

DRAFT
FOR DISCUSSION ONLY

UNIFORM ACT ON COLLATERAL CONSEQUENCES OF CONVICTION

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Without Prefatory Notes or Comments

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February 10, 2009

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UNIFORM ACT ON COLLATERAL CONSEQUENCES OF CONVICTION

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

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

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 a felony,
9 misdemeanor, or other offense, that applies by operation of law whether or not it is included in
10 the judgment or sentence. The term does not include imprisonment, probation, parole,
11 supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

12 ~~(3) “Conviction” or “convicted” includes a juvenile adjudication and [insert terms for~~
13 ~~lesser offenses, and other adjudications in enacting state] if by law other than this [act] they~~
14 ~~authorize or impose collateral consequences.~~

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

19 (5) “Felony” means a criminal offense as defined in [the state criminal code] when
20 referring to the law of this state, or, when referring to the law of another another state or the
21 United States, a criminal offense defined as a felony under the law of that jurisdiction.

22 (6) “Misdemeanor” means a criminal offense [as defined in the state criminal code] when
23 referring to the law of this state, or, when referring to the law of another state or the United

1 States, a criminal offense defined as a misdemeanor under the law of that jurisdiction.

2 (7) "Offense" means a felony, misdemeanor, or [insert term for lesser offenses and other
3 adjudications in enacting state], when referring to the law of this state, or, when referring to the
4 law of another state or the United States, a felony, misdemeanor or lesser offense ~~that authorizes~~
5 ~~or imposes collateral consequences~~ under the law of that jurisdiction. [A juvenile adjudication is
6 a conviction for an offense, if by law other than this [act] provides the adjudication authorizes or
7 imposes collateral consequences.]

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

9 (1) provide a basis for:

10 (a) invalidating a conviction or plea;

11 (b) a cause of action for money damages for any violation of this [act];

12 (c) a claim for relief from or defense to the application of a collateral consequence
13 based on non-compliance with Sections 4, 5 or 6 of this [act]; or

14 (2) affect:

15 (a) the duty an individual's attorney owes to the individual;

16 (b) any claims or rights held by a victim of crime; or

17 (c) the availability or effect of rights or relief under law other than this [act]

18 available to a person convicted of an offense.

19 **SECTION 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF**
20 **LAWS REGARDING COLLATERAL CONSEQUENCES.**

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

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

23 Constitution, statutes, and administrative rules that imposes a collateral sanction or authorizes the

1 imposition of a disqualification, and any provision of law that may afford relief from them;

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

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

8 (4) shall update or cause to be updated the collection within [specify period] after
9 each [regular session] of the [legislature].

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

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

15 (2) An error or omission in this collection is not a reason for invalidating a
16 conviction or a plea or for not imposing a collateral sanction or 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
21 collateral sanction or a disqualification, or relief from them, enacted or adopted after the
22 collection was last updated.

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

1 published, the collection, created and updated as required under subsection (a). The collection
2 must be available to the public on the Internet without charge within [insert number] of days
3 after it is created or updated.

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

6 (a) At or before arraignment or other judicial proceeding at which an individual is
7 formally advised of the potential sentence for an offense with which the individual is charged,
8 [the designated government agency or official] shall communicate to the individual information
9 substantially similar to the following notice:

10 NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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

- 14 • being unable to get or keep some licenses, permits, or jobs;
- 15 • being unable to get or keep benefits such as public housing or education;
- 16 • receiving a higher sentence if you are convicted of another crime in the future;
- 17 • having the government take your property; and
- 18 • prohibiting you from voting or possessing a firearm.

19 Also, if you are not a United States citizen, conviction may result in your deportation, removal,
20 exclusion from admission to the United States, or denial of citizenship.

21 The law may provide ways to obtain some relief from these consequences. Further information
22 about the consequences of conviction is available on the Internet at [list website indicating where
23 the collection described in Section 4(c) can be found]].

1 **SECTION 6. NOTICE OF COLLATERAL SANCTIONS AND**
2 **DISQUALIFICATIONS AT SENTENCING OR UPON RELEASE.**

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

4 (1) that collateral sanctions and disqualifications may apply because of the
5 conviction;

6 (2) of where the website where the collection of relevant laws published under
7 Section 4(c) can be found;

8 (3) that there may be ways to obtain relief from collateral sanctions and
9 disqualifications;

10 (4) of contact information for government or nonprofit agencies, groups, or
11 organizations, if any, that offer assistance to individuals seeking relief from collateral sanctions
12 and disqualifications, and

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

14 (b) The [designated government agency or official] shall provide this information at
15 sentencing if an individual is not sentenced to imprisonment or other incarceration. If the
16 individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the
17 individual shall provide this information not more than [30] days, and, if practicable, at least
18 [10] days before release.

19 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL**
20 **CONSEQUENCES; CONSTRUCTION IN CASE OF AMBIGUITY.**

21 (a) The state acting directly or through its departments, agencies, officers, or
22 instrumentalities, including municipalities, political subdivisions, educational institutions,
23 boards, or commissions, or their employees may impose a penalty, disability, or disadvantage,

1 however denominated, on an individual as a result of the individual’s conviction for a felony,
2 misdemeanor, or other offense, only pursuant to statute, ordinance, or rule authorized by law and
3 adopted in accordance with [insert citation to State Administrative Procedure Act or any other
4 applicable law].

5 (b) If a law is ambiguous as to whether a collateral consequence is a collateral sanction or
6 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 imposing or authorizing collateral consequences, a conviction for a
10 an offense in a court of another state or the United States is deemed a conviction of the same
11 offense in this state, or, if there is no such offense, a conviction for the most serious included
12 offense in this state, except that an offense graded below a misdemeanor in the jurisdiction of
13 conviction may not be deemed a conviction of a crime in this state, and an offense graded as a
14 misdemeanor in the jurisdiction of conviction may not be deemed a felony in this state.

15 (b) A conviction that is reversed, overturned, set aside, or otherwise vacated by order of
16 a court of competent jurisdiction of this state, another state, or the United States on grounds other
17 than rehabilitation or good behavior, is not deemed a conviction in this state and is not the basis
18 for a collateral consequence in this state.

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

22 (d) A criminal charge in any jurisdiction that has been finally terminated without a
23 judgment of conviction and imposition of sentence, based on the defendant’s participation in a

1 deferred prosecution or diversion program, is not deemed a conviction in this state. This
2 subsection shall not affect the validity of any restrictions or conditions imposed by law as part of
3 participation in the deferred prosecution or diversion program, either before or after the
4 termination of the charge.

5 **ALTERNATIVE A**

6 (e) A conviction that is expunged, sealed, annulled, set aside, or otherwise vacated by a
7 court of competent jurisdiction of another state, or the United States on grounds of rehabilitation
8 or good behavior is not deemed a conviction for purposes of imposing or authorizing collateral
9 consequences in this state, except with respect to collateral consequences applicable under the
10 law of this state for which relief could not be granted under Section 11, or for which relief was
11 expressly withheld by the court order or by the law of the jurisdiction that vacated the
12 conviction. The individual convicted of the offense may apply for relief as provided in Section 9
13 or 10 from any collateral consequence for which relief was withheld, other than those listed in
14 Section 11, and the [designated board or agency] shall consider that the conviction was vacated
15 in deciding whether to grant relief.

16 **ALTERNATIVE B**

17 (e) A conviction that is expunged, sealed, annulled, set aside, or otherwise vacated by a
18 court of competent jurisdiction of another state or the United States on grounds of rehabilitation
19 or good behavior is deemed a conviction for the same offense in this state, or, if there is no such
20 offense, for the most serious included offense in this state, for purposes of imposing or
21 authorizing collateral consequences in this state. The individual convicted of the offense may
22 apply for relief as provided in Section 9 or 10 from any imposed or authorized collateral

1 consequence, other than those listed in Section 11, and the [designated board or agency] shall
2 consider that the conviction was vacated in deciding whether to grant relief.

