

1 **UNIFORM ACT ON COLLATERAL CONSEQUENCES OF CONVICTION**

2 **Alternative Approach**

3 November 21, 2007

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

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

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

13 (2) “Disqualification” means a penalty, disability, or disadvantage, however denominated,
14 that an administrative agency, governmental official, or a court in a civil proceeding is authorized,
15 but not required, to impose on an individual as a result of the individual’s conviction for a felony,
16 misdemeanor, or other offense.

17 (3) “Collateral consequence” means a collateral sanction or disqualification.

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

20 (1) provide a basis for invalidating a conviction or plea; or

21 (2) address the duty an individual’s attorney owes to the individual.

1 **SECTION 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF**
2 **LAWS REGARDING COLLATERAL CONSEQUENCES.**

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

4 (1) identify or cause to be identified any provision in this state’s [Constitution,]
5 statutes, and administrative rules that imposes a collateral sanction or authorizes the imposition of a
6 disqualification, and any provision that may afford relief from them;

7 (2) not later than [insert date], collect or cause to be collected citations to, and the
8 text or short descriptions of, the provisions identified under subparagraph (a)(1); and

9 (3) update or cause to be updated the collection after each [regular session] of the
10 legislature.

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

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

14 (2) An error or omission in this collection is not a reason for invalidating a
15 conviction or a plea or for otherwise avoiding the imposition of a collateral sanction or
16 disqualification.

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

20 (4) This collection does not include any law or other provision regarding a collateral
21 sanction or a disqualification, or relief from such, enacted or adopted after the collection was last
22 updated or, if not updated, completed.

23 (c) The [designated governmental agency or official] shall publish, or cause to be published,

1 the collection, updated as required under subsection (a)(3) on the Internet without charge.

2 (d) A failure to comply with this section shall not provide a basis for relief from the
3 imposition of, or afford a remedy for imposing, a collateral consequence.

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5 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL**
6 **PROCEEDING.**

7 (a) Not later than the time of arraignment or other judicial proceeding at which an individual
8 is formally advised of the potential sentence for the offense for which the individual is charged, [the
9 designated government agency or official] shall communicate to the individual a notice substantially
10 similar to the following:

11 **NOTICE OF ADDITIONAL LEGAL CONSEQUENCES**

12 If you are convicted of an offense you may suffer additional legal consequences beyond
13 imprisonment, [insert term for post-incarceration supervision] and fines. These consequences may
14 include:

- 15 • being unable to get a government license, permit, or job, or benefits like public housing;
16 • the government taking your property; and
17 • prohibiting you from voting or possessing a firearm.

18 Also, if you are not a U.S. citizen, conviction may result in your deportation, removal,
19 exclusion from admission to the United States, or denial of citizenship. The law may provide ways
20 to obtain relief from these consequences. Further information about the consequences of conviction
21 is available on the [Internet] [at list website].

22 (b) A failure to comply with this section shall not provide a basis for relief from the
23 imposition of, or afford a remedy for imposing, a collateral consequence.

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**SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING;
ADVISEMENT UPON RELEASE.**

(a) If an individual convicted of an offense is not sentenced to a term of imprisonment or other incarceration, the [designated government agency or official] shall at the time of sentencing provide written notice to the individual that collateral sanctions and disqualifications may apply because of the conviction, that there may be ways to obtain relief from them, and that a collection of the relevant laws and rules is available on the Internet. The notice must give the individual information on how to contact agencies, groups, or persons, if any, that offer assistance to individuals seeking relief from collateral sanctions and disqualifications.

(b) No sooner than [30], but, if practicable, no later than [10] days before release, an officer or agency releasing an individual from imprisonment or other incarceration shall advise the individual that collateral sanctions and disqualifications may apply because of the conviction, that there may be ways to obtain relief from them, and that a collection of the relevant laws and rules is available on the Internet. The officer or agency shall also give the individual information on how to contact agencies, groups, or persons, if any, that offer assistance to individuals seeking relief from collateral sanctions and disqualifications.

(c) A failure to comply with this section shall not provide a basis for relief from the imposition of, or afford a remedy for imposing, a collateral consequence.

**SECTION 7. STATUTORY AUTHORIZATION REQUIRED FOR COLLATERAL
SANCTION.** If an otherwise valid rule, ordinance, or policy imposes a collateral sanction without specific statutory authorization it is deemed to authorize the imposition of a disqualification and not

1 a collateral sanction. A general grant of authority to adopt rules, ordinances or policies, or to
2 establish standards requiring good moral character or other criteria for hiring, licensing, or
3 admission to educational programs may not be interpreted as granting specific authorization, but is
4 authority to provide for considering the facts underlying the conviction and that they were
5 established by the judgment of conviction.

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7 **SECTION 8. EFFECT OF REVERSED OR PARDONED CONVICTION[; ARREST**
8 **NOT RESULTING IN CONVICTION].**

9 [(a)] A conviction that is reversed, vacated, or otherwise overturned, by a court of competent
10 jurisdiction, or that is the subject of a pardon based on innocence, does not give rise to a collateral
11 consequence, and is not evidence that any fact alleged in the course of the associated proceeding is
12 true.

13 [(b) An arrest, accusation, complaint, indictment, information, or other proceeding not
14 resulting in a conviction, including a proceeding in which charges are dismissed pursuant to a plea
15 agreement, is not evidence that any fact alleged in the course of the associated proceeding is true.]

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17 **SECTION 9. CERTIFICATE OF RELIEF FROM COLLATERAL SANCTION.**

18 (a) On motion of an individual convicted of an offense, the [court that sentenced the
19 individual] [designated agency] may issue, at any time, a certificate of relief from one or more
20 collateral sanctions relating to employment, education, housing, public benefits or occupational
21 licensing[, except a sex offender registration requirement or motor vehicle license suspension,
22 revocation or ineligibility based on conviction of operating a motor vehicle under the influence of
23 alcohol or drugs]. The motion must specify all collateral sanctions and convictions from which relief

1 is sought. The individual shall serve a copy of the motion on the agency that prosecuted the
2 individual, which may appear and participate. The [court] [designated agency] shall hold a hearing
3 before deciding the motion if requested by the individual or the prosecutor. The [court] [designated
4 agency] may issue a certificate if, after reviewing the record, including the individual's criminal
5 history, and any response, it finds that relief from a collateral sanction does not pose an unreasonable
6 risk to the safety or welfare of any individual or the public, and may assist the individual in
7 maintaining employment, reentering the community, or living a law-abiding life.

8 (b) If an individual is or may be subject to a collateral sanction under the law of this state
9 based on a conviction in another jurisdiction, the [[trial court of general jurisdiction in this state] of a
10 [insert jurisdictional reference] where the collateral sanction may affect the individual] [designated
11 agency], on petition of the individual, may issue a certificate of relief from one or more collateral
12 sanctions relating to employment, education, housing, public benefits or occupational licensing[,
13 except a sex offender registration requirement or motor vehicle license suspension, revocation or
14 ineligibility based on conviction of operating a motor vehicle under the influence of alcohol or
15 drugs]. The petition must specify all collateral sanctions and convictions from which relief is
16 sought. The individual shall serve a copy of the petition on the [appropriate prosecuting authority in
17 this state], and on the prosecuting authority that obtained the conviction. These prosecutors may
18 appear and participate. The [court] [designated agency] shall hold a hearing before deciding the
19 petition if requested by the individual or a prosecutor. The [court] [designated agency] may issue
20 the certificate if, after reviewing the record, including the individual's criminal history, and any
21 response, it finds that relief from a collateral sanction does not pose an unreasonable risk to the
22 safety or welfare of any individual or the public, and may assist the individual in maintaining
23 employment, reentering the community, or living a law-abiding life.

1 (c) A certificate of relief from collateral sanctions may be modified upon motion of the
2 individual or modified or revoked by the [court] [designated agency] for cause and is revoked by
3 operation of law if the holder is subsequently convicted of a felony.

