

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 24, 2009

**DRAFTING COMMITTEE ON UNIFORM ACT ON
COLLATERAL CONSEQUENCES OF CONVICTION**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *Chair*
ANN WALSH BRADLEY, P.O. Box 1688, