone Interview with David Maheney, Director, Cecil County Housing Authority (Mar. 28, 2007).

65. Telephone Interview with Cynthia Phillips, Program Manager, St. Mary's County Housing Authority (Mar. 28, 2007).

66. *Id.*

67. Telephone Interview with Clarisse Fortt, Deputy Director, Wicomico County Housing Authority (Mar. 28, 2007).

C. EMPLOYMENT AND LICENSING

As a result of their criminal convictions, ex-offenders in Maryland face various collateral consequences regarding employment and licensing. Maryland has established collateral sanctions through statutory prohibitions, licensing, and statutorily required and optional background checks. There are several statutory prohibitions within the Maryland Code disqualifying persons convicted of certain types of crimes from employment and licensing. Many more of these consequences, however, are enforced primarily by licensing agencies, which have the authority to deny licenses based on the applicant's criminal history, and by employers, who can use the results of statutorily required and optional background checks to reject applicants based on their criminal records.

This structure affords state licensing agencies enormous discretion to determine whether a person is suitable to be licensed based on several factors, including criminal background. As a result of this mandatory or optional criminal background check, an ex-offender may be denied the ability to obtain a license or permit. This inability severely limits his or her employment opportunities, particularly as an overwhelming number of jobs in Maryland require a permit or license. For example, an ex-offender in Maryland could find herself unable to secure employment as a cosmetologist because the relevant licensing board has the discretion to deny the license application on the basis of a felony or misdemeanor conviction.⁶⁸ The following sets forth some of the effects that criminal convictions can and do have on employment and licensing opportunities in Maryland.

68. See MD. CODE ANN., BUS. OCC. & PROF. § 5-314(a)(1)(vii)(1)&(2) (Supp. 2006).

1. *Explicit Statutory and Regulatory Prohibitions*

a. Education

Several statutes and regulations explicitly prohibit persons who have been convicted of certain types of crimes from employment and/or licensing. In the education field,

[t]he State Board shall adopt regulations that prohibit a county board from knowingly hiring, as a noncertificated employee, any individual who has been convicted of a crime involving:

- 1) An offense under § 3-307 of the Criminal Law Article;
- 2) Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in this State; or
- 3) A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of §14-101 of the Criminal Law Article if committed in this State.⁶⁹

b. Health and Mental Hygiene

Individuals are disqualified from employment as personal care aides or respite care workers if they “have been convicted of, received a probation before judgment for, or entered a plea of *nolo contendere* to a felony or any crime involving moral turpitude or theft, or have any other criminal history that indicates behavior which is potentially harmful to participants.”⁷⁰

Similarly, regulations governing assisted living programs prohibit the employment of staff who have criminal convictions or criminal histories “that indicate[] behavior that is potentially harmful to residents, as evidenced through a criminal history

69. MD. CODE ANN., EDUC. § 6-113(1)-(3) (2004).

70. MD. CODE REGS. 10.09.54.06(B)(6) (2006) (personal care aides); MD. CODE REGS. 10.09.54.07(D)(2) (2006) (respite care workers). Chapter 54 is authorized by MD. CODE ANN., HEALTH-GEN. §§ 2-104(b) (Supp. 2006), 15-103, 15-105, 15-132 (2005).

records check or a criminal background check.”⁷¹ Also, an assisted living program may not knowingly employ an individual who has this type of criminal conviction or other criminal history.⁷²

Lastly, a licensee of a program designed for individuals with developmental disabilities “may not employ or contract with any person who has a criminal history which would indicate behavior potentially harmful to individuals,” which is likewise documented through either a criminal history records check or a criminal background check.⁷³

c. Corrections

Maryland also has prohibitive regulations regarding employment in the corrections field. An applicant for appointment as a uniformed correctional officer shall be disqualified if he or she has been convicted of certain felony or misdemeanor offenses.⁷⁴

2. Licensing and Statutorily Required and Optional Background Checks

Maryland primarily regulates the employment field through licensing agencies and by requiring or giving employers the option to conduct criminal background checks before they hire individuals. According to the licensing agency list in the *Maryland Trial*

71. MD. CODE REGS. 10.07.14.17(B)(4) (2006). Chapter 14 is authorized by MD. CODE ANN., HEALTH-GEN. § 19-1802 (2005). The definitions of assisted living programs are set out in the Appendix. *See infra* App., subs. B, Part I at A-4.

72. MD. CODE REGS. 10.07.14.27(B) (2006).

73. MD. CODE REGS. 10.22.02.11(B) (2006); Chapter 22 is authorized by MD. CODE ANN., HEALTH-GEN. § 7-904 (Supp. 2006).

74. MD. CODE REGS. 12.10.01.17(A) (2006); Chapter 10 is authorized under MD. CODE ANN., CORR. SERVS. § 8-208(a) (Supp. 2006). For code text and disqualifying convictions, see *infra* App., subs. B, Part I at A-4.

Judges' Benchbook, countless employment opportunities within Maryland require a license or permit.⁷⁵

a. Statutorily Required Background Checks

In many instances, licensing agencies are required to conduct background checks. These agencies use the results of these checks as a factor in determining whether to issue the specific license. Often, the existence of a criminal record can be grounds for denial. For example, individuals applying for a taxicab license must subject themselves to mandatory criminal background checks.⁷⁶ In turn, “[t]he Commission may deny an applicant a license or suspend or revoke the license of a licensee if the applicant or licensee has been convicted of a crime that bears a direct relationship to the applicant’s or licensee’s fitness to serve the public as a for-hire driver.”⁷⁷ Thus, the various agencies have enormous discretion to prohibit ex-offenders from obtaining licenses.

b. Optional Background Checks and the Negligent Hiring Doctrine

There are some situations where criminal background checks are optional, rather than required. In these instances, an employer has the option of reviewing an applicant’s criminal record as part of the application and hiring processes. For example, Anne Arundel, Howard, Washington, and Prince George’s Counties may request a state and national criminal history records check from the Central Repository for any prospective

75. See MARYLAND INSTITUTE FOR CONTINUING PROFESSIONAL EDUCATION OF LAWYERS, INC., MARYLAND TRIAL JUDGES’ BENCHBOOK 148-97 (1999). This list of over 500 occupations is broad, as examples include architects, attorneys, barbers, bus drivers, dry cleaners, physicians, physician’s assistants, welders, and youth camp operators.

76. MD. CODE ANN., PUB. UTIL. COS. § 10-104(a)(1)(v) (Supp. 2006).

77. § 10-104(e).

employee of their respective counties.⁷⁸ Hence, these employers have vast discretion to deny employment opportunities to ex-offenders based solely on their criminal records.

Even in circumstances where criminal background checks are not mandatory or explicitly set forth as optional, the Negligent Hiring Doctrine may compel employers to investigate each applicant's criminal background.⁷⁹ Pursuant to this doctrine, "employers are potentially liable for hiring or retaining employees who are unfit and who consequently injure a third person."⁸⁰ Employers generally do not need to inquire about an employee's criminal record, however, an inquiry may be required for jobs where the employee's tasks places third parties at risk of harm.⁸¹

Thus, ex-offenders are often ineligible for or denied employment opportunities as a result of various statutes and regulations, as well as the vast discretion afforded licensing authorities and employers to deny licensing or employment based on an applicant's criminal record.⁸²

78. MD. CODE ANN., CRIM. PROC. §§ 10-231(a) (2001) (Anne Arundel County), 10-233(a) (2001) (Howard County), 10-235(b)(1)-(2) (Supp. 2006) (Washington County), 10-236 (Supp. 2006) (Prince George's County).