4 (d) An application under this Section is part of the original criminal action for purposes of
5 [insert reference to crime victim's rights law].
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7 **SECTION 10. CERTIFICATE OF GOOD CONDUCT.**

8 (a) An individual convicted of an offense in this state or another jurisdiction who is or may
9 be subject to a collateral consequence in this state may apply for a certificate of good conduct from
10 the [[trial court of general criminal jurisdiction] in the [insert jurisdictional reference] where the
11 individual lives or, if the individual does not live in this state, where the collateral consequence may
12 affect the individual] [designated agency]. The [court] [designated agency] shall give notice of the
13 application to [insert name of appropriate prosecuting authority in this state], and, if the individual
14 was convicted outside this state, to the prosecuting authority that obtained the conviction. These
15 prosecutors may appear and participate. To obtain a certificate of good conduct, the individual must
16 establish that:

17 (1) at least [five] years have elapsed since the most recent conviction of the individual
18 of any felony or of a misdemeanor involving violence or dishonesty and, if applicable, since release
19 from [prison] [prison, jail, half-way house, home detention, or other confinement];

20 (2) for the [five] years before issuance of an order granting the certificate the
21 individual has been engaged in, or seeking to engage in, a lawful occupation or activity, including
22 employment, training, education, or rehabilitative programs or, if the individual is retired or
23 disabled, that the individual has a lawful source of support;

1 (3) the individual complied with the terms of any criminal sentence, or that failure to
2 comply is justified or involuntary; and

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

4 (b) In connection with an application for a certificate of good conduct, the [court]
5 [designated agency] may order any test, investigation or disclosure by the individual it considers
6 reasonably necessary, which shall include at least the preparation of a report of the type prepared
7 before sentencing an individual convicted of a felony.

8 (c) If the requirements of subsection (a) are met, and the [court] [designated agency] finds no
9 reason to deny the application, the [court] [designated agency] may grant the application and issue a
10 certificate of good conduct. The certificate must identify the offenses of which the individual was
11 convicted.

12 [(d)] A certificate of good conduct may be revoked by the [court] [designated agency] for
13 cause and is revoked by operation of law if the holder is subsequently convicted of a felony.

14 [(e)] An application under this Section is part of the original criminal action for purposes of
15 [insert reference to crime victim's rights law].

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17 **SECTION 11. EFFECT OF CERTIFICATE OF RELIEF FROM COLLATERAL**
18 **SANCTION OR CERTIFICATE OF GOOD CONDUCT.**

19 (a) In this section, "state" means:

20 (1) the state acting directly and through its departments, agencies, officers, or
21 instrumentalities, including municipalities, political subdivisions, educational institutions, boards, or
22 commissions, or their employees [.] [; and]

23 [(2) government contractors (including subcontractors) made subject to this section

1 by contract, law other than this act, or ordinance.]

2 (b) Except as otherwise provided in subsection[s] (d) [and (e)], [and in [insert references to
3 constitutional provisions removing or suspending officeholders based on criminal charge or
4 conviction],] the state may not impose a collateral sanction:

5 (1) on an individual who holds an unrevoked certificate of good conduct; or

6 (2) which has been the subject of relief by an unrevoked certificate of relief from
7 collateral sanction.

8 (c) The state may, based on a conviction, disqualify an individual who holds a certificate of
9 good conduct or who holds a certificate of relief from collateral sanctions covering the opportunity
10 at issue if the decisionmaker determines that granting the opportunity presently poses an
11 unreasonable risk to the safety or welfare of any individual or the public. An individual applying for
12 an opportunity may be required to furnish copies of court records or other relevant information. In
13 determining whether the individual poses an unreasonable risk, the decisionmaker may consider:

14 (1) the individual's age when the offense was committed;

15 (2) the time since commission of the offense and since release;

16 (3) the length and consistency of the individual's work history, including whether the
17 individual has a recent record of consistent employment;

18 (4) the individual's education level;

19 (5) the facts underlying the conviction and their relation, if any, to the duties or
20 functions of the occupation, profession, or educational opportunity;

21 (6) the individual's rehabilitation and conduct since the offense, including the
22 individual's receipt of a certificate of good conduct or a certificate of relief from collateral sanction;
23 and

1 (7) whether other individuals who engaged in similar prohibited conduct, whether or
2 not convicted, have been or would be excluded on the ground that they present an unreasonable risk.