3 **SECTION 9. ORDER OF LIMITED RELIEF FROM COLLATERAL**
4 **SANCTIONS.**

5 (a) An individual convicted of an offense may petition for an order of relief from one or
6 more collateral sanctions related to employment, education, housing, public benefits, or
7 occupational licensing, except those listed in Section 11. The petition may be presented to:

8 (1) the sentencing court at or before sentencing, but it may be granted by the
9 sentencing court only if no incarceration is imposed on the convicted individual, other than for
10 time already served; or

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

12 (b) The court or the [designated board or agency] shall grant a petition requesting relief,
13 and issue an order of relief, from one or more of the collateral sanctions described in subsection

14 (a) if, after reviewing the record, including the individual's criminal history, and any filing by a
15 prosecutor or victim, it finds that the individual has established by a preponderance of the
16 evidence that:

17 (1) granting the petition is likely to assist the individual in living a law-abiding
18 life, including obtaining or maintaining employment, or reentering the community; and

19 (2) if less than five years has elapsed since the individual was sentenced for any
20 felony, the individual has substantial need for the relief requested in order to live a law-abiding
21 life;

22 unless the court or [designated board or agency] finds, based on a review of the record, that:

23 (3) granting the petition would pose an unreasonable risk to the safety or welfare

1 of the public or any individual, or

2 (4) some other reasonable ground warrants denial of the petition,

3 (c) The text of an order of relief from collateral sanctions shall specify:

4 (1) any restrictions imposed pursuant to Section 12(d); and

5 (2) the particular collateral sanctions from which relief has been granted.

6 (d) The state acting directly or through its departments, agencies, officers, or
7 instrumentalities, including municipalities, political subdivisions, educational institutions,
8 boards, or commissions, or their employees[, and government contractors, including
9 subcontractors, made subject to this section by contract, law other than this [act], or ordinance,]
10 may not impose a collateral sanction that is the subject of an unrevoked order of relief from
11 collateral sanctions issued [in this state] [in any state], but may in its discretion impose a
12 disqualification based on the conduct underlying the conviction.

13 [(e) An order of relief from collateral sanctions may be introduced in a judicial or
14 administrative proceeding by a decisionmaker as evidence of the decisionmaker's due care in
15 deciding to hire, retain, license, lease to, admit to a school or program, or otherwise transact
16 business or engage in activity with the individual to whom the order was issued, if the
17 decisionmaker had knowledge of the order at the time of the alleged negligence or other fault.]

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

19 (a) An individual convicted of an offense may petition the [designated board or agency]
20 for a certificate of restoration of rights.

21 (b) The [designated board or agency] shall grant a petition for a certificate of restoration
22 of rights and issue such a certificate, relieving an individual from one or more collateral
23 sanctions including those listed in Section 9(a), or from all collateral sanctions, except those

1 listed in Section 11, if after reviewing the record, including the individual’s criminal history, and
2 any filing by a prosecutor or victim, it finds that the individual has established by a
3 preponderance of the evidence that:

4 (1) at least [five] years has elapsed since the date of the individual’s most recent
5 conviction of a felony [or misdemeanor] in any jurisdiction;

6 (2) for the [five] years preceding the issuance of the certificate, the individual:

7 (A) has not been confined pursuant to a criminal sentence in [prison]
8 [prison, jail, a half-way house, home detention, or other actual confinement] in any jurisdiction;

9 (B) has been engaged in, or seeking to engage in, a lawful occupation or
10 activity, including employment, training, education, or rehabilitative programs or, if the
11 individual is retired or disabled, that the individual has a lawful source of support; and

12 (C) has not violated the terms of any criminal sentence, or that any failure
13 to comply is justified, involuntary, or insubstantial; and

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

15 unless it finds, based on a review of the record, that

16 (4) granting the petition would pose an unreasonable risk to the safety or welfare
17 of the public or any individual, or

18 (5) some other reasonable ground warrants denial of the petition.

19 (c) The [designated board or agency] may issue a certificate of restoration of rights
20 relieving all collateral sanctions under subsection (b), with specified exceptions in addition to the
21 applicable exceptions listed in Section 11. The text of a certificate shall:

22 (1) specify any restrictions imposed pursuant to Section 12(d), and

23 (2) specify the particular collateral sanctions from which relief has been granted;

1 or

2 (3) state that the certificate grants relief from all collateral sanctions imposed by
3 the law of this state except those collateral sanctions listed in Section 11 that are applicable to the
4 individual, and any other collateral sanctions from which relief has not been granted.

5 (d) The state acting directly or through its departments, agencies, officers, or
6 instrumentalities, including municipalities, political subdivisions, educational institutions,
7 boards, or commissions, or their employees[, and government contractors, including
8 subcontractors, made subject to this section by contract, law other than this [act], or ordinance,]
9 may not impose a collateral sanction that is the subject of an unrevoked certificate of restoration
10 of rights issued [in this state] [in any state].