79. See HOMELESS PERSONS REPRESENTATION PROJECT, INC., EX-OFFENDERS AND EMPLOYMENT: A REVIEW OF MARYLAND'S PUBLIC POLICY AND A LOOK AT OTHER STATES 7-8 (2001) (revised and updated, June 2002), available at <http://www.altrue.net/altruesite/files/hprp/publications/abell%20final.pdf> (explaining the negligent hiring doctrine).

80. *Id.* at 7. A plaintiff bringing a negligent hiring claim must prove that the employer's failure to "undertake a reasonable inquiry" resulted in the hiring of the specific employee, and that the hiring proximately caused the injury. *Cramer v. Housing Opportunities Comm'n*, 501 A.2d 35, 39, 304 Md. 705, 713 (1985). In situations where the plaintiff asserts the claim based on the employee's past criminal record, courts will analyze whether the employer had a duty to conduct a criminal background check. Among the factors to be assessed in this regard include the availability of the information, as well as "the cost, inconvenience, and delay in obtaining it." *Id.* at 40, 304 Md. at 716.

81. *Id.* at 40-41, 304 Md. at 715-16. See also *Evans v. Morsell*, 395 A.2d 480, 283 Md. 160 (1978) (tavern owner not negligent for hiring a bartender with a criminal background who shot a customer).

82. Examples of statutory and regulatory prohibitions as well as required and optional background checks are set out in the Appendix. See App., subs. B, Part II.

D. FAMILY LIFE

A criminal conviction can also have wide-ranging effects on an individual's family life. Unlike the collateral consequences set forth above, however, the consequences pertaining to family life are triggered by an individual's incarceration, rather than conviction. As with the other collateral consequences, these family-rooted ramifications are often unforeseen by criminal defendants and broadly impact their relationships with their spouses and children.

1. Impact of Incarceration on Marriage

One way that criminal convictions can impact families is through a statutory provision that allows for an individual to divorce⁸³ his or her incarcerated spouse. Specifically, this statute allows a court to decree an absolute divorce if the defendant has been convicted of a felony or misdemeanor in any state or federal court, has been sentenced to a prison term of at least three years, and has served twelve months of that sentence.⁸⁴

2. Parental Rights

An individual's incarceration in Maryland could also potentially lead to the termination of his or her parental rights. Maryland law defining this consequence is based on the Adoption and Safe Families Act of 1997.⁸⁵ The Adoption and Safe Families Act sets forth various requirements that states must meet to remain eligible for federal funds under the Social Security Act.

83. According to its common usage, "divorce" includes "the dissolution of a valid marriage, a formal separation of married persons, and the annulment of a marriage void from the beginning." 8A WEST'S MARYLAND LAW ENCYCLOPEDIA § 1 (2001). An absolute divorce is the "total divorce of the husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations." *Id.*

84. MD. CODE ANN., FAM. LAW § 7-103(a)(4)(i)&(ii) (2006).

85. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2125 (1997).

One requirement is that the State shall file a petition for the termination of parental rights if a child has been in foster care for fifteen of the most recent twenty-two months.⁸⁶ This provision potentially affects incarcerated parents. Specifically, a parent's incarceration may result in the State placing his or her child in some form of foster care. Should the child remain in foster care for the time period set forth in the Adoption and Safe Families Act, the State must file a petition for termination of the incarcerated individual's parental rights.

The Adoption and Safe Families Act also mandates the initiation of termination proceedings if a court has determined that a parent has committed certain offenses. Specifically, the statute mandates the filing of the petition if a parent "has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder of such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent. . . ."⁸⁷ In these circumstances, the State must petition for termination of parental rights irrespective of the length of incarceration.⁸⁸

Maryland law is similar to the Adoption and Safe Families Act in many respects. However, it also broadens several of the federal provisions. As with the federal statute, Maryland mandates that termination of parental rights proceedings be initiated if the child

86. 42 U.S.C. § 675(5)(E) (2000). In addition to filing this petition, the state must "identify, recruit, process and approve a qualified family for an adoption...." *Id.* There are three exceptions to this requirement: (1) if the state agency allows the child to be cared for by a relative; (2) a state agency has documented a "compelling reason" that filing a termination proceeding would not be in the child's best interests; or (3) if the state has not provided services to the child's family that the state declares are necessary for the child's safe return to his or her home. § 675(5)(E)(i)-(iii).

87. § 675(5)(E).

88. *Id.*

has been in an out-of-home placement for fifteen of the most recent twenty-two months.⁸⁹ However, while the Adoption and Safe Families Act states that a child is considered to be in foster care on the earlier of the date of the first judicial finding that the child has been abused or neglected, or sixty days after he or she has been removed from the home,⁹⁰ Maryland has a blanket time period that considers the child “to have entered an out-of-home placement [thirty] days after the child is placed into an out-of-home placement.”⁹¹

Maryland law also expands the portion of the Adoption and Safe Families Act that requires the initiation of termination proceedings based upon convictions of specific crimes. Maryland requires the commencement of termination proceedings if the parent is convicted in Maryland of a crime of violence⁹² against the child, the other natural parent of the child, any other child of the natural parent, or any person who lives with the natural parent,⁹³ is convicted in any other state or federal court of committing a crime of violence against these individuals,⁹⁴ or is convicted for aiding or abetting, conspiring, or soliciting to commit any of these crimes in Maryland or any other state.⁹⁵

3. *Child Support*

Child support arrearages are the source of many additional hurdles for ex-offenders because child support obligations continue during the period of their

89. MD. CODE ANN., FAM. LAW § 5-525.1(b)(1)(i) (2006). “Out-of-home placement” is defined as “placement of a child into foster care, kinship care, group care, or residential treatment care.” MD. CODE ANN., FAM. LAW § 5-501(m) (2006).

90. 42 U.S.C. § 675(5)(F)(i)-(ii) (2000).

91. MD. CODE ANN., FAM. LAW § 5-525.1(b)(2) (2006).

92. “Crimes of Violence” are defined in MD. CODE ANN., CRIM. LAW § 14-101(a) (Supp. 2006), and MD. CODE ANN., PUB. SAFETY § 5-101(c) (2003).

93. MD. CODE ANN., FAM. LAW § 5-525.1(b)(1)(iii)(1) (2006).

94. § 5-525.1(b)(1)(iii)(1).