3 (d) Subsection (b) is not applicable to law enforcement agencies [as defined in [insert
4 reference to other law defining law enforcement agencies]] [including the attorney general,
5 prosecutors' offices, police departments, sheriffs' departments, the state police, and the department
6 of corrections.] [However, law enforcement agencies in their discretion may consider employment
7 applications from individuals with criminal records.]

8 [(e) Issuance of a certificate of good conduct does not remove an otherwise applicable sex
9 offender registration requirement, or motor vehicle license suspension, revocation or ineligibility
10 based on conviction of operating a motor vehicle under the influence of alcohol or drugs. Issuance
11 of a certificate of good conduct does not remove an otherwise applicable firearms restriction unless it
12 expressly so provides.]

13 (f) A pardon [in the jurisdiction where the conviction was obtained] [in this state] [in any
14 jurisdiction] not based on innocence or an order [in the jurisdiction where the conviction was
15 obtained] [in this state] [in any jurisdiction] removing all collateral sanctions, or all collateral
16 sanctions with specified exceptions, has the effect of a certificate of good conduct issued in this state
17 for purposes of subsections (a) through [(e)]. With respect to a pardon or order issued in this state,
18 its effect as a certificate of good conduct is in addition to whatever other relief is provided by law.

19 [(g) Issuance of a certificate of good conduct in this state renders the underlying convictions
20 inadmissible as evidence that a public or private decision-maker was negligent or otherwise at fault
21 for hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting
22 with an individual, if the decision-maker had knowledge of the certificate at the time of the alleged
23 negligence or other fault. Issuance of a certificate of good conduct in this state is admissible as

1 evidence of due care at the instance of any person who had knowledge of it, in deciding to hire,
2 retain, license, lease to, admit to a school or program, or otherwise transact with an individual.]

3 (h) With respect to individuals who receive certificates of good conduct or certificates of
4 relief from collateral sanctions, this section does not eliminate any legal right or remedy, or create a
5 private right of action for damages or relief other than a declaration that a policy is invalid or, if an
6 individual has shown that an opportunity was denied in violation of this section, for an order that the
7 individual's application be reconsidered in accordance with this section.

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9 **SECTION 12. REPRESENTATION BY APPOINTED COUNSEL.** An attorney or
10 [insert name of indigent defense agency] appointed to defend an individual charged with an offense
11 may but is not required to represent that individual [pro bono] in an application for an order under
12 Sections 9 or 10 or other provision of law providing for relief from collateral consequences. Such
13 [pro bono] representation is within the scope of the original appointment. [The attorney or [insert
14 name of indigent defense agency] shall not be entitled to, or accept, additional compensation from
15 the individual or the appointing authority unless authorized by law other than this Section.]

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17 **SECTION 13. VOTING RIGHTS.** An individual may not be denied the right to vote
18 because of conviction:

19 (1) of an offense other than a felony; or

20 (2) of a felony [except during actual incarceration] [after completion of the sentence
21 imposed, including probation, incarceration, parole and other post-incarceration supervision.].

1 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

2 In applying and construing this uniform act, consideration must be given to the need to
3 promote uniformity of the law with respect to its subject matter among states that enact it.

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5 **SECTION 15. SAVINGS AND TRANSITIONAL PROVISIONS.**

6 (a) This act applies to collateral consequences whenever enacted, unless the law creating the
7 collateral consequence expressly states that this act does not apply.

8 (b) [if any]

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10 **SECTION 16. EFFECTIVE DATE.** This [act] takes effect . . .