

**Excerpted from THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE: A GUIDE FOR CRIMINAL DEFENSE ATTORNEYS AND OTHER ADVOCATES FOR PERSONS WITH CRIMINAL RECORDS (The Bronx Defenders, April 2006 Edition)**

**FEDERAL STUDENT LOANS**

1. **Automatic ineligibility** (Title IV funds): 20 U.S.C. § 1091(r)(1) suspends eligibility for any grant, loan, or work assistance for students convicted while receiving student aid of *any offense* under any Federal or State law involving the possession or sale of a *controlled substance*.<sup>1</sup> Federal law also denies the Hope tax credit to students and their families if the student has a prior felony drug conviction.
  - a. *Definition:* the term “controlled substance” is defined in 21 U.S.C. § 802(6), which includes marijuana.
  - b. The federal benefits referenced are those under 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.*
  - c. The period of suspension begins on the date of the conviction and ends after the following intervals:

Type of Offense	Ineligibility Period for 1 <sup>st</sup> Offense	Ineligibility Period for 2d Offense	Ineligibility Period for 3d Offense
Possession of a controlled substance	1 year	2 years	Indefinite
Sale of a controlled substance	2 years	Indefinite	

- d. **Warning:** A conviction for Unlawful Possession of Marijuana, PL 221.05, will make your client ineligible for federal aid. A person is ineligible under Section 1091 because of a conviction for any controlled substance “offense,” not necessarily a “crime.” In New York, PL 221.05 is an offense (a violation), although not a crime, and marijuana is a controlled substance.
- e. **Waiver:** Under § 1091(r)(2), a student may regain eligibility before the above period expires if:
  - i) The student satisfactorily completes a drug rehabilitation program that
    - (1) Complies with criteria set out by the Secretary of Education,
      - (a) Be qualified to receive funds from federal, state, or local government, or from a federally- or state-licensed insurance company; **OR**
      - (b) Be administered or recognized by a federal, state, or local government agency or court, or a federally- or state-licensed hospital, health clinic, or medical doctor
    - AND**
    - (2) Includes 2 unannounced drug tests; or
  - ii) The conviction is reversed, set aside, or otherwise rendered nugatory.

<sup>1</sup> On February 8, 2006, this provision was amended to bar student loan eligibility only when the drug conviction occurred during receipt of student loans. *See* Pub. L. No. 109-171, § 8021, 120 Stat 4 (February 8, 2006).