95. § 5-525.1(b)(1)(iii)(2). However, as with the federal statute, Maryland has three exceptions to the requirement that a termination petition be filed: (1) if the child is being cared for by a relative; (2) if the local department that would otherwise be required to file the petition has documented a “compelling reason” that filing said petition would not be in the child’s best interests; or (3) if the local department has not provided services to the child’s family that said department considers necessary for the child’s safe return to his or her home. § 5-525.1(b)(3)(i)-(iii).

incarceration.⁹⁶ Inmates with little or no financial resources will be unable to pay child support during the period of incarceration. As a result, child support arrears accrue during this period and must be paid by ex-offenders upon their release. If the ex-offender had any funds in a savings account, those funds likely would have been seized by the time he or she has completed his or her sentence.⁹⁷ Additionally, an ex-offender's failure to support his or her children while incarcerated could technically lead to state⁹⁸ or federal charges.⁹⁹

Arrearages also can affect an ex-offender's license status. The Child Support Enforcement Administration (CSEA) can request licensing agencies to suspend a delinquent, non-custodial parent's professional and recreational licenses or to deny his or her application for such license.¹⁰⁰ Although the CSEA has the discretion to make such a request, the licensing authority must suspend or deny the license once such a request has been made.¹⁰¹

96. It should be noted that, in the event the obligor is delinquent, the recipient can assign the child support to the Child Support Enforcement Administration. In this instance, the Department of Human Resources will provide cash assistance to the recipient. MD. ANN. CODE art. 88A, § 50(b)(2) (2003). The State will attempt to be reimbursed by the delinquent parent.

97. See MD. CODE ANN., FAM. LAW § 10-108.3(b)(1) (2006) (the Child Support Enforcement Administration may bring an action to seize one or more bank accounts for the amount owed by an obligor who is \$500 or more in arrears and has not paid child support for more than sixty days).

98. See § 10-203(a) ("A parent may not willfully fail to provide for the support of his or her minor child.").

99. See 18 U.S.C. § 228(a)(1) (2000) (stating that a person has committed the criminal offense of failure to pay legal child support obligations when he, *inter alia*, "willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than [one] year, or is greater than \$5,000.").

100. The CSEA can make this request if the obligor is in arrears amounting to more than 120 days under the most recent court order; *and* the CSEA has accepted an assignment of the support from the recipient; *or* the recipient has find an application for support enforcement services with the CSEA; *or* the obligor has failed to comply with a subpoena issued by the CSEA. MD. CODE ANN., FAM. LAW. § 10-119.3(e)(1)-(2) (2006).

101. § 10-119.3(e)(2)(i)-(ii).

The CSEA has similar power regarding a delinquent, non-custodial parent's driver's license.¹⁰² The parent may apply for a work-restricted license,¹⁰³ but he or she must be employed *before* this license will be issued.¹⁰⁴ Moreover, the work-restricted license is only valid in the State of Maryland.¹⁰⁵ Those with criminal convictions, who already must confront several employment-related obstacles, will have difficulty finding employment if they are unable to drive.¹⁰⁶

The aforementioned consequences can be avoided if the parent moves to modify the support order upon conviction. Generally, orders can be modified if one parent experiences a "material change of circumstances."¹⁰⁷ The Maryland Court of Appeals has held that imprisonment constitutes such a change.¹⁰⁸ A modification will not eliminate the support obligation, but a judge may reduce the obligation in proportion to the parent's reduced ability to pay.¹⁰⁹ Incarceration can also result in the suspension of the child support obligation from the date of incarceration until after release.¹¹⁰

102. MD. CODE ANN., TRANSP. § 16-203(b)(1) (2006).

103. § 16-203(b)(2).

104. MD. CODE REGS. 11.11.08.04(B)(1) (2007).

105. MD. CODE ANN., FAM. LAW § 10-119(b)(2)(ii) (2006) ("[The Motor Vehicle Administration] may issue a work-restricted license or work-restricted privilege to drive *in the State . . .*") (emphasis added). However, the obligor does have the opportunity to assert that the basis of the suspension is inaccurate; that the suspension would impede current or potential employment; the suspension would "place an undue hardship" on the obligor because of "a documented disability resulting in a verified inability to work," or that he was unable to comply with the court order. § 10-119(c)(1)(i)(1)-(3).

106. Driver's licenses can be reinstated if the arrearage has been paid in full or if the parent has demonstrated good faith by paying an ordered amount for six consecutive months, or if the CSEA finds that one of the hardships listed directly above, *supra* note 93, exists. § 10-119(d). *See* MD. CODE ANN., TRANSP. § 16-203(e) (2006) (also stating that good faith period for a driver's licenses is six months).

107. *See* MD. CODE ANN., FAM. LAW § 12-104(a) (2006) ("The court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.").

108. *Wills v. Jones*, 667 A.2d 331, 336, 340 Md. 480, 490-91 (1995).

109. *Id.* at 339, 340 Md. at 496-97. This is true assuming that the parent did not commit the crimes with the intent of going to prison or otherwise becoming impoverished. *Id.* at 339, 340 Md. at 497 ("[A] prisoner is only 'voluntarily impoverished' as a result of incarceration if the crime leading to incarceration was committed with the intention of becoming incarcerated or otherwise impoverished").

110. *See generally Wheeler v. State*, 864 A.2d 210, 160 Md. App. 363 (Md. Ct. Spec. App. 2004).

It is important to note that although the parent may move to modify the order at any time, modifications are not retroactive.¹¹¹ Also, the order may be modified once the non-custodial parent is released or is granted work release. Depending on where the non-custodial parent is incarcerated, the amount of child support owed will be deducted from the parent's work release pay.¹¹²

E. CIVIL DISABILITIES

In addition to restrictions on receiving government benefits, subsidized or public housing, and employment opportunities, an ex-offender in Maryland faces restrictions and limitations on civil privileges, such as jury service, commercial driver's licenses, firearm possession, and voting. Moreover, individuals convicted of felony offenses are prohibited by federal law from serving in the United States military.¹¹³ This subsection spells out these restrictions.

1. Jury Service

Maryland law provides that a person is not eligible for jury service if he or she has “been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding [six] months and received a sentence of imprisonment for more than [six] months, or [h]as a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding [six] months.”¹¹⁴ Moreover, the statute

111. MD. CODE ANN., FAM. LAW § 12-104(b) (2006).

112. MD. CODE ANN., CORR. SERVS. § 11-711(g)(2)(iv) (1999) (Dorchester County); MD. CODE ANN., CORR. SERVS. § 11-712(c)(5)(ii)(4) (Supp. 2006) (Frederick County); MD. CODE ANN., CORR. SERVS. § 11-716(g)(2)(iv) (1999) (Kent County); MD. CODE ANN., CORR. SERVS. § 11-717(e)(2)(iii) (1999) (Montgomery County); MD. CODE ANN., CORR. SERVS. § 11-718(e)(2)(iii) (1999) (Prince George's County); MD. CODE ANN., CORR. SERVS. § 11-724(g)(2)(iv) (1999) (Wicomico County).

113. However, the Secretary of each military branch may authorize exceptions. *See infra* note 136 and accompanying text.

