

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

April 27, 2009 Draft for Conference Call

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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April 27, 2009

**DRAFTING COMMITTEE ON UNIFORM COLLATERAL
CONSEQUENCES OF CONVICTION ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *Chair*
ANN WALSH BRADLEY, P.O. Box 1688, Madison, WI 53701-1688
JOHN M. CARY, 1201 Third Ave., #2812, Seattle, WA 98101
BRIAN K. FLOWERS, Council of the District of Columbia, 1350 Pennsylvania Ave. NW, Suite
4, Washington, DC 20004
JESSICA FRENCH, Division of Legislative Services, 910 Capitol St., 2nd Floor, General
Assembly Building, Richmond, VA 23219
ROGER C. HENDERSON, 5861 N. Paseo Niquel, Tucson, AZ 85718
H. LANE KNEEDLER, 901 E. Byrd Street, Suite 1700, Richmond, VA 23219
HARRY D. LEINENWEBER, 219 S. Dearborn St., Suite 1946, Chicago, IL 60604
MARIAN P. OPALA, State Capitol, Room 238, Oklahoma City, OK 73105
RAYMOND G. SANCHEZ, P.O. Box 1966, Albuquerque, NM 87103
ALEXANDRA T. SCHIMMER, Office of the Ohio Attorney General, 30 E. Broad Street, 17th
Flr., Columbus, OH 43215-3428
PAULA TACKETT, Legislative Council Service, State Capitol, Room 411, Santa Fe, NM 87501
MICHELE L. TIMMONS, Office of the Revisor of Statutes, 700 State Office Bldg., 100 Rev.
Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155
JACK CHIN, University of Arizona, 1201 Speedway, P.O. Box 210176, Tucson, AZ 85721,
Reporter

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,
President
JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

MARGARET COLGATE LOVE, 15 Seventh St. NE, Washington, DC 20002, *ABA Advisor*
RODGER DREW, 1430 F St. NE, Washington, DC 20002, *ABA Section Advisor*
THOMAS EARL PATTON, 1747 Pennsylvania Ave. NW, Suite 300, Washington, DC 20006,
ABA Section Advisor
CHARLES M. RUCHELMAN, 1 Thomas Circle NW, Suite 1100, Washington, DC 20005-5894,
ABA Section Advisor

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

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1 **UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Collateral
4 Consequences of Conviction Act.

5 **SECTION 2. DEFINITIONS.** In this [act]:

6 (1) “Collateral consequence” means a collateral sanction or a disqualification.

7 (2) “Collateral sanction” means a penalty, disability, or disadvantage, however
8 denominated, imposed on an individual as a result of the individual’s conviction for an offense
9 that applies by operation of law whether or not it is included in the judgment or sentence. The
10 term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution,
11 fine, assessment, or costs of prosecution.

12 (3) “Decisionmaker” means the state acting directly or through its departments, agencies,
13 officers, or instrumentalities, including municipalities, political subdivisions, educational
14 institutions, boards, or commissions, or their employees[, and government contractors, including
15 subcontractors, made subject to this [act] by contract, by law other than this [act], or ordinance].

16 (4) “Disqualification” means a penalty, disability, or disadvantage, however
17 denominated, that an administrative agency, governmental official, or a court in a civil
18 proceeding is authorized, but not required, to impose on an individual on grounds relating to the
19 individual’s conviction for an offense.

20 (5) “Offense” means a felony, misdemeanor, or [insert term for lesser offenses and other
21 adjudications in enacting state] under the law of this state, another state, or the United States.

22 The term includes a juvenile adjudication.

23 (6) “Person” means an individual, corporation, business trust, estate, trust, partnership,

1 limited liability company, association, joint venture, public corporation, government or
2 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

3 **SECTION 3. LIMITATION ON SCOPE.** This [act] does not:

4 (1) provide a basis for:

5 (A) invalidating a sentence, conviction, or plea;

6 (B) a cause of action for money damages; or

7 (C) a claim for relief from or defense to the application of a collateral

8 consequence based on a failure to comply with Section 4, 5, or 6; or

9 (2) affect:

10 (A) the duty an individual's attorney owes to the individual;

11 (B) any claim or right held by a victim of an offense; or

12 (C) rights or relief under law other than this [act] available to an individual

13 convicted of an offense.