11 (e) The state acting directly or through its departments, agencies, officers, or
12 instrumentalities, including municipalities, political subdivisions, educational institutions,
13 boards, or commissions, or their employees[, and government contractors, including
14 subcontractors, made subject to this section by contract, law other than this [act], or ordinance,]
15 may not impose a disqualification that precludes further consideration of an individual to whom
16 an unrevoked certificate of restoration of rights has been issued covering the opportunity at issue
17 unless the decisionmaker determines [in its discretion] that: 1) granting the opportunity poses an
18 unreasonable risk to the safety or welfare of the public or any individual; 2) the conduct
19 underlying the conviction is sufficiently closely related to the opportunity that it renders the
20 individual unqualified. In making this determination, the decisionmaker may conduct any
21 investigation it considers necessary, may require that an individual applying for an opportunity
22 furnish copies of court records or other relevant information, and shall consider:

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

- 1 (2) the time since commission of the offense and since release from any custody;
- 2 (3) the length and consistency of the individual's work history, including whether
- 3 the individual has a recent record of consistent employment;
- 4 (4) the individual's education and training;
- 5 (5) the facts underlying the conviction and their relation, if any, to the duties or
- 6 functions of the opportunity;
- 7 (6) the individual's other criminal history, if any, and rehabilitation and conduct
- 8 since the offense, including the individual's receipt of an order of relief from collateral sanctions,
- 9 a certificate of restoration of rights, a pardon, or other relief;
- 10 (7) whether other individuals who engaged in similar prohibited conduct, whether
- 11 or not convicted, have been or would be excluded on the ground that they present an
- 12 unreasonable risk; and
- 13 (8) any other relevant factor.

14 Nothing in this subsection prohibits a decisionmaker from denying an opportunity to an

15 individual based on a determination, on grounds unrelated to the conviction, that the individual is

16 unqualified, or is less qualified than other applicants.

17 (f) [(1)] If a certificate of restoration of rights is issued and unrevoked at the time of

18 decision, the underlying conviction is inadmissible as evidence that a decisionmaker was

19 negligent or otherwise at fault for hiring, retaining, licensing, leasing to, admitting to a school or

20 program, or otherwise transacting business or engaging in activity with the individual to whom

21 the certificate was issued.

22 [(2)] A certificate of restoration of rights may be introduced in a judicial or

23 administrative proceeding by a decisionmaker as evidence of the decisionmaker's due care in

1 deciding to hire, retain, license, lease to, admit to a school or program, or otherwise transact
2 business or engage in activity with the individual to whom the certificate was issued, if the
3 decisionmaker had knowledge of the certificate at the time of the alleged negligence or other
4 fault.]

5 **SECTION 11. SANCTIONS NOT SUBJECT TO ORDER OF RELIEF FROM**
6 **COLLATERAL SANCTIONS OR CERTIFICATE OF RESTORATION OF RIGHTS.**

7 An order of relief from collateral sanctions or certificate of restoration of rights may not be
8 issued to relieve the following sanctions:

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

11 (2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to
12 [insert citation to state DWI laws], or a motor vehicle license suspension, revocation, limitation,
13 or ineligibility pursuant to [insert citation to provision providing for license suspension for traffic
14 offenses], for which restoration or relief is available pursuant to [insert citation to
15 occupational/temporary/restricted licensing provisions] [; or]

16 (3) ineligibility for employment with a law enforcement agency [as defined in [insert
17 reference to other law defining law enforcement agencies] [including the attorney general,
18 prosecutors’ offices, police departments, sheriffs’ departments, the [state police,] and the
19 department of corrections.] [or

20 (4) ineligibility pursuant to [insert references to constitutional provisions removing or
21 suspending officeholders based on criminal charge or conviction].

