

D R A F T
FOR DISCUSSION ONLY

UNIFORM ACT ON COLLATERAL CONSEQUENCES OF CONVICTION

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For February 29 – March 2, 2008 Drafting Committee Meeting

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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

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

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

17 (4) “Felony” means a criminal offense in any jurisdiction that would be a felony under
18 the law of this state.

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
6 of a disqualification, and any provision of law 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
12 included 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
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 otherwise avoiding the imposition of a collateral sanction or
17 disqualification.

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

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

1 (c) The [designated governmental agency or official] shall publish, or cause to be
2 published, the collection, updated as required under subsection (a)(3) on the Internet without
3 charge.

4 (d) Noncompliance with this section does not give rise to a cause of action for relief from
5 a collateral consequence or for damages.

6 **ALTERNATIVE A**

7 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL** 8 **PROCEEDING.**

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

13 **NOTICE OF ADDITIONAL LEGAL CONSEQUENCES**

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

- 17 • being unable to get certain licenses, permits, or jobs,
- 18 • being unable to get benefits such as public housing or education;
- 19 • a higher sentence if you are convicted of another crime in the future;
- 20 • the government taking your property;
- 21 • prohibiting you from voting or possessing a firearm; and
- 22 • if you are not a U.S. citizen, conviction may result in your deportation, removal,
- 23 exclusion from admission to the United States, or denial of citizenship.

1 The law may provide ways to obtain some relief from these consequences. Further information
2 about the consequences of conviction is available [on the Internet] [at [list website]].

3 (b) Noncompliance with this section shall not give rise to a cause of action for relief from
4 a collateral consequence or for damages.

5 **ALTERNATIVE B**

6 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES BEFORE GUILTY** 7 **PLEA.**

8 (a) Before accepting a plea of guilty to an offense, the court shall provide the following
9 notice to the individual:

10 If you plead guilty, you may suffer additional legal consequences beyond the
11 imprisonment, [probation] [insert jurisdiction's alternative term for probation], [insert term for
12 post-incarceration supervision] and fines that we have discussed. These consequences may
13 include:

- 14 • being unable to get certain licenses, permits, or jobs,
- 15 • being unable to get benefits such as public housing or education;
- 16 • a higher sentence if you are convicted of another crime in the future;
- 17 • the government taking your property;
- 18 • prohibiting you from voting or possessing a firearm; and
- 19 • if you are not a U.S. citizen, conviction may result in your deportation, removal,
20 exclusion from admission to the United States, or denial of citizenship.

21 The court shall not accept a guilty plea without confirming on the record that the individual has
22 received and understood the notice

23 (b) Noncompliance with this section does not give rise to a cause of action for relief from

1 a collateral consequence or for damages.

2 **SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING**
3 **OR UPON RELEASE.**

4 (a) An individual convicted of an offense must be given notice that collateral sanctions
5 and disqualifications may apply because of the conviction, notice that there may be ways to
6 obtain relief from them, and notice of where a collection of relevant laws can be found. Notice
7 substantially similar to the notice set forth in Section 5(a) is sufficient, except that it must also
8 include contact information for any agencies, groups, or persons that offer assistance to
9 individuals seeking relief from collateral sanctions and disqualifications.

10 (b) The [designated government agency or official] shall give the notice at sentencing if
11 an individual is not sentenced to imprisonment or other incarceration. If the individual is
12 sentenced to imprisonment or other incarceration, the officer or agency releasing the individual
13 shall give the notice between [30], and, if practicable, [10] days before release.

14 (c) Noncompliance with this section does not give rise to a cause of action for relief from
15 a collateral consequence or for damages.

16 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;**
17 **CONSTRUCTION IN CASE OF AMBIGUITY.**

18 (a) A collateral sanction may be imposed only by statute, ordinance or rule authorized by
19 law and adopted in accordance with [insert citation to State Administrative Procedure Act]..

20 (b) If a law is ambiguous as to whether it imposes or authorizes a collateral sanction or
21 imposes or authorizes a disqualification, it shall be construed as authorizing or imposing a
22 disqualification.

1 **SECTION 8. EFFECT OF OVERTURNED OR PARDONED CONVICTION[;**
2 **ARREST NOT RESULTING IN CONVICTION].**

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

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

11 **SECTION 9. ORDER OF RELIEF FROM COLLATERAL SANCTION.**

12 (a) Except as provided in Section 12(d), an individual convicted of an offense may apply
13 for an order of relief from one or more collateral sanctions to which the individual is or expects
14 to be subject. The application must specify the collateral sanctions from which relief is sought.
15 The individual shall serve a copy of the application on the agency that prosecuted the individual,
16 which may appear and participate. If a conviction giving rise to collateral sanctions in this state
17 was obtained in another state, the individual shall also serve the [appropriate prosecuting agency
18 in this state with jurisdiction where the court is located], which may appear and participate.

19 (b) An order under this section may be issued by a court of this state, but only at the time
20 of sentencing, or by the [designated agency] at any time.

21 (c) Until five years has elapsed since sentencing the individual for any felony, the
22 individual may apply for relief from one or more collateral sanctions related to relating to
23 employment, education, housing, public benefits or occupational licensing. After five years has

1 elapsed since sentencing for any felony, the individual may apply for relief from one or more
2 collateral sanctions of any type.

3 (d) The court or the [designated agency] must order any test, investigation or disclosure
4 by the individual it deems necessary before ruling on an application, which may include
5 preparation of a report of the type required before sentencing an individual convicted of a felony.
6 The court or [designated agency] shall hold a hearing before deciding an application if requested
7 by the individual or the prosecutor.

8 (e) The court or [designated agency] may issue an order if, after reviewing the record,
9 including the individual's criminal history, and any response, it finds by a preponderance of the
10 evidence that granting relief does not pose an unreasonable risk to the safety or welfare of the
11 public or any individual, and may assist the individual in living a law-abiding life, including
12 obtaining or maintaining employment, or reentering the community. In addition, if less than
13 five years has elapsed since the individual was sentenced for any felony, the court or [designated
14 agency] may issue an order only if it finds that the individual has substantial need for the relief
15 requested in order to live a law-abiding life.

16 (f) An order of relief from collateral sanction may be modified upon motion of the
17 individual.

18 **SECTION 10. ORDER OF RELIEF FROM ALL COLLATERAL SANCTIONS.**

19 (a) An individual who is a resident of this state, convicted of an offense in this state or in
20 another jurisdiction, may apply to the [designated agency] for an order of relief from all
21 collateral sanctions, except for collateral sanctions listed in Section 12(d). The [designated
22 agency] shall give notice of the application to [insert name of appropriate prosecuting authority
23 in this state], and, if the individual was convicted outside this state, to the prosecuting authority

1 that obtained the conviction. These prosecutors may appear and participate. To obtain an order
2 of relief from all collateral sanctions, the individual must establish by a preponderance of the
3 evidence that:

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

7 (2) for the [five] years before issuance of the order the individual has been
8 engaged in, or seeking to engage in, a lawful occupation or activity, including employment,
9 training, education, or rehabilitative programs or, if the individual is retired or disabled, that the
10 individual has a lawful source of support;

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

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

14 (5) granting the order would not pose an unreasonable risk to the safety or welfare
15 of the public or any individual.

16 (b) Before issuing an order relieving all collateral sanctions, the [designated agency] shall
17 order the preparation of, and review, a report of the type required before sentencing an individual
18 convicted of a felony, and may also order any other test, investigation or disclosure by the
19 individual it considers necessary. The [designated agency] shall hold a hearing before deciding
20 the application if requested by the individual or the prosecutor.

21 (c) If the requirements of subsection (a) are met, and the [designated agency] finds no
22 reason to deny the application, the [designated agency] may issue an order relieving all collateral
23 sanctions, which shall state that it does not relieve collateral sanctions listed in Section 12(d).

1 The order must identify the offenses of which the individual was convicted.

2 **SECTION 11. RULES, REVOCATION, AND VICTIM’S RIGHTS WITH**
3 **RESPECT TO ORDER OF RELIEF FROM COLLATERAL SANCTION AND ORDER**
4 **OF RELIEF FROM ALL COLLATERAL SANCTIONS.**

5 (a) [insert citation to state’s rules of evidence] (other than with respect to privileges) do
6 not apply to proceedings under Sections 9 or 10. The [designated agency] may adopt rules for
7 the application, determination, modification and revocation of orders under Sections 9 and 10
8 under the provisions of [insert reference to state administrative procedure act]. The [designated
9 agency] shall maintain a public record of the application, determination, modification and
10 revocation of orders under Section 9 or 10. The [state criminal justice record agency] may
11 include issuance and revocation of orders under Sections 9 and 10 in its system of records.

12 (b) The [designated agency] may revoke an order under Section 9 or Section 10: 1) after
13 notice to the holder of the order and the agency that prosecuted the holder; 2) after a hearing
14 pursuant to rules adopted under the [insert reference to the state administrative procedure act] if
15 requested by the holder of the order or the agency that prosecuted the holder; 3) if it finds by a
16 preponderance of the evidence that just cause exists to revoke the order. Subsequent conviction
17 of the holder for a crime that would be a felony in this jurisdiction constitutes just cause.

18 (c) A crime victim shall have the right to receive notice of and participate in proceedings
19 under Sections 9 or 10 pursuant to [insert reference to crime victim’s act].

20 **SECTION 12. EFFECT OF ORDER OF RELIEF FROM COLLATERAL**
21 **SANCTION.**

22 (a) In this section, “state” means:

23 (1) the state acting directly and through its departments, agencies, officers, or

1 instrumentalities, including municipalities, political subdivisions, educational institutions,
2 boards, or commissions, or their employees [.] [; and]

3 [(2) government contractors (including subcontractors) made subject to this
4 section by contract, law other than this act, or ordinance.]

5 (b) Except as otherwise provided in subsection (d), the state may not impose a collateral
6 sanction which is the subject of an unrevoked order of relief from collateral sanction or order of
7 relief from all collateral sanctions.

8 (c) The state may impose a disqualification on an individual holding an order of relief
9 from a collateral sanction covering the opportunity at issue or an order of relief from all
10 collateral sanctions if the decisionmaker determines that granting the opportunity poses an
11 unreasonable risk to the safety or welfare of the public or any individual. The decisionmaker
12 may perform any investigation it considers necessary, and may require an individual applying for
13 an opportunity to furnish copies of court records or other relevant information. In determining
14 whether the individual poses an unreasonable risk, the decisionmaker shall consider:

- 15 (1) the individual's age when the offense was committed;
- 16 (2) the time since commission of the offense and since release from any custody;
- 17 (3) the length and consistency of the individual's work history, including whether
18 the individual has a recent record of consistent employment;
- 19 (4) the individual's education;
- 20 (5) the facts underlying the conviction and their relation, if any, to the duties or
21 functions of the opportunity;
- 22 (6) the individual's other criminal history, if any, and rehabilitation and conduct
23 since the offense, including the individual's receipt of a certificate of relief from collateral

1 sanction, pardon, or other relief;

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

5 (8) any other relevant factor.

6 (d) An order issued under Section 9 or 10 does not remove an otherwise applicable:

7 (1) sex offender registration requirement,

8 (2) motor vehicle license suspension, revocation or ineligibility based on
9 conviction of operating a motor vehicle under the influence of alcohol or drugs; or

10 (3) employment restriction imposed by a law enforcement agency [as defined in
11 [insert reference to other law defining law enforcement agencies]] [including the attorney
12 general, prosecutors' offices, police departments, sheriffs' departments, the state police, and the
13 department of corrections.] [However, law enforcement agencies in their discretion may consider
14 employment applications from individuals with criminal records.] [or

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

17 (e) Issuance of an order under Section 10 renders the underlying conviction(s)
18 inadmissible as evidence that a decisionmaker was negligent or otherwise at fault for hiring,
19 retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting with an
20 individual, if the decision maker had knowledge of the order at the time of the alleged negligence
21 or other fault. An order under Section 9 or 10 may be introduced as evidence of a
22 decisionmaker's due care in deciding to hire, retain, license, lease to, admit to a school or
23 program, or otherwise transact with the individual holding the order, if the decisionmaker had

1 knowledge of the order at the time of the alleged negligence or other fault..

2 (f) With respect to an individual holding an order of relief from collateral sanction or an
3 order of relief from all collateral sanctions, this section does not eliminate any legal right or
4 remedy, or give rise to a cause of action for damages or relief other than a declaration that a
5 policy is invalid or, if an individual has shown that an opportunity was denied in violation of this
6 section, for an order that the individual's application be reconsidered in accordance with this
7 section.

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

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

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

14 (b) [if any]

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