114. MD. CODE ANN., CTS. & JUD. PROC. § 8-103(b)(4)-(5) (2006). The statute does, however, permit a pardoned individual to qualify for jury service. *Id.* at § 8-103.

provides that a person is ineligible if he or she has a pending charge, or has been convicted of, “an offense punishable under § 8-401(c).”¹¹⁵

2. *Driver’s Licenses*

A range of offenses lead to the disqualification of a commercial driver’s license.¹¹⁶ An individual must be disqualified from driving a commercial vehicle for a period of one year if:

- 1) The individual is convicted of committing any one of the following offenses while driving a commercial motor vehicle:
 - i. Driving in violation of § 21-902 of this article;¹¹⁷
 - ii. Driving in violation of a federal law or any other state’s law which is substantially similar in nature to the provisions in § 21-902 of this article;
 - iii. Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation;
 - iv. A crime, other than a crime described in subsection (e)¹¹⁸ of this section, that is punishable by death or imprisonment for a term exceeding 1 year; or
 - v. Driving in violation of § 25-112 of this article.¹¹⁹

The Maryland Code supplements the state’s authority to revoke a person’s commercial driver’s license upon a drug conviction. Section 1-506(a) states that if an

115. MD. CODE ANN., CTS. & JUD. PROC. § 8-506(a)-(b) (2006). Section 8-506 states that a person who “willfully misrepresent[s] a material fact on a juror qualification form for the purpose of avoiding or obtaining service as a juror . . . is subject to a fine not exceeding \$5000 or imprisonment not exceeding 30 days or both.”

116. The statutory provisions appears to be aimed at the revocation of commercial driver’s licenses as opposed to individual driver’s licenses, unless an individual has been convicted of driving while under the influence of alcohol or a controlled dangerous substance. MD. CODE ANN., TRANSP. § 16-205 (2006).

117. This code section prohibits driving or attempting to drive while under the influence of alcohol; *see* MD. CODE ANN., TRANSP. § 21-902(a)(1) (2006), while under the influence of alcohol per se, *see* § 21-902(a)(2), while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, *see* § 21-902(c)(1), or while impaired by a controlled dangerous substance. § 21-902(d).

118. This code section deals with controlled dangerous substances, and states that “[t]he Administration shall disqualify any person from driving a commercial motor vehicle for life who is convicted of using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled dangerous substance, or possession with intent to manufacture, distribute or dispense a controlled dangerous substance.” MD. CODE ANN., TRANSP. § 16-812(e) (2006).

119. MD. CODE ANN., TRANSP. § 16-812(a) (i)-(v) (2006).

individual who is convicted of a drug crime¹²⁰ holds a commercial driver's license, the Motor Vehicle Administration "may disqualify the individual from driving a commercial motor vehicle or take any other action permitted under this subtitle."¹²¹ Section 1-506(b) states that if the Motor Vehicle Administration so disqualifies an individual from driving a commercial motor vehicle, it "shall issue a noncommercial driver's license to the individual if: (1) The individual surrenders the commercial driver's license; and (2) The individual's driving privilege is not otherwise refused, suspended, revoked, or cancelled in this State or any other state."¹²²

3. *Firearm Possession*

Various statutory provisions regulate firearm possession by persons convicted of criminal offenses. One relevant provision provides that

[a] person may not possess, own, carry, or transport a firearm if that person has been convicted of: (1) a felony under this title; (2) a crime under the laws of another state or of the United States that would be a felony under this title if committed in this State; (3) conspiracy to commit a crime referred to in paragraphs (1) and (2) of this subsection; or (4) an attempt to commit a crime referred to in paragraphs (1) and (2) of this subsection.¹²³

Additional authority to regulate firearms possession by convicted felons is provided in the Public Safety section of the Maryland Code. The relevant portions of this statute state that a person may not possess a regulated firearm if the person:

120. MD. ANN. CODE art. 41, § 1-506(a) (2003). "Drug crime" is defined in MD. ANN. CODE art. 41, § 1-501(b) (2003) as "(1) A violation of Title 5 of the Criminal Law Article; (2) A violation of Title 12 of the Criminal Procedure Article; or (3) A violation of the law of any other jurisdiction if the prohibited conduct would be a violation of Title 5 of the Criminal Law Article or Title 12 of the Criminal Procedure Article if committed in this State." It encompasses both felonies and misdemeanors.

121. MD. ANN. CODE art. 41, § 1-506(a) (2003).

122. § 1-506(b).

123. MD. CODE ANN., CRIM. LAW § 5-622(b) (Supp. 2006). The definition of firearm includes "(1) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, and short-barreled rifle, as those words are defined in § 4-201 of this article; (2) a machine gun, as defined in 4-401 of this article; and (3) a regulated firearm, as defined in §5-101 of the Public Safety Article." MD. CODE ANN., CRIM. LAW § 5-622(a).

- 1) has been convicted of a disqualifying crime;
- 2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 yrs;
- 3) is a fugitive from justice; . . . or
- 9) if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.¹²⁴

Further, this statute sets out as a separate criminal offense the possession of a regulated firearm by one who was previously convicted of a crime of violence¹²⁵ or a violation of § 5-602 through § 5-609, or § 5-612 through § 5-614 of the Criminal Law article.¹²⁶

In support of the foregoing statutory provisions, the Code of Maryland Regulations allows the Secretary to deny an applicant the ability to purchase a firearm from a licensed dealer if the applicant has ever been convicted of:

- a) A crime of violence;
- b) Any violation classified as a felony in this State;
- c) Any violation classified as a misdemeanor in this State that carries a statutory penalty of more than 2 years; or
- d) Any violation classified as a common law offense when the person received a term of imprisonment of more than 2 years.¹²⁷

Additionally, an applicant may be denied the ability to purchase a firearm if he or she is younger than thirty years old at the time of the application and has been adjudicated delinquent by a juvenile court for:

- a) a crime of violence;
- b) any violation classified as a felony in this State; or
- c) any violation classified as a misdemeanor in this State that carries a statutory penalty of more than two years.¹²⁸

124. MD. CODE ANN., PUB. SAFETY § 5-133(b) (2003). As defined in MD. CODE ANN., PUB. SAFETY § 5-101(g) (2003), “[d]isqualifying crime” means: (1) a crime of violence; (2) a violation classified as a felony in the State; or (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.”

125. “Crime of violence” is defined in MD. CODE ANN., PUB. SAFETY § 5-101(c) (2003).

126. MD. CODE ANN., PUB. SAFETY § 5-133(c)(1). The offenses set forth in § 5-133(c)(ii) all involve controlled dangerous substances or counterfeit substances.

127. MD. CODE REGS. 29.03.01.11 (A)(4)(a)-(d) (2007).

4. Voting Rights

Voting is a fundamental right guaranteed to all Americans, yet there are an estimated 5.3 million Americans in our democracy who have temporarily or permanently lost their right to vote due to a felony conviction.¹²⁹ Of these 5.3 million Americans, 2.1 million are ex-offenders who have already paid their debt to society.¹³⁰

In Maryland, qualifications for and restrictions on voting privileges are set out in the Election Law section of the Code.¹³¹ As with most states, Maryland has a network of laws that disenfranchise categories of individuals with criminal records. Until recently, Maryland was one of seven states that disenfranchised certain ex-offenders for life.¹³² Also, Maryland imposed a three-year waiting period on individuals convicted of two or

128. MD. CODE REGS. 29.03.01.11 (A)(11)(a)-(c) (2007).

129. THE SENTENCING PROJECT; FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1 (2007), available at http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf (thirty-five states disenfranchise ex-offenders while they are on parole and thirty of these states, one of which is Maryland, also disenfranchise ex-offenders while they are on probation). Of this number, 1.4 million, or over one-third, are African-American men (thirteen percent of all African-American men).

130. *Id.*

131. MD. CODE ANN., ELEC. LAW § 3-102(b) (Supp. 2006). Section 3-102(b) states that a person cannot vote if he or she:

- (1) has been convicted of theft or other infamous crime, unless the individual:
 - (i) has been pardoned; or
 - (ii) 1. in connection with a first conviction, has completed the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines; or 2. in connection with a subsequent conviction, has completed the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines, and at least 3 years have elapsed since the completion of the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines;
- (2) is under guardianship for mental disability; or
- (3) has been convicted of buying or selling votes.

Notwithstanding section 3-102(b), however, a person is ineligible to register if he or she “has been convicted of a second or subsequent crime of violence, as defined in § 14-101 of the Criminal Law Article.” § 3-102(c).

132. On April 24, 2007, Maryland Governor Martin O’Malley signed into law the Voter Registration Protection Act, which allows individuals who have completed their court-ordered sentences for felony convictions to register to vote. The law will take effect July 1, 2007. *See* 2007 Md. Laws ch. 159.

more “infamous crimes.”¹³³ Thus, these individuals had to complete their sentences and then wait three years before they would regain their voting right. Moreover, Maryland disenfranchised for life those convicted of two or more crimes of violence.

However, on April 24, 2007, Governor Martin O’Malley signed into law the Voter Registration Protection Act, which eliminates the waiting period and lifetime disenfranchisement provisions.¹³⁴ The new law will allow individuals who have completed their court-ordered sentences for felony convictions to register to vote.¹³⁵ The law also repealed the definition of “infamous crime.” The law will take effect on July 1, 2007.

5. *Military Service*

Federal statutory authority for the prohibition against convicted felons enlisting and serving in the United States Armed Forces is provided in 10 U.S.C. § 504. This statute states that “[n]o person who is insane, intoxicated or a deserter from an armed force, *or who has been convicted of a felony*, may be enlisted in any armed force. However, the Secretary of [each military branch] may authorize exceptions, in meritorious cases, for the enlistment of persons . . . convicted of felonies.¹³⁶ Accordingly, a person convicted of a felony in Maryland as well as in other states will be ineligible for military service, unless authorized an exception as noted directly above.

F. SEX OFFENDER REGISTRATION

133. An index of over 100 infamous crimes under Maryland Law is set forth in a 1982 Maryland Attorney General Opinion. 67 Md. Op. Att’y Gen. 176, 181-91 (1982). Of these crimes that lead to disenfranchisement, only four—including election fraud and ballot tampering—actually relate to voting.

134. 2007 Md. Laws ch. 159, *available at* http://mlis.state.md.us/2007RS/chapters_noln/Ch_159_sb0488T.pdf.

135. Those who have yet to complete their sentence—including probation or parole—for a felony conviction remain ineligible to vote.

136. 10 U.S.C.A. § 504 (West Supp. 2007) (emphasis added).

In response to public safety concerns focusing on child sexual offenders and sexually violent offenders, Congress passed the Wetterling Act in 1994.¹³⁷ This Act called for the establishment of guidelines for state programs pertaining to registration of sex offenders. Maryland's law, codified in the Criminal Procedure Article, §§ 11-701 through 11-721 of the Annotated Code of Maryland, sets out the state's provisions for sex offender registration.

1. Statutory Requirements

The following persons are required to register as sex offenders: 1) a child sexual offender; 2) an offender; 3) a sexually violent offender; or 4) a sexually violent predator as these terms are defined in section 11-701.¹³⁸ Convictions can be obtained through several methods: a finding of guilt by a jury or judge; a plea of guilty or *nolo contendere*; as part of a condition of probation before judgment; or if the defendant has been found not criminally responsible for a crime.¹³⁹

The registration terms are either ten years or life.¹⁴⁰ Lifetime registration is required if:

- 1) the registrant is a sexually violent predator;
- 2) the registrant has been convicted of a sexually violent offense;
- 3) the registrant has been convicted of a violation of § 3-602 of the Criminal Law Article for commission of a sexual act involving penetration of a child under the age of 12 years; or
- 4) the registrant has been convicted of a prior crime as a child sexual offender, an offender, or a sexually violent offender.¹⁴¹

137. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (codified as amended at 42 U.S.C. § 14071).

138. MD. CODE ANN., CRIM. PROC. § 11-704(a)(1)-(4) (Supp. 2006). In addition, certain individuals moving to Maryland from other states are required to register. See § 11-704(a)(5)-(7).

139. MD. CODE ANN., CRIM. PROC. § 11-702(1)-(4) (2001).

140. MD. CODE ANN., CRIM. PROC. § 11-707(a)(4)(i) & (ii) (Supp. 2006).

141. MD. CODE ANN., CRIM. PROC. § 11-707(a)(4)(ii)(1)-(4).

If a resident of Maryland, the individual must register on or before the date he or she is released, granted probation before or after judgment, granted a suspended sentence, or received a sentence other than imprisonment.¹⁴² The registration statement must include several items related to the registrant, including his or her name, address, social security number, and a description of the crime for which he or she was convicted.¹⁴³

The only instance in which a defendant in Maryland is required to receive advanced notice of the possibility of registration is when the State's Attorney asks the sentencing court to determine whether the defendant is a sexually violent predator. In this circumstance, the State's Attorney must serve written notice of intent to make this request on the defendant or defense counsel at least thirty days before trial.¹⁴⁴ No similar provision exists for defendants against whom State's Attorneys do not seek this determination, but who nevertheless might be required to register as a result of their conviction.

2. Repercussions of Failure to Register

Section 11-721 sets out the penalties for failure to register. A registrant who knowingly fails to register, or knowingly fails to provide written notice when so required, or knowingly provides false information of a material fact is "guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding three years or a fine not exceeding \$5000 or both."¹⁴⁵

142. MD. CODE ANN., CRIM. PROC. § 11-705(b)(1)(i)-(v).

143. The complete list of these required items is set forth in MD. CODE ANN., CRIM. PROC. § 11-706(a)(1)-(10) (Supp. 2006). In the case of sexually violent predators, the registration statement must include these ten enumerated items, as well as a physical description of the registrant, the registrant's "anticipated future residence", the offense history, and any "documentation of treatment received for a mental abnormality or personality disorder." § 11-706(b)(1)-(4).

144. MD. CODE ANN., CRIM. PROC. § 11-703(c) (Supp. 2006).

145. MD. CODE ANN., CRIM. PROC. § 11-721 (a)-(b).

3. *Notice to the Community*

There are several ways in which the community can receive information regarding the registrants. First, the Department of Public Safety and Correctional Services website maintains free access to all information that the registrants are required to provide.¹⁴⁶ Second, any individual can request information about specific individuals in the registry.¹⁴⁷ Third, section 11-708(c)(2)(i) provides that “[i]f the registrant is enrolled in or carries on employment at . . . an institution of higher education in the State, within [five] days after obtaining a registration statement, the supervising authority shall send a copy of the registration statement . . . to the campus police. . . .”¹⁴⁸ Fourth, section 11-709(a)(1) states that: “Every [three] months within [five] days after a child sexual offender or sexually violent predator completes the registration requirements of § 11-707(a) of this subtitle, a local law enforcement unit shall send notice of the child sexual offender's or sexually violent predator's quarterly registration to the Department.”¹⁴⁹ Lastly, section 11-718(a)(1) states that a local law enforcement unit can give notice of the registration statement to a person, if “it is necessary to give notice . . . to [that] particular person.”¹⁵⁰

4. *Possible Relief from Registration Requirements*

The sole mode of relief from having to register is detailed in Section 11-704(b), which sets forth that a person is no longer subject to registration if the underlying

146. Maryland Department of Public Safety and Correctional Services, Sex Offender Registry, <http://www.dpscs.state.md.us/onlineservs/sor/> (last visited Mar. 23, 2007).

