

MEMORANDUM

To: Rich Cassidy

From: Jack Chin

Re: Issues in August 4, 2008 Draft

Date: February 3, 2009

I see several issues worth discussing during our phone calls.

1. The definition section includes juvenile and sub-criminal convictions in the act, if they give rise to collateral consequences, through the definition of “offense.” 2(7). (The draft also does the same thing through the definition of “Conviction” 2(3) but I wonder if that is redundant and should be eliminated.) Is this sufficient?

2. There is new material on out-of-state convictions. 2(5)-(7) simply borrows out of state definitions, i.e., defines out of state convictions that are felonies and misdemeanors defined in their home jurisdictions as felonies and misdemeanors in the state. In contrast, 8(a) does, essentially, *Blockburger* analysis, treating an out of state conviction as the same offense in this state, or, if there is no identical offense, the highest included offense in this state (with the proviso that out of state violations cannot be crimes, and out of state misdemeanors cannot be felonies). I think we have to choose one or the other approach.

3. My recollection is that not everyone was there when we discussed 8(d). Not treating diverted cases as convictions seems right to me, but it is an important policy decision.