Memo from: Margy Love
Date: April 27, 2009
Re: Three issues for possible discussion in the April 29 conference call

Section 6 – Notice of collateral consequences by court at sentencing

Section 9 authorizes a sentencing court to issue an order relieving certain collateral sanctions when a petition is presented at sentencing. But the Section 6 obligation to notify of collateral sanctions at sentencing is reposed in a board or designated agency rather than the court. Moreover, under Section 6 notice need not be given at sentencing at all if the person is sentenced to even a short time in jail. This seems to set up an inefficient dichotomy between the obligation to notify under Section 6 and the authority to relieve under Section 9, in two ways: 1) the court has authority to relieve but does not notify; and 2) there is no obligation at all to notify in cases where the defendant is sentenced to a jail term., even though the court has authority to relieve. The failure to make the court responsible for notifying at sentencing is also inconsistent with the ABA Standards. See Standard 19-2.4.

I would make Sections 6 and 9 consistent with one another, and require the court to notify at the same sentencing proceeding in which it has authority to relieve. This would not impose an undue burden on courts since presumably they must know about what collateral sanctions apply in order to perform their duty to relieve, and they can in any event simply direct the person to the website. I would keep the provision requiring the releasing authority to notify upon release if a term of incarceration is imposed. It does no harm to inform a person twice, particularly if a long period of incarceration separates sentencing and release, so that additional or different collateral consequences may apply by the time a person gets out. It imposes no burden on prison authorities given the availability of the website.

Section 7(b) – Effect of disqualification

The Criminal Justice Section Council thought this section as presently worded was confusing in explaining what a decision-maker may consider in deciding whether to disqualify a person. I propose the following redrafting:

Proposed: *(b) In deciding whether to disqualify an individual, a decision-maker shall undertake an individualized assessment to determine whether the individual is presently unqualified for the benefit or opportunity at issue. The decision-maker may not act based upon the fact of conviction alone, but may consider the particular facts and circumstances involved in the offense if they are substantially related to the benefit or opportunity at issue.* The decision-maker shall also consider other relevant information, including whether the individual has been granted relief such as an order of limited relief from collateral sanctions or a certificate of restoration of rights.

<u>Section 11(4)</u> – Sanctions not Subject to Order of Limited Relief

I would delete Section 11(4) in its entirety, because it has no effect on people convicted in the enacting jurisdiction (by hypothesis it deals with rights the legislature cannot restore), and it may impose a substantial burden on people with out-of-state convictions through Section 8(d).

First of all, the only collateral consequences that cannot be removed by legislation are the three basic civil rights. In many states, these rights are restored automatically upon release from prison or completion of sentence, but in many other states at least one of these rights (usually the right to serve on a jury) may be regained only through a pardon. This means that the situation will frequently arise where a person convicted in one jurisdiction who has regained one or more of their civil rights in that jurisdiction, would under 11(4) lose those rights again when they moved into a jurisdiction that requires a pardon. Moreover, people with out-of-state convictions are generally not eligible for a pardon. Therefore, the only relief available to people with out-of-state convictions would be a pardon in the jurisdiction where they were convicted, which may impose a substantial burden because of in-person hearing requirements. This requirement would substantially burden the right to move interstate, and discriminate against people moving into the enacting jurisdiction in an area vital to citizenship.

Currently, the few states that do not restore the right to vote automatically (notably FL, KY, and VA) recognize out-of-state restorations, so this provision would be a step backwards in those jurisdictions at least where voting rights are concerned. I haven't studied how jurisdictions would be affected where the two other civil rights are concerned.