22
23

1 **SECTION 12. PROCEDURES APPLICABLE TO ISSUANCE, REVOCATION,**
2 **AND MODIFICATION OF ORDERS OF RELIEF FROM COLLATERAL SANCTIONS**
3 **AND CERTIFICATES OF RESTORATION OF RIGHTS; VICTIMS' RIGHTS.**

4 (a) The [designated board or agency] shall give notice of the filing of a petition for an
5 order of relief from collateral sanctions under Section 9, or for a certificate of restoration of
6 rights under Section 10, to the office that prosecuted the offense for which the order or certificate
7 is sought, and, if the conviction was not obtained in this state, to [the Office of the Attorney
8 General of this state or an appropriate prosecuting office in this state]. If a petition for an order
9 of relief from collateral sanctions is filed with the sentencing court, such notice shall be governed
10 by the applicable rules of court. Any prosecutor so notified, and any prosecuting agency in this
11 state, may participate in the process by which the court or the [designated board or agency]
12 considers the petition.

13 (b) The court or the [designated board or agency] may order any test, report,
14 investigation, or disclosure by the individual it believes necessary to its decision. Before issuing
15 a certificate of restoration of rights, the [designated board or agency] shall order preparation of a
16 report of the type required before sentencing an individual convicted of a felony. If there are
17 disputed issues of fact or law material to the decision, the [designated board or agency] shall give
18 the individual and the prosecutor the opportunity to submit evidence and argument on those
19 issues before decision.

20 (c) The court or the [designated board or agency] may grant any relief to which the
21 individual is entitled, even if the individual does not request that relief in the petition for an order
22 or a certificate. The [designated board or agency] may modify an order of relief from collateral
23 sanctions issued previously by a court or by the [designated board or agency], or a certificate of

1 restoration of rights issued previously by the [designated board or agency] on petition of the
2 individual or the state. A petition for additional relief not granted by an earlier order or
3 certificate may be granted if the individual satisfies the requirements for the additional requested
4 relief under the applicable provisions of Section 9(b) or Section 10(b).

5 (d) The court or [designated board or agency] may grant relief subject to restrictions,
6 conditions or additional requirements. In denying relief, the [designated board or agency] may
7 provide that reapplication will be subject to satisfaction of particular conditions or additional
8 requirements.

9 (e) The [designated board or agency] may revoke an order for relief from collateral
10 sanctions issued under Section 9, or a certificate of restoration of rights issued under Section 10,
11 in whole or part, if it finds by a preponderance of the evidence that just cause exists for
12 revocation. Just cause includes subsequent conviction of the holder for a crime that is a felony in
13 this state, or a conviction in another jurisdiction that would be a felony in this state under
14 Subsection 8(a). An order of revocation may be entered:

15 (1) sua sponte or by motion of a prosecutor in this state;

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

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

21 (f) The [designated board or agency] may adopt rules for application, determination,
22 modification, and revocation of orders for relief from collateral sanctions under Section 9 and
23 certificates of restoration of rights under Section 10, in accordance with the provisions of [insert

1 reference to state administrative procedure [act]]. The [designated board or agency] is not bound
2 by the rules of evidence except those on privileges. The [designated board or agency] shall
3 maintain a public record of the application, determination, modification, and revocation of orders
4 of relief from collateral sanctions and certificates of restoration of rights. The [state criminal
5 justice record agency] shall include issuance, modification, and revocation of orders of relief
6 from collateral sanctions and certificates of restoration of rights in its system of records.

7 (g) A victim of the offense that led to the collateral sanction for which the petitioner is
8 seeking relief shall be notified of, and have the right to participate in, a proceeding for issuance,
9 modification, or revocation of an order for relief from collateral sanctions or a certificate of
10 restoration of rights [pursuant to [insert citation to state crime victim's act]].

11 (h) With respect to an individual to whom an order of relief from collateral sanctions or
12 certificate of restoration of rights has been issued, this [act] does not give rise to a cause of action
13 other than a declaration that a policy imposing a collateral sanction on an individual to whom
14 such an order or certificate has been issued is invalid or, if an individual has shown that an
15 opportunity was denied in violation of this Act, for an order that the individual's application be
16 reconsidered in accordance with this Act.

17 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
18 applying and construing this uniform [act], consideration must be given to the need to promote
19 uniformity of the law with respect to its subject matter among states that enact it.

20 **SECTION 14. SAVINGS AND TRANSITIONAL PROVISIONS.**

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

23 (b) This [act] does not invalidate the imposition of a collateral sanction on an individual

1 before [the effective date of this [act]], but collateral sanctions validly imposed before [the
2 effective date of this [act]] may be the subject of relief under this [act].

3 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect . . .