

CIVIL CONSEQUENCES OF CRIMINAL CONVICTIONS IN SOUTH CAROLINA

South Carolina Appleseed Legal Justice Center
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FOREWORD

A criminal conviction can often impact an individual's ability to receive certain benefits or exercise certain rights, so it is important for attorneys and their clients to know about these consequences.

This manual is intended to be a starting point for criminal defense attorneys in South Carolina, not a comprehensive explanation of all civil consequences of criminal convictions. Defendants should understand these potential civil consequences of a criminal conviction before they plead guilty.

Nothing contained in this publication should be considered legal advice. We have attempted to provide information that is current and topical. Because the law changes rapidly, however, we cannot guarantee that this information will always be up to date, or correct.

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The South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low-income people in South Carolina to effect systemic change by acting in and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training and co-counseling. To find out more about SCALJC, go to www.scjustice.org on the Internet.

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I. HOUSING ASSISTANCE

There are several different types of housing assistance available to those who qualify. A person convicted of or engaging in criminal actions could either be barred from receiving housing assistance or evicted, depending on what type of assistance they receive.

Applicants for all types of housing assistance are screened for admission. Certain criminal convictions or actions will keep a person, who otherwise qualifies, from receiving assistance. Likewise, certain crimes and actions will also cause the person to be evicted.

Generally, the following are bars to admission for all types of housing assistance.

- Those who have been evicted from federally-assisted housing for drug-related criminal activity for three years following the date of eviction (unless the family can demonstrate that the person who engaged in the drug-related activity has been rehabilitated or is no longer a member of the household); or
- Those who are currently engaging in illegal use of a drug; or
- Those who have shown a pattern of use of illegal drugs that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents; or
- Those whose abuse of alcohol or whose pattern of abuse of alcohol would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents; or
- Those who have been convicted of drug-related criminal activity for manufacture of methamphetamine on the premises of federally-assisted housing; or
- Those who are subject to a lifetime registration requirement under a sex offender registration program.

The three main types of housing assistance that are generally available are **public housing, project-based housing, and housing choice voucher assistance**. Each is discussed below along with what types of criminal convictions or activities can cause a recipient to be evicted.

Keep in mind that these are not the only types of housing assistance available. To fully understand other types of housing assistance and the regulations which apply, visit the Housing and Urban Development (HUD) website at <http://www.hud.gov/local/index.cfm?state=sc>.

Public Housing

Public housing is for low-income people who meet income requirements and other criteria. The local housing authority owns and manages the housing units, and is the landlord.

The following are causes for evictions in public housing:

- A household member has been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally-assisted housing; or
- Drug-related criminal activity engaged **in, on, or off** the premises by any tenant, member of the tenant's household or guest, or other person under the tenant's control; or
- If a household member is illegally using a drug or when a pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other tenants; or

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or those persons residing in the immediate vicinity of the premises ; or
- When a household member has engaged in alcohol abuse or a pattern of alcohol abuse that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants; or
- If a household member furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers; or
- If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a felony or violating a condition of probation or parole imposed under state or federal law; or
- If the covered person has engaged in the criminal activity (regardless of whether the covered person has been arrested or convicted for such activity).

Project-Based Housing

This is housing where a private owner is the landlord, and has contracted with the government for a low interest rate loan. The loan can be used to either build the housing or renovate the housing. In exchange for the low interest rate loan, the private owner agrees to rent the units to people who must meet certain income and other requirements, and to charge lower rent.

The following are causes for eviction in project-based housing:

- Drug-related criminal activity engaged **in, on or near** the premises by any tenant, household member, guest, or any other person under the tenant's control; or
- If a household member is illegally using a drug or there is a pattern of illegal use of a drug that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents; or
- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises) and those persons residing in the immediate vicinity of the premises; or
- If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime that is a felony; or
- If a tenant is violating a condition of probation or parole imposed under federal or state law; or
- If a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or
- If a covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity.

Housing Choice Voucher Programs

These vouchers are awarded to people who meet income and other requirements. In the voucher program, a tenant finds a place to live that meets the Housing and Urban Development (HUD) standards. The landlord contracts with the tenant and the local housing authority or the State Housing Finance Authority. The tenant pays a share of the rent and the difference is made up by HUD. The lease consists of HUD requirements.

If the tenant violates the provisions below, he or she will lose his or her housing choice voucher. If the violation does not also violate some provision of the lease, the landlord can choose to keep the tenant. The tenant must then pay the rent without the assistance of the voucher.

The following will cause a person to lose their housing choice voucher:

- If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program; or
- If a member of the family has engaged in drug-related criminal activity or violent criminal activity. (A conviction or charge is not necessary); or
- If a member of the family has illegally used or possessed, for personal use, a controlled substance. (The person does have an opportunity to show that they are rehabilitated).

TERMS

The following sets of terms apply to the Housing Assistance section.

Covered person - a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

Currently engaging in - the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

Drug - a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity - the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Guest - a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

Household - the family and local housing authority approved live-in aide.

Other person under the tenant's control - the person was, at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

Violent criminal activity - any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

SOURCES

<http://www.povertylaw.org/index.cfm>

National Center on Poverty Law

<http://www.povertylaw.org/legalresearch/manual/Public%20housing.pdf>

Overview of Public Housing, HUD Federally Subsidized Housing, and Section 8 Housing Voucher Programs
By Fred Fuchs

General HUD Program Requirements; Waivers, 24 C.F.R. Part 5, Section 5.850 (2000)

Grants to States For Aid And Services To Needy Families With Children And For Child-Welfare Services - Prohibitions and Requirements, 42 U.S.C. 608 (2005)

Public Housing Lease and Grievance Procedure, 24 C.F.R. Part 966 (2001).

Section Eight Project Based Certification, 24 C.F.R. Part 983 (2000).

Section Eight Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. Part 9, Sections 982.551-553 (1999)

II. FOOD STAMPS

The Food Stamp Program is a program that helps low-income families buy food. People who receive Food Stamps have a green plastic card that is used to buy food at certain stores. This is an Electronic Benefit Transfer (EBT) card.

The federal law has set up certain bars to Food Stamp access. Individual states have the ability to opt out of the federal law. South Carolina has not opted out of this federal law provision.

The following people are ineligible for Food Stamps:

- A person convicted of a felony drug offense occurring after August 22, 1996, for use, possession, distribution, or trafficking. This is a permanent bar for life; or
- Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime. The crime must be a felony; or
- Individuals who are violating a condition of probation or parole in federal or state court; or
- Individuals who are in jail or prison. The person can reapply once released, and it can take up to 30 days for benefits to resume; or
- Persons who are convicted of Food Stamp fraud.

TERMS

The following term applies to the Food Stamp section.

Drug - a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SOURCES

Controlled Substances Act, 21 U.S.C. Section 802 (2004)

Controlled Substances Act – Denial of Assistance and Benefits for Certain Related Convictions, 21 U.S.C. Section 862a (2004)

Food Stamp Act of 1977, 7 U.S.C. Section 2011, (2000)

Food Stamp Regulations, 7 C.F.R. Parts 271-283 (1994)

Grants to States For Aid And Services To Needy Families With Children And For Child-Welfare Services - Social Security -Prohibitions and Requirements, 42 U.S.C. 608 (2005)

Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat 2105 (1996)

South Carolina Food Stamp Regulations – S.C. CODE ANN. REGS. 114-1300 (1976, as amended)

III. TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)

TANF provides monthly cash assistance to certain families with children, as well as job training and job placement services. TANF also helps with child care and transportation. It was formerly known as Aid to Families with Dependent Children (AFDC).

Under the federal law if someone is convicted of a felony drug conviction, then they are barred for life from receiving TANF. South Carolina has chosen to opt out of this specific federal law provision.

Also, under the federal law, fleeing felons and probation and parole violators are barred from receiving TANF. The federal law bars states from opting out of this rule.

The following people are ineligible for TANF:

- Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime. The crime must be a felony; or
- Individuals who are violating a condition of probation or parole in federal or state court; or
- Although not barred from receiving TANF, if a person falls under the following group, they will be asked to participate in a drug treatment program.
 - Those convicted of an alcohol-related offense; or
 - Those convicted of a controlled substance offense; or
 - Those who have given birth to a child with evidence of the effects of substance abuse.

In addition to the drug treatment program, the person must also submit to random drug tests. If an individual does not abide and participate in the random tests and treatment program, then he or she is barred from receiving TANF. If after treatment an individual fails a random test or receives a conviction for a controlled substance then the person is ineligible for TANF. He or she will have to reapply at a later date after going through a conciliation assessment.

SOURCES

South Carolina Family Independence Act of 1995, 1995 S.C. Acts 102

IV. SUPPLEMENTAL SECURITY INCOME (SSI)

SSI is a program that helps aged, blind, and disabled persons. It provides a monthly check and Medicaid assistance. To qualify for SSI, the person has to meet the federal definition of disabled.

The following people are ineligible for SSI:

- Someone who is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, which is a felony; or
- Someone who is violating a condition of probation or parole under federal or state law; or
- Someone who is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense; or
- Someone who is confined by court order in an institution at public expense in connection with—
 - a verdict or finding that the individual is guilty but insane, with respect to a criminal offense; or
 - a verdict or finding that the individual is not guilty of such an offense by reason of insanity; or
 - a finding that such individual is incompetent to stand trial under an allegation of such an offense; or
 - a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence)
- Someone who is confined by court order in an institution pursuant to a finding that the individual is a sexual predator or a similar finding; or
- Someone who is in jail throughout a calendar month (has to be 30 days or more). The inmate's payments will be suspended but not terminated; or
- Someone who is in jail for 12 consecutive calendar months. The inmate's eligibility is terminated; or
- Someone whose drug addiction or alcoholism is a contributing factor material to the determination of disability. People, who currently use drugs or alcohol may be eligible for benefits if they can prove that they are disabled, based on other physical and/or mental impairments, without considering the substance abuse problem.

SOURCES

Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (1935)

Social Security - Prohibitions and Requirements, 42 U.S.C. 608 (2005)

V. MEDICAID

Medicaid is a program that pays for health care for those who are eligible due to low income and other qualifications. In South Carolina, the Medicaid program for adults is Partners for Health. In South Carolina, the Medicaid program for children is Partners for Healthy Children.

There are no individual rules on what crimes or criminal activity will cause one to lose Medicaid benefits. Medicaid benefits are often tied in with one qualifying for other benefits. Thus if someone no longer qualifies for TANF or SSI, then typically the person will no longer qualify for Medicaid either. The same is true for Food Stamps.

The only clear cut rule about losing benefits has to do with being detained. Those individuals who are in detention facilities or state mental institutions are ineligible for Medicaid benefits. However, once the individual is released he or she would be eligible to receive benefits again.

SOURCES

State Plans for Medical Assistance, 42 U.S.C. Section 1396a (2005)
S.C. CODE ANN. REGS 126-300 (2004)

VI. DRIVER'S LICENSES

Many types of convictions will cause the state to revoke or suspend one's license. However, sometimes a person can receive a provisional driver's license.

SUSPENSION

A person's license will be suspended when he or she:

- is found guilty, or forfeits bond, on a charge of driving while under the influence of intoxicating liquor or narcotic drugs; or
- refuses to take the test for intoxication when called upon to do so by a law enforcement officer; or
- is convicted of reckless driving for a second time within five years and each subsequent conviction within that period; or
- helps another person to race on a public highway by lending him a motor vehicle; or
- prepares an engine for the purpose of racing either for their use or someone else's use; or
- is convicted of hauling illegal whiskey; or
- is a habitual offender (**see habitual offender below**); or
- accumulates 12 points under the point system law (**see points below**); or
- is *under* 21 years of age and registers a Blood/Breath Alcohol Concentration (BAC) of .02 or greater (the suspension is immediate – a conviction is not necessary); or
- is *under* 21 years of age and is convicted of possession of alcohol (beer, wine or liquor), even if the violation did not occur in a motor vehicle; or
- is convicted of a controlled substance violation; or
- is in arrears on child support payments; or
- is *over* 21 years of age and is convicted of transferring or selling alcohol to a minor; or
- is *over* 21 years of age and registers a BAC of .15 or greater (the suspension is immediate – a conviction is not necessary); or
- is involved in an accident and does not verify he or she had insurance coverage on the day of the accident (this must be done within 15 days of the accident); or
- accumulates three or more convictions for the following offenses (**see habitual offender**):
 - voluntary or involuntary manslaughter involving a motor vehicle;
 - operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs, or unlawful alcohol concentration;
 - driving or operating a motor vehicle in a reckless manner;
 - driving a motor vehicle while license, permit or privilege to drive a motor vehicle has been suspended, cancelled or revoked;
 - any offense punishable as a felony under the motor vehicle laws;
 - any felony in the commission of which a motor vehicle is used;
 - failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of the accident and to report his identity.

Habitual offenders and license suspension

A habitual offender is a driver who accumulates 10 or more convictions for moving violations that carry at least 4 points in a 3 year period. Habitual offenders are also people who accumulate 3 or more convictions for the major

offenses that were listed above. If the person meets the requirements under the law, the Department of Public Safety must certify the driving record before the person's license can be suspended for five years.

Points and license suspension

After points are a year old they are cut in half. After points are two years old, they are completely gone. People can also reduce the amount of points that they have accrued by successfully completing an approved defensive driving course. Only one such reduction in a three-year period is permitted.

For a listing of the penalties that earn points refer to the South Carolina Code of Laws or the South Carolina DMV Manual.

REVOCAATION

A person's license will be revoked if he or she:

- is found guilty of killing any person while driving a car in a careless manner; or
- is found guilty of any felony in which a motor vehicle is used;
- is involved in any accident in which someone is killed or injured and he or she fails to stop and give assistance; or
- is convicted of driving a motor vehicle engaged in a race on a public street or highway; or
- has furnished false information pertaining to financial responsibility on their motor vehicle registration; or
- is mentally or physically incompetent to drive.

PROVISIONAL LICENSE

A South Carolina licensed driver who is convicted of a first offense for driving under the influence may qualify for a "Provisional Driver's License." The license is issued for a period of 6 months. To obtain such a license he or she must be eligible under the South Carolina Code to have such a license and meet the following requirements:

- file proof of financial responsibility with the Department of Public Safety; and
- enroll in an approved Alcohol and Drug Safety Action Program (ADSAP); and
- he or she can have no other existing suspension recorded against him or her.

After the suspension period a person can receive a regular license. The person must meet the following requirements:

- successfully complete all phases of the driver's examination; and
- pay a reinstatement fee; and
- maintain SR-22 insurance; and
- complete ADSAP.

For more detailed information about anything discussed in this section, refer to either the South Carolina Code of Laws or the South Carolina DMV Manual.

SOURCES

<http://www.scdmvonline.com/DLmanual.aspx>
South Carolina DMV Manual

VII. IMMIGRATION

Any person who is not a citizen of the United States can be deported from the country, or denied the opportunity to obtain, or even change, his or her legal status in the United States. This includes, but is not limited to, those who are undocumented, those who have Visas, and those who are lawful permanent residents.

An undocumented alien who entered the U.S. without inspection is removable regardless of the outcome of any criminal case. If she's been here for more than 6 months, she is also subject to at least a 3-year bar to reentry. Whether at the end of that period she could apply for a Visa would depend on whether she would be "admissible".

An alien, who enters with inspection, must be concerned with "deportability" and the effect the criminal justice system could have on his ability to become a U.S. Citizen.