14 **SECTION 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF**
15 **LAWS REGARDING COLLATERAL CONSEQUENCES.**

16 (a) The [designated governmental agency or official]:

17 (1) shall identify or cause to be identified any provision in this state's

18 Constitution, statutes, and administrative rules that imposes a collateral sanction or authorizes the
19 imposition of a disqualification, and any provision of law that may afford relief from them;

20 (2) within [insert number of days] after the effective date of this [act], shall collect
21 or cause to be collected citations to, and the text or short descriptions of, the provisions identified
22 under paragraph (1);

23 (3) shall update or cause to be updated the collection within [specify period] after

1 each [regular session] of the [legislature]; and

2 (4) in complying with paragraphs (1) and (2), may rely on the study of this state's
3 collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of
4 Justice described in Section 510 of the Court Security Improvements Act of 2007, Pub. L. 110-
5 177.

6 (b) The [designated governmental agency or official] shall include or cause to be
7 included the following statements in a prominent manner at the beginning of the collection
8 described in subsection (a):

9 (1) This collection has not been enacted into law and does not have the force of
10 law.

11 (2) An error or omission in this collection is not a reason for invalidating a
12 sentence, conviction, or plea or for not imposing a collateral sanction or disqualification.

13 (3) The laws of the United States, other jurisdictions and [insert term for local
14 governments] impose additional collateral sanctions and disqualifications not listed in this
15 collection.

16 (4) This collection does not include any law or other provision regarding a
17 collateral sanction or a disqualification, or relief from them, enacted or adopted after the
18 collection was prepared or last updated.

19 (c) The [designated governmental agency or official] shall publish, or cause to be
20 published, the collection, created and updated as required under subsection (a). The collection
21 must be available to the public on the Internet without charge within [insert number of] days
22 after it is created or updated.

1 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL**
2 **PROCEEDING.**

3 (a) At or before arraignment for an offense with which the individual is charged, [the
4 designated government agency or official] shall communicate to the individual information
5 substantially similar to the following notice:

6 **NOTICE OF ADDITIONAL LEGAL CONSEQUENCES**

7 If you are convicted of an offense you may suffer additional legal consequences beyond
8 imprisonment, [probation] [insert jurisdiction’s alternative term for probation], periods of [insert
9 term for post-incarceration supervision], and fines. These consequences may include:

- 10 • being unable to get or keep some licenses, permits, or jobs;
11 • being unable to get or keep benefits such as public housing or education;
12 • receiving a longer sentence if you are convicted of another offense in the future;
13 • having the government take your property; and
14 • being unable to vote or possess a firearm.

15 If you are not a United States citizen, conviction may also result in your deportation, removal,
16 exclusion from admission to the United States, or denial of citizenship.

17 The law may provide ways to obtain some relief from these consequences. Further
18 information about the consequences of conviction is available on the Internet at (insert Internet
19 web address of the collection of laws published under Section 4(c)).

20 **SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING**
21 **OR UPON RELEASE.**

22 (a) An individual convicted of an offense must be given notice:

- 23 (1) that collateral sanctions and disqualifications may apply because of the

1 conviction;

2 (2) of the Internet web address of the collection of laws published under Section

3 4(c);

4 (3) that there may be ways to obtain relief from collateral sanctions and

5 disqualifications;

6 (4) of contact information for government or nonprofit agencies, groups, or

7 organizations, if any, offering assistance to individuals seeking relief from collateral sanctions

8 and disqualifications; and

9 (5) of when an individual convicted of a crime may vote under this state's law.

10 (b) The [designated government agency or official] shall provide the information in

11 subsection (a) at sentencing if an individual is not sentenced to imprisonment or other

12 incarceration. If an individual is sentenced to imprisonment or other incarceration, the officer or

13 agency releasing the individual shall provide the information in subsection (a) not more than [30]

14 days, and, if practicable, at least [10] days before release.

15 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;**

16 **APPLYING DISQUALIFICATION; CONSTRUCTION IN CASE OF AMBIGUITY.**

17 (a) A collateral sanction may be imposed only by statute or ordinance, or by a rule

18 authorized by law and adopted in accordance with [insert citation to State Administrative

19 Procedure Act or any other applicable law].

20 (b) In deciding whether to disqualify an individual, a decisionmaker shall undertake an

21 individualized assessment of whether the particular facts and circumstances involved in the

22 offense indicate that the applicant is presently unqualified for the opportunity or benefit at issue.