147. MD. CODE ANN., CRIM. PROC. § 11-716 (2001).

148. MD. CODE ANN., CRIM. PROC. § 11-708(c)(2)(i) (Supp. 2006).

149. MD. CODE ANN., CRIM. PROC. § 11-709(a)(1) (Supp. 2006).

150. MD. CODE ANN., CRIM. PROC. § 11-718(a)(1) (Supp. 2006).

conviction is reversed, vacated or set aside, or if the registrant is pardoned for the underlying conviction.¹⁵¹

151. MD. CODE ANN. CRIM. PROC. § 11-704(b)(1)-(2) (Supp. 2006).

CONCLUSION

The purpose of this report is to further the discussion that the ABA began in August, 2003, when it adopted the *ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*. In this initial step, the report aims to inform Maryland stakeholders of several collateral consequences that result from criminal convictions in Maryland. The report illustrates that such consequences potentially affect every aspect of an ex-offender's life upon his or her reentry. As with those in other states, however, defendants in Maryland are unaware of most of these consequences at the time they enter guilty pleas. As a result, their pleas are generally uninformed.

At the very least, defendants should be provided notice of these potential consequences before they enter guilty pleas. This information would greatly aid their ability to assess fully the ramifications of entering their pleas, and would lead to truly informed decisions. The ABA Standards set forth a mechanism by which these changes can be implemented in Maryland. It is our hope that community stakeholders in Maryland will discuss these various issues and that, ultimately, they will find ways to incorporate these standards into the criminal process.

APPENDIX

**SUBSECTION A – SYNOPSIS OF FEDERAL HOUSING BENEFITS
STATUTES**

1. 42 U.S.C. § 13661: Screening of Applicants for Federally Assisted Housing

This statute provides for the screening of applicants before housing benefits are conferred. Its sub-sections render anyone ineligible for federal public housing assistance (either housing in a publicly-owned unit or a Section 8 voucher) who has previously been evicted for drug-related criminal activity,¹ anyone who the local housing authority deems a “drug user” or an “alcohol abuser,”² and anyone who engaged “drug-related or violent criminal activity”, or whose criminal activity (in the eyes of the local authority) threatens the peaceful enjoyment of other residents.³

The federal statutes indicate that this ineligibility need not always be permanent. With respect to ineligibility for drug-related criminal activity, the offender’s ineligibility lasts for three years from the date of their conviction.⁴ The second sub-section, which provides for ineligibility of illegal drug users and alcohol abusers, provides the applicant an opportunity to demonstrate rehabilitation.⁵ The public housing agency may consider whether the individual has successfully completed a rehabilitation program,⁶ whether the individual has been successfully rehabilitated on his own,⁷ or whether the individual is currently participating in a rehabilitation program.⁸ The final sub-section, which renders

¹ 42 U.S.C. § 13661(a) (2000).

² § 13661(b).

³ § 13661(c).

⁴ § 13661(a).

⁵ § 13661(b)(2).

⁶ § 13661(b)(2)(A).

⁷ § 13661(b)(2)(B).

⁸ § 13661(b)(2)(C).

applicants ineligible if their drug-related crime, violent criminal activity, or other criminal activity threatens the peaceful enjoyment of the neighbors, provides that the ineligibility attaches only if the particular criminal activity took place recently, before a “reasonable” amount of time had passed.⁹

2. 42 U.S.C. § 13662: Termination of Tenancy and Assistance for Illegal Drug Users and Alcohol Abusers in Federally Assisted Housing

This statute similarly renders certain people ineligible for housing benefits. However, this statute addresses the termination of existing assistance, as opposed to the screening process for those applying for such assistance. The first sub-section provides that “a public housing agency or an owner of federally assisted housing” has the authority “to terminate the tenancy or assistance for any household with a member” who is illegally using a controlled substance or whose alcohol abuse “interfere[s] with the health, safety, or right to peaceful enjoyment” of the other residents.¹⁰ Both the determination as to whether a particular resident is illegally using a controlled substance or abusing alcohol in a way that interferes with the other residents and the decision to evict the household are left to the local authority (in the case of publicly-owned projects) or to the private landlords (in the case of a government voucher). In reaching this determination, the public housing agency or owner may consider whether the household member has been rehabilitated¹¹ or is in the process of being rehabilitated.¹²

⁹ § 13661(c)(2).

¹⁰ 42 U.S.C. § 13662(a) (2000).

¹¹ 42 U.S.C. § 13661(b)(2)(A)-(B) (2000).

¹² § 13661(b)(2)(C).

3. 42 U.S.C. § 13663: Ineligibility of Dangerous Sex Offenders for Admission to Public Housing

The third statute deals with those determined to be “dangerous sex offenders.” Any household that includes an individual who is subject to a lifetime registration requirement under a state sex offender registration program shall be prohibited from receiving federally-assisted housing.¹³ Accordingly, this prohibition is mandatory and leaves the owner of such housing with no discretion.¹⁴

4. 42 U.S.C. § 1437f(d)(1)(B)(iii): Criminal Activity as Cause for Termination of Low-Income Housing Assistance

This statute deals solely with ineligibility for continued assistance in the form of government vouchers. Specifically, the statute provides that when a tenant has entered into a residential lease with assistance from a Section 8 voucher, “any criminal activity that threatens the health, safety, or right to peaceful enjoyment” of the neighbors, or “any drug-related criminal activity on or near such premises...shall be cause for termination of tenancy.”¹⁵

¹³ 42 U.S.C. § 13663(a) (2000).

¹⁴ *Id.* There are also sub-sections to this statute that set forth the means for public housing agencies and owners to obtain this information, *see* § 13663(b)(1)-(2), (c), and a sub-section that gives the individual an opportunity to dispute the adverse action. § 13663(d).

¹⁵ 42 U.S.C.A. § 1437f(d)(1)(B)(iii) (West Supp. 2007).

SUBSECTION B – EMPLOYMENT AND LICENSING

PART I

1. **MD. CODE REGS. 10.07.14.02(B)(10): Assisted Living Program**

“Assisted living program” means a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of residents who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the residents.

(a) “Assisted living program” does not include:

- (i) A nursing home, as defined under Health-General Article, § 19-301, Annotated Code of Maryland;
- (ii) A State facility, as defined under Health-General Article, § 10-101, Annotated Code of Maryland;
- (iii) A program licensed or approved by the Department under Health-General Article, Title 7 or Title 10, Annotated Code of Maryland;
- (iv) A general hospice care program licensed by the Department under Health-General Article, Title 19, Annotated Code of Maryland;
- (v) Services provided by family members;
- (vi) Services provided by a licensed residential service agency or licensed home health agency in an individual's own home;
- (vii) Emergency, transitional, and permanent housing arrangements for the homeless, where no assistance with activities of daily living is provided; or
- (viii) Emergency, transitional, and permanent housing arrangements for the victims of domestic violence.

2. **MD. CODE REGS. 12.10.01.17(A): Disqualifying Criminal Convictions for Uniformed Correctional Officers**

A. An applicant for appointment as a uniformed correctional officer shall be disqualified if the applicant has:

- (1) A felony conviction for:
 - (a) Aggravated assault,
 - (b) Murder or manslaughter,
 - (c) Robbery,
 - (d) Arson,
 - (e) Kidnapping,
 - (f) A handgun or weapon-related violation,
 - (g) A first, second, or third degree sexual offense, or
 - (h) Two or more felonies not arising from the same incident;
- (2) A conviction for an offense that resulted in incarceration when less than 10 years have elapsed since the applicant was released from incarceration or terminated from parole or probation, whichever last occurred;

- (3) A misdemeanor conviction that resulted in incarceration when less than 5 years have elapsed since the applicant was released from incarceration or terminated from parole or probation, whichever has last occurred; or
 - (4) Three or more misdemeanor convictions, except convictions for minor traffic violations, arising out of separate occurrences if at least one misdemeanor was for an offense involving violence or moral turpitude and a term of imprisonment was served for any one offense.
- B. This regulation does not require a correctional unit to employ a correctional officer with a criminal record or prevent the unit from setting higher criminal history standards than specified in this regulation.
- C. The Commission may reject the appointment of an individual with a criminal record not covered by this regulation.

3. MD. CODE ANN., FAM. LAW § 5-561. Mandatory Criminal History Records Checks

(a) Criminal History Records Check. -- Notwithstanding any provision of law to the contrary, an employee and employer in a facility identified in subsection (b) of this section and persons identified in subsection (c) of this section shall apply for a national and State criminal history records check at any designated law enforcement office in this State.

(b) Facilities required to obtain a criminal history records check. -- The following facilities shall require employees and employers to obtain a criminal history records check under this Part VI of this subtitle:

- (1) a child care center required to be licensed under Part VII of this subtitle;
- (2) a family day care home required to be registered under Part V of this subtitle;
- (3) a child care home required to be licensed under this subtitle or under Article 83C of the Code;
- (4) a child care institution required to be licensed under this subtitle or under Article 83C of the Code;
- (5) a juvenile detention, correction, or treatment facility provided for in Article 83C of the Code;
- (6) a public school as defined in Title 1 of the Education Article;
- (7) a private or nonpublic school required to report annually to the State Board of Education under Title 2 of the Education Article;
- (8) a foster care family home or group facility as defined under this subtitle;
- (9) a recreation center or recreation program operated by State or local government primarily serving minors; or
- (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the Code of Maryland Regulations, primarily serving minors.

4. MD. CODE ANN., HEALTH-GEN. § 19-1901(b): Adult Care Programs

Adult dependent care program. – “Adult dependent care program” means:

- (1) An adult day care facility regulated under Title 14, Subtitle 2 of this article;
- (2) An assisted living program facility regulated under Subtitle 18 of this title;
- (3) A group home regulated under Title 10, Subtitle 5 or Title 7, Subtitle 6 of this article;
- (4) A home health agency regulated under Subtitle 4 of this title;
- (5) A congregate housing services program regulated under Article 70B of the Code;
- (6) A residential service agency as defined under § 19-4A-01 of this title;
- (7) An alternative living unit as defined under § 7-101 of this article;
- (8) A hospice facility regulated under Subtitle 9 of this title; or
- (9) A related institution regulated under Subtitle 3 of this title.

PART II

EMPLOYMENT AND LICENSING EMPLOYMENT CHART

Examples of Absolute Prohibitions

Statute/Regulation	Prohibitions/Explanation
MD. CODE ANN., EDUC. § 6-113.	<p>Education: The State Board shall adopt regulations that prohibit a county board from knowingly hiring, as a non-certificated employee, any individual who has been convicted of a crime involving:</p> <ul style="list-style-type: none"> • An offense under § 3-307 of the Criminal Law Article; • Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in this State; or • A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this State.
MD. CODE REGS. 10.09.54.06(B)(6).	<p>Home/Community Based Services Waiver for Older Adults: Individuals seeking employment as Personal Care Aides are disqualified from employment if they have been convicted of, received a probation before judgment for, or entered a plea of nolo contendere to a felony or any crime involving moral turpitude or theft, or have any other criminal history that indicates behavior which is potentially harmful to participants.</p>
MD. CODE REGS. 10.09.54.07(D)(2).	<p>Home/Community Based Services Waiver for Older Adults: Individuals seeking employment as Respite Care Workers are disqualified from employment if they have been convicted of, received a probation before judgment for, or entered a plea of nolo contendere to a felony or any crime involving moral turpitude or theft, or have any other criminal history that indicates behavior which is potentially harmful to participants.</p>
MD. CODE REGS. 10.07.14.17(B)(4).	<p>Assisted Living Programs: State Regulations governing the Staff at Assisted Living Programs prohibit the employment of staff having criminal convictions or criminal history that indicates behavior that is potentially harmful to residents, as evidenced through a criminal history records check or a criminal background check. (The definitions of Assisted Living Programs are set out in the Appendix. See App, Subsection B at page v, note 1).</p>

Statute/Regulation	Prohibitions/Explanation
MD. CODE REGS. 10.07.14.27(B).	Assisted Living Programs: An assisted living program may not knowingly employ an individual who has any criminal conviction or other criminal history that indicates behavior that is potentially harmful to residents, documented through either a criminal history records check or a criminal background check.
MD. CODE REGS. 10.22.02.11(B).	Developmental Disabilities Worker: A licensee may not employ or contract with any person who has a criminal history which would indicate behavior potentially harmful to individuals, documented through either a criminal history records check or a criminal background check, pursuant to Health-General Article, § 19-1902 et seq., Annotated Code of Maryland, and COMAR 12.15.03.
MD. CODE REGS. 12.10.01.17(A).	Uniform Correctional Officer: The disqualifying convictions for Uniformed Correctional Officers are set out in the Appendix. See App, Subsection B at page A-5, note 2.

Examples of Statutory Required Background Checks

Statute/Regulation	Background Check/Explanation
MD. CODE ANN., FAM. LAW §5-561(b)(1)-(10).	Child Care Services/Foster Care: Requires employers and employees in facilities that care, supervise, or have access to children to be subjected to criminal history checks. (Lists of facilities are detailed in the Appendix. See App, Subsection B at page A-6, note 3).
MD. CODE ANN., HEALTH-GEN. § 19-1902(a)(1)(i)-(ii).	Adult Dependent Care Program: Before an eligible employee may begin work for an adult dependent care program, each adult dependent care program shall, for each eligible employee apply for a State criminal history records check or request a private agency to conduct a background check. (The meaning of Adult Dependent Care Program is set out in the Appendix. See Apps, Subsection A at page A-7, note 4).
MD. CODE ANN., PUB. UTIL. COS. § 10-104(a)(1)(v).	For Hire Driving Services: An applicant for a for-hire driver's license shall apply to the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services for a State criminal history records check.
MD. CODE ANN., PUB. UTIL. COS. § 10-102(e)(1)	Drivers for Government or Non-Profits: A driver employed or offered employment by a governmental unit or not-for-profit organization shall apply to the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services for a State criminal history records check on or before the first day of the driver's actual employment.