Certain crimes and convictions can place a non-citizen at risk for deportation and can also make one inadmissible. Below is a list of such crimes and convictions:

- **Aggravated felonies – can make someone deportable**
 - The crime must carry a punishment of one year or more (thus many misdemeanors can fall under this category);
 - The person does not have to be confined in prison to be able to be deported or be inadmissible;
 - The person in this situation could receive a suspended sentence of one year or more and be deported or deemed inadmissible;
 - Examples are thefts, murder, rape, burglary and crimes of violence.

The list of aggravated felonies is exhaustive and is detailed in The Immigration and Nationality Act. Keep in mind, though, that the list may not contain all aggravated felonies. One would also have to look at the South Carolina Code and determine what a "felony" is for purposes of being able to be deported or deemed inadmissible.

- **Crimes involving moral turpitude (CIMT) – can make someone either deportable or inadmissible**
 - No statutory definition for CIMT;
 - Crimes typically involve base or vile acts;
 - The crime must be punishable with a sentence of one year or more;
 - One must examine the crime as it is defined by the elements in the criminal statute - not the person's actual conduct;
 - Examples are:
 1. Crimes that involve intent to defraud or steal;
 2. Crimes that involve intentional or reckless infliction of harm to a person or property;
 3. Crimes involving malice or lewdness.

It should be noted that there is no requirement that a person actually serve time for a CIMT. The person could be deemed deportable or inadmissible even if he or she received a fine or probation. A person may become inadmissible without even a conviction, by admitting that he or she committed a crime.

- **Controlled substances – can make someone deportable or inadmissible**
 - A one time exception for possession of marijuana for personal use of 30 grams or less (only for those who are deportable) (**This does not apply in SC**);
 - Non-citizens who are drug users or addicts are inadmissible ;
 - May be deportable or inadmissible even without a conviction;
 - Conviction of a felony drug offense in South Carolina also makes non-citizens deportable as an aggravated felony conviction.

In South Carolina, the personal use of 30 grams would not be an exception. This is because in South Carolina 30 grams or more of marijuana is not considered possession, but possession with intent to distribute.

In cases involving controlled substances, a conviction is not always necessary to make a person deportable or inadmissible. If a person makes a formal knowing admission of a drug offense to a Department of State or a Department of Homeland Security official then they are at risk. The person must voluntarily admit to the elements of the offense after the official explains the offense in plain terms for it to constitute a valid admission. A non-citizen can also be at risk, and become permanently barred, if a Department of State or a Department of Homeland Security official has “reason to believe” that the non-citizen is or was a drug trafficker.

- **Domestic violence – can make someone deportable, as can the following:**
 - Stalking; or
 - Child abuse; or
 - Violations of orders of protection

For purposes of domestic violence, the crime must be one committed against a spouse, former spouse, co-parent, co-inhabitor, or other person similarly situated under the law.

- **Firearms charges – can make someone deportable**
 - Convictions for purchasing, selling, using, owing, or possessing a firearm under certain laws

Naturalization

A non-citizen trying to become naturalized can also be affected by crimes and convictions. Anyone who wants to become naturalized has to meet several requirements, one of which is good moral character.

Examples of crimes that might show a lack of good moral character:

- Any crime against a person with intent to harm; or
- Any crime against property or the Government that involves “fraud” or evil intent; or
- Violating any controlled substance law; or
- Habitual drunkenness or drunk driving; or
- Illegal gambling; or
- Prostitution; or
- Polygamy; or
- Confinement in jail, prison, or similar institution for which the total confinement was 180 days or more; or
- Failing to complete any probation, parole, or suspended sentence; or
- Criminal domestic violence (above).

Conviction of an aggravated felony is a permanent bar to proving good moral character.

The list of crimes contained here are the most common types of crimes that are considered when a non-citizen is trying to get some type of status in the United States, or become naturalized. There are many others. It is best to look to the Immigration and Nationality Act if there are any concerns, or in the alternative, contact an immigration attorney.

TERMS

The following sets of terms apply to the Immigration section.

Admissible - it covers stages (a) a person is eligible to obtain a Visa to enter the United States under the law; or (b) to become a permanent resident or otherwise acquire legal status.

Aggravated felonies - Generally, a crime where the maximum term of imprisonment is more than one year. It does not matter if the individual is actually confined to prison.

Controlled substance convictions - where the person has been convicted of any law or regulation relating to a controlled substance. It also includes conspiracy and attempt. (See section 102 of the Controlled Substances Act - 21 U.S.C. 802).

Conviction - a formal judgment of guilt, either through a guilty plea, plea of nolo contendere or a trial. Also, a conviction may be deemed from the person admitting sufficient facts to warrant a finding of guilt.

Crimes involving moral turpitude (CIMT) - crimes typically involving base or vile acts. There is no statutory definition for CIMT.

Crimes of violence - offenses that include the use of force. May also include any felony that by its nature presents a substantial risk that force will be used against a person or property in the commission of the offense.

Deportable - a person is subject to being formally removed from the United States. After being removed, he or she is inadmissible for at least 10 years because of this. He or she may be permanently inadmissible, as well, depending on the basis for the deportation.

Inadmissible - a person is (a) ineligible to enter the United States under the law or, (b) if already in the United States, is ineligible to become a lawful permanent resident or otherwise acquire legal status.

Protection order - any injunction to protect against credible threats of violence, repeated harassment or bodily injury.

Sentence - any period of incarceration or confinement. It also includes suspended sentences, probationary sentences and sentences of fines.

SOURCES

Katherine Brady and Dan Kesselbrenner, *Grounds of Deportability and Inadmissibility Related to Crimes*
(Last modified April 2003) http://www.fd.org/pdf_lib/GroundsofDeport_Inadmiss.pdf

Immigration and Nationality Act, 8 U.S.C. Section 1101 (2003)

S.C. CODE ANN. 16-1-10 (1976)

S.C. CODE ANN. 44-53-370 (1976)

VIII. ADOPTION AND FOSTER CARE

The Adoption and Safe Families Act of 1997 (ASFA) creates a plan in which federal grants are given to states for foster care and adoption assistance. If a state wants to be eligible for the grant, then the state must have a plan that meets ASFA rules.

ASFA requires states to provide for criminal background checks. The checks must be done before anyone can become either an adoptive or foster parent.

ASFA completely bars an individual from ever becoming an adoptive or foster parent if he or she has a felony conviction for any of the following crimes:

- Child abuse or neglect; or
- Spousal abuse; or
- A crime against children (including child pornography); or
- Rape; or
- Sexual Assault; or
- Homicide.

ASFA also bars people from becoming adoptive or foster parents if they have been convicted in the prior five years of a felony for:

- Physical assault; or
- Battery; or
- Drug-related offense.

In addition, South Carolina has added the following bars for foster care.

- A person with a substantiated history of child abuse or neglect; or
- A person who has pled guilty or nolo contendere to or who has been convicted of:
 - An "Offense Against the Person" as provided for in Chapter 3, Title 16; or
 - An "Offense Against Morality or Decency" as provided for in Chapter 15, Title 16; or
 - Contributing to the delinquency of a minor as provided for in Section 16-17-490; or
 - The common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger; or
 - Criminal domestic violence, as defined in Section 16-25-20; or
 - Criminal domestic violence of a high and aggravated nature, as defined in Section 16-25-65; or
 - A felony drug-related offense under the laws of South Carolina.

SOURCES

Adoption and Safe Families Act of 1997, Pub. L. No 105-89, III Stat 2115 (1997)
S.C. CODE ANN. 20-7-1642, 1650-1897 (1976)
S.C. CODE ANN. REGS 114-4980 (2004)

IX. STUDENT LOANS

Since 1998, a person convicted of any state or federal drug offense, including possession of marijuana, is not eligible for any federal higher education grants, loans or work study assistance for the following time periods:

Convictions for possession of a controlled substance:

- 1st offense – 1 year from date of conviction
- 2nd offense – 2 years from date of conviction
- 3rd offense – indefinite period of suspension

Convictions for selling a controlled substance:

- 1st offense – 2 years from date of conviction
- 2nd offense – indefinite period of suspension

The student may receive a waiver, if the student successfully completes a drug rehabilitation program. The rehabilitation program must be one that is approved and includes two unannounced drug tests.

Convictions can also affect the **HOPE and LIFE Scholarships**. People are not eligible for the HOPE or LIFE Scholarships who have been:

- judged delinquent; or
- convicted or pled guilty or nolo contendere to any felony in any state; or
- convicted of any alcohol or drug-related misdemeanor in any state within the past academic year.

TERMS

This term applies to the Student Loan section.

Drug - a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SOURCES

Higher Education Act, Pub. L. No. 105-244, 112 Stat 1581 (1998)
Student Assistance – Federal Work Study Programs, 42 U.S.C. 2751 (1993)
University of South Carolina - Office of Financial Aid and Scholarships
South Carolina Commission on Higher Education

X. VOTING

The requirements to vote in South Carolina are (1) be a United States Citizen, (2) be at least 18 years old on or before the next election, (3) be a resident of South Carolina and of the county and precinct and (4) not have been found mentally incompetent by a court of competent jurisdiction.

In South Carolina, a person will be disqualified from voting if he or she is:

- serving a term of imprisonment resulting from a conviction of a crime; or
- convicted of a felony; or
- convicted of offenses against the election laws.

To be able to restore the right to vote the person must complete their entire sentence, including probation and parole. Once this has been done, the right to vote is automatically restored, so long as the person is registered to vote. For those who are not registered, they must register before they will be able to vote.

It should also be noted that if someone has been convicted in a state or federal court of a crime punishable by more than one year of imprisonment and his civil rights have not been restored, then he may not be able to sit on a jury.

SOURCES

S.C. CODE ANN. 7-5-120 (1976)
S.C. CODE ANN. 14-7-10, etc (1976)
South Carolina State Election Commission webpage

XI. ARMED FORCES

Generally, a felony conviction will preclude military service. However, every branch has the authority to make exceptions to that rule.

SOURCES

Qualification Standards for Enlistment Appointment and Induction, 10 U.S.C. 504 (2004)
Acquisition and Use of Criminal History Record Information By The Military Services, 32 C.F.R. 96 (2004)

XII. FIREARMS

Criminal convictions greatly impact one's ability to own or carry firearms. Federal law prohibits certain persons from shipping, transporting, possessing or receiving firearms or ammunition. South Carolina also has laws that prohibit certain people from possessing firearms.

The federal law states that:

- It is a federal crime to ship, transport, possess, or receive a firearm or ammunition by anyone:
 - who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; or
 - who is a fugitive from justice; or
 - who is an unlawful user of or addicted to any controlled substance; or
 - who has been adjudicated as a mental defective or who has been committed to a mental institution; or
 - who has been convicted in any court of a misdemeanor crime of domestic violence; or
 - who is subject to a court order* that restrains such person from
 1. harassing, stalking, or threatening an intimate partner or child of such intimate partner; or
 2. engaging in other conduct that would place an intimate partner or child of such intimate partner in reasonable fear of bodily injury ;

*The court order must be an order where the person had an opportunity to participate. Further the order must meet one of the following criteria:

- include a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

South Carolina law states that:

- It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this state any handgun to:
 - a person who has been convicted of a crime of violence in any court of the U.S.; or
 - one who is a fugitive from justice; or
 - one who is a habitual drunkard or a drug addict; or
 - one who has been adjudicated mentally incompetent.

In addition, anyone who is on probation, parole, or community supervision is prohibited from possessing or purchasing a firearm.

TERMS

The following are terms that apply to the Firearm section.

Federal law terms

Fugitive from justice - any person who has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

State law terms

Conviction - includes pleas of guilty, pleas of nolo contendere, and forfeiture of bail.

Crime of violence - murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

Fugitive from justice - any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

SOURCES

Firearms – Unlawful Acts, 18 U.S.C. 922 (2003)
S.C. CODE ANN. 16-23-30 (1976)