23 In making that decision, a decisionmaker may not consider the fact of a conviction itself, but

1 may consider the facts and circumstances involved in the offense, if such facts and circumstances
2 are substantially related to the benefit or opportunity. The decisionmaker shall also consider
3 other relevant information, including whether the individual has been granted relief such as an
4 order of limited relief from collateral sanctions or a certificate of restoration of rights.

5 (c) If a law creating a collateral consequence is ambiguous as to whether it imposes a
6 collateral sanction or authorizes a disqualification, it must be construed as a disqualification.

7 **SECTION 8. EFFECT OF CONVICTION BY ANOTHER STATE OR THE**
8 **UNITED STATES; VACATED OR PARDONED CONVICTION.**

9 (a) For purposes of authorizing or imposing collateral consequences in this state, a
10 conviction for an offense in a court of another state or the United States is deemed a conviction
11 of the offense in this state with the same elements. If there is no offense in this state with the
12 same elements, the conviction is deemed a conviction of the most serious offense in this state
13 which is established by the elements of the offense. An offense graded as a misdemeanor in the
14 jurisdiction of conviction may not be deemed a felony in this state, and an offense graded below
15 a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a crime in
16 this state. A juvenile adjudication in another state or the United States may not be deemed a
17 felony, misdemeanor, or offense below a misdemeanor in this state, but may be deemed a
18 juvenile adjudication for the juvenile violation in this state with the same elements. If there is no
19 juvenile violation in this state with the same elements, the juvenile adjudication is deemed an
20 adjudication of the most serious juvenile violation in this state which is established by the
21 elements of the juvenile adjudication.

22 (b) A conviction that is reversed, overturned, or otherwise vacated by a court of
23 competent jurisdiction of this state, another state, or the United States on grounds other than

1 rehabilitation or good behavior may not serve as the basis for authorizing or imposing a
2 collateral consequence in this state.

3 (c) A pardon issued by another state or the United States has the same effect for purposes
4 of authorizing, imposing, and relieving collateral consequences in this state as it has in the
5 issuing jurisdiction.

6 **ALTERNATIVE A**

7 (d) A conviction that has been expunged, sealed, annulled, set aside, or otherwise
8 vacated by a court of competent jurisdiction of another state or the United States on grounds of
9 rehabilitation or good behavior, or for which civil rights were restored pursuant to statute, has the
10 same effect for purposes of authorizing, imposing, and relieving collateral consequences in this
11 state as it has in the jurisdiction of conviction, except that vacation or restoration of civil rights
12 does not relieve collateral consequences applicable under the law of this state for which relief
13 could not be granted under Section 11, or for which relief was expressly withheld by the court
14 order or by the law of the jurisdiction that vacated the conviction. An individual convicted in
15 another jurisdiction may seek relief under Section 9 or 10 from any collateral consequence for
16 which relief was not granted in the issuing jurisdiction, other than those listed in Section 11, and
17 the [designated board or agency] shall consider that the conviction was vacated or civil rights
18 restored in deciding whether to issue an order or certificate.

19 **ALTERNATIVE B**

20 (d) A conviction that has been expunged, sealed, annulled, set aside, or otherwise
21 vacated by a court of competent jurisdiction of another state or the United States on grounds of
22 rehabilitation or good behavior, or for which civil rights were restored pursuant to statute, is
23 deemed a conviction for purposes of authorizing or imposing collateral consequences in this state

1 as provided in subsection (a). An individual convicted in another jurisdiction may seek relief
2 under Section 9 or 10 from any authorized or imposed collateral consequence, other than those
3 listed in Section 11, and the [designated board or agency] shall consider that the conviction was
4 vacated or civil rights restored in deciding whether to issue an order or certificate.

5 (e) A charge or prosecution in any jurisdiction that has been finally terminated without a
6 judgment of conviction and imposition of sentence based on participation in a deferred
7 prosecution or diversion program may not serve as the basis for authorizing or imposing a
8 collateral consequence in this state. This subsection does not affect the validity of any
9 restrictions or conditions imposed by law as part of participation in the deferred prosecution or
10 diversion program, either before or after the termination of the charge or prosecution.

11 **SECTION 9. ORDER OF LIMITED RELIEF FROM COLLATERAL**
12 **SANCTIONS.**

13 (a) An individual convicted of an offense may petition for an order of limited relief from
14 one or more collateral sanctions related to employment, education, housing, public benefits, or
15 occupational licensing. The petition may be presented to the:

16 (1) sentencing court at or before sentencing; or

17 (2) [designated board or agency] at any time after sentencing.

18 (b) Except as otherwise provided in Section 11, the court or the [designated board or
19 agency] may issue an order relieving one or more of the collateral sanctions described in
20 subsection (a) if, after reviewing the record, including the individual's criminal history, any
21 filing by a prosecutor or victim under Section 14, and any other relevant evidence, it finds the
22 individual has established by a preponderance of the evidence that:

23 (1) granting the petition will materially assist the individual in obtaining or

1 maintaining employment, education, housing, public benefits, or occupational licensing;

2 (2) the individual has substantial need for the relief requested in order to live a
3 law-abiding life; and

4 (3) granting the petition would not pose an unreasonable risk to the safety or
5 welfare of the public or any individual.

6 (c) The order must specify:

7 (1) the particular collateral sanction from which relief is granted; and

8 (2) any restrictions imposed pursuant to Section 12(a).

9 (d) Issuance of an order relieves a collateral sanction to the extent provided in the order.

10 A decision maker may consider the conduct underlying the conviction in the same manner as
11 provided in Section 7(b).

12 **SECTION 10. CERTIFICATE OF RESTORATION OF RIGHTS.**

13 (a) An individual convicted of an offense may petition the [designated board or agency]
14 for a certificate of restoration of rights relieving collateral sanctions not sooner than [five] years
15 after the individual's most recent conviction of a felony [or misdemeanor] in any jurisdiction, or
16 [five] years after the individual's release from confinement pursuant to a criminal sentence in
17 any jurisdiction, whichever is later.

18 (b) Except as otherwise provided in Section 11, the [designated board or agency] may
19 issue a certificate if after reviewing the record, including the individual's criminal history, any
20 filing by a prosecutor or victim under Section 14, and any other relevant evidence, it finds the
21 individual has established by a preponderance of the evidence that

22 (1) the individual is engaged in, or seeking to engage in, a lawful occupation or
23 activity, including employment, training, education, or rehabilitative programs, or otherwise has

1 a lawful source of support;

2 (2) the individual is not in violation of the terms of any criminal sentence, or that
3 any failure to comply is justified, involuntary, or insubstantial;

4 (3) no criminal charges are pending against the individual; and

5 (4) granting the petition would not pose an unreasonable risk to the safety or
6 welfare of the public or any individual.

7 (c) A certificate must specify any restrictions imposed and collateral sanctions from
8 which relief has not been granted under Section 12(a).

9 (d) Issuance of a certificate relieves all collateral sanctions, except those listed in Section
10 11 and any others specifically excluded in the certificate. A decisionmaker may consider the
11 conduct underlying the conviction in the same manner as provided in Section 7(b).

12 **SECTION 11. SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF**
13 **OR CERTIFICATE OF RESTORATION OF RIGHTS.** An order of limited relief from
14 collateral sanctions or certificate of restoration of rights may not be issued to relieve the
15 following collateral sanctions:

16 (1) requirements imposed by [insert citation to state’s “Megan’s Law” enacted pursuant
17 to 42 U.S.C. Section 14071 or its associated regulations];

18 (2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to
19 [insert citation to state DWI laws], or a motor vehicle license suspension, revocation, limitation,
20 or ineligibility pursuant to [insert citation to provision providing for license suspension for traffic
21 offenses], for which restoration or relief is available pursuant to [insert citation to occupational,
22 temporary, and restricted licensing provisions]; [or]

23 (3) ineligibility for employment pursuant to [insert references to laws restricting

1 employment of convicted individuals with law enforcement agencies including the attorney
2 general, prosecutors' offices, police departments, sheriffs' departments, the state police, or the
3 department of corrections[.] [; or

4 (4) ineligibility pursuant to [insert references to constitutionally created collateral
5 sanctions which the legislature has no power to remove, such as those removing or suspending
6 officeholders based on criminal charge or conviction.]