Statute/Regulation	Background Check/Explanation
MD. ANN. CODE. art. 83C, § 2-132(a)(1).	The Department of Juvenile Justice: The Department shall apply to the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services for a federal and State criminal history records check for each employee of the Department, within the first month of employment with the Department.
MD. CODE ANN., BUS. OCC. & PROF. § 18-303(a)(3), (e)(1).	Security System Technicians: Persons providing security system services shall submit a set of their fingerprints to a national and state search of criminal records done by Criminal Justice Information Systems.
MD. CODE ANN., PUB. SAFETY § 3-305(a)(1)-(2).	Special Police Officers: The Secretary shall investigate the character, reputation, and qualifications of each applicant for a commission. The investigation shall include an investigation of the applicant's criminal record, including checking records of local police departments and the Federal Bureau of Investigation.
MD. CODE ANN., BUS. REG. § 12-204(b)	Second Hand Precious Metal Object Dealers and Pawnbrokers: Applicants for licenses under § 12-201 (Dealers) of this subtitle and individuals whose names must be submitted to the Secretary under § 12-203 (Employees) of this subtitle shall apply to the Central Repository for a national and State criminal history records check on a form approved by the Director of the Central Repository.
MD. CODE ANN., BUS. OCC. & PROF. § 19-304(c)(1).	Security Guard Agency Licenses: The Department of State Police shall apply to the Central Repository for a State and national criminal history records check for each license applicant.

Examples of Optional Background Check

Statute/Regulation	Background Check/Explanation
MD. CODE ANN., CRIM. PROC. § 10-231(a).	Anne Arundel County: In accordance with guidelines that the Anne Arundel County Council adopts by resolution, the Director of Administration of Anne Arundel County may request a State and national criminal history records check from the Central Repository for a prospective employee of Anne Arundel County.
MD. CODE ANN., CRIM. PROC. § 10-232(b)(1)-(2).	Carroll County: The County Commissioners of Carroll County may request a State and national criminal history records check from the Central Repository for: (1) a current or prospective employee of Carroll County who is or will be assigned to a position that

Statute/Regulation	Background Check/Explanation
	involves: (i) inspections; (ii) approval or denial of a permit, license, or other grant of authority; (iii) work in the offices of the County Commissioners, sheriff, State's Attorney, circuit court, or county attorney; or (iv) collecting or handling money; or (2) a current or prospective employee of a person that has a contract with Carroll County if the contract involves work in a place that requires security of personnel or files, including the county courthouse, the local correctional facility, the State's Attorney's office, a county commissioner's office, and the county attorney's office.
MD. CODE ANN., CRIM. PROC. § 10-233(a).	Howard County: The County Administrator of Howard County may request a State and national criminal history records check from the Central Repository for a prospective employee of Howard County.
MD. CODE ANN., CRIM. PROC. § 10-234(b).	Montgomery County: In accordance with this subtitle, Montgomery County may request a criminal history records check from the Central Repository or through the Department from the Federal Bureau of Investigation on an applicant for a taxicab license or licensee seeking a renewal of a taxicab license.
MD. CODE ANN., CRIM. PROC. § 10-235(b)(1)-(2).	Washington County: The County Administrator in Washington County may request with reference to a prospective employee of Washington County: (1) a State and national criminal history records check from the Central Repository; or (2) a background investigation from an independent private investigation agency.
MD. CODE ANN., PUB. SAFETY § 6-306(a)(1).	Fire Department/Rescue Squad and Paramedics Personnel: may request the State Fire Marshal or other authorized agency that has access to the Criminal Justice Information System Central Repository in the Department of Public Safety and Correctional Services to conduct an initial criminal history records check on an applicant for employment or appointment as a volunteer or career firefighter, rescue squad member, or paramedic

Licensing

Statute/Regulation	Background Check/Explanation
MD. CODE ANN., HEALTH OCC. § 12-313(b)(22).	License for Pharmacist: the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee has been convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
MD. CODE ANN., BUS. REG. § 9A-310(a)(1)(v) and (b)(1)-(5)	Heating, Ventilation, Air-conditioning, and Refrigeration Contractors: The Board may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license after a public hearing if the Board finds that the individual under the laws of the United States or of any state, is convicted of: 1. a felony; or 2. a misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to provide heating, ventilation, air-conditioning, or refrigeration services. The Board shall consider the following facts in the granting, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony or misdemeanor described in subsection (a)(1)(v) of this section: (1) the nature of the crime;(2) the relationship of the crime to the activities authorized by the license; 3) with respect to a felony, the relevance of the conviction to the fitness and qualification of the applicant or licensee to provide heating, ventilation, air-conditioning, and refrigeration services; (4) the length of time since the conviction; and (5) the behavior and activities of the applicant or licensee before and after the conviction.
MD. CODE ANN., BUS. OCC. & PROF. § 14-317(a)(1)(iii), (b)(1)-(5).	License for Engineers: Same as Directly Above.
MD. ANN. CODE art. 41, § 1-502(a)-(b).	All Licenses: As a condition to issuance of a license or renewal of a license, a licensing authority may require an individual applying for a license to disclose whether the individual has ever been convicted of a drug crime committed on or after January 1, 1991. If an individual applying for a license has been convicted of a drug crime committed on or after January 1, 1991, a licensing authority may: (1) Refuse to issue a license to the individual; or (2) Issue a license subject to any terms and conditions that the licensing authority deems appropriate under § 1-504 of this subtitle.

Statute/Regulation	Background Check/Explanation
MD. ANN. CODE art. 41, § 1-505(b).	<p>All Licenses: In deciding whether to deny an applicant's application for a license or whether to impose license sanctions against a licensee and the nature of the sanctions, a licensing authority shall consider the following factors: (1) The relationship between the drug crime and the license, including: (i) The licensee's ability to perform the tasks authorized by the license; and (ii) Whether the public will be protected if: 1. In the case of an applicant, the license is issued; or 2. In the case of a licensee, the license is not suspended or revoked; (2) The nature and circumstances of the drug crime; (3) If an individual is applying for a license or license renewal, the date of the drug crime; and (4) Any other relevant information.</p>
MD. ANN. CODE art. 41, § 1-506(a).	<p>Commercial Drivers License: if an individual who is convicted of a drug crime committed on or after January 1, 1991 holds a commercial driver's license, the Motor Vehicle Administration may disqualify the individual from driving a commercial motor vehicle or take any other action permitted under this subtitle.</p>
MD. CODE ANN., BUS. REG. § 12-209(a)(2)(iv) & 12-209(c).	<p>Second Hand Precious Metal Object Dealers and Pawnbrokers: Same as the laws spelled out above relating to Heating, Ventilation, Air-conditioning, and Refrigeration Contractors and Engineers, except that this statute applies to applicants or licensees as well as to an agent, employee, manager, or partner of the applicant or licensee.</p>