7 **SECTION 12. PROCEDURES FOR ISSUANCE, MODIFICATION, AND**
8 **REVOCAION OF ORDERS OF LIMITED RELIEF AND CERTIFICATES OF**
9 **RESTORATION OF RIGHTS.**

10 (a) When a petition is filed under Section 9 or 10, including a petition for enlargement of
11 an existing order of limited relief from collateral sanctions or certificate of restoration of rights,
12 the [designated board or agency] shall notify the office that prosecuted the offense giving rise to
13 the collateral consequence from which relief is sought and, if the conviction was not obtained in
14 a court of this state, the [Office of the Attorney General of this state or an appropriate
15 prosecuting office in this state]. The court or [designated board or agency] may issue an order or
16 certificate subject to restriction, condition, or additional requirement. When issuing, denying,
17 modifying, or revoking an order or certificate, the [designated board or agency] may impose
18 conditions for reapplication.

19 (b) The [designated board or agency] may restrict or revoke an order or certificate it
20 previously issued or an order issued by a court in this state if it finds just cause by a
21 preponderance of the evidence. Just cause includes subsequent conviction of the holder for a
22 felony in this state, or for an offense in another jurisdiction that is deemed a felony in this state
23 under Section 8(a). An order of restriction or revocation may be issued:

1 (1) on motion of the [designated board or agency] or the office of the prosecutor
2 that obtained the conviction, or a government agency designated by that prosecutorial office;

3 (2) after notice to the individual to whom the order or certificate was issued and
4 any other prosecutor that has appeared in the matter; and

5 (3) after a hearing pursuant to rules adopted under the [insert reference to the state
6 administrative procedure act] if requested by the individual or the prosecutor who made the
7 motion or any prosecutor that has appeared in the matter.

8 (c) The [designated board or agency] shall order any test, report, investigation, or
9 disclosure by the individual it reasonably believes necessary to its decision to issue, modify or
10 revoke an order or certificate. If there are material disputed issues of fact or law, the individual
11 and any prosecutor notified under subsection (a) or another prosecutorial agency designated by a
12 prosecutor notified under subsection (a) shall have the opportunity to submit evidence and be
13 heard on those issues.

14 (d) The [designated board or agency] shall maintain a public record of the issuance,
15 modification, and revocation of orders and certificates. The system of records of the [state
16 criminal justice record agency] shall include issuance, modification, and revocation of orders and
17 certificates.

18 [(e) The [designated board or agency] may adopt rules for application, determination,
19 modification, and revocation of orders and certificates, in accordance with the provisions of
20 [insert reference to state administrative procedure [act]].]

21 **SECTION 13. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF**
22 **DUE CARE.** In a judicial or administrative proceeding alleging negligence or other fault, an
23 order of limited relief from collateral sanctions or a certificate of restoration of rights may be

1 introduced by a person as evidence of the person’s due care in hiring, retaining, licensing, leasing
2 to, admitting to a school or program, or otherwise transacting business or engaging in activity
3 with the individual to whom the order was issued, if the person knew of the order or certificate at
4 the time of the alleged negligence or other fault.

5 **SECTION 14. VICTIM’S RIGHTS.** A victim of an offense may participate in
6 proceedings for issuance, modification, and revocation of orders of limited relief from collateral
7 sanctions and certificates of restoration of rights [in the same manner as at a sentencing
8 proceeding pursuant to [insert citation to state crime victim’s act]] [to the extent permitted by
9 rules adopted by the [designated board or agency]].

10 **SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
11 applying and construing this uniform act, consideration must be given to the need to promote
12 uniformity of the law with respect to its subject matter among states that enact it.

13 **SECTION 16. SAVINGS AND TRANSITIONAL PROVISIONS.**

14 (a) This [act] applies to collateral consequences whenever enacted or imposed, unless the
15 law creating the collateral consequence expressly states that this [act] does not apply.

16 (b) This [act] does not invalidate the imposition of a collateral sanction on an individual
17 before [the effective date of this [act]], but a collateral sanction validly imposed before [the
18 effective date of this [act]] may be the subject of relief under this [act].

19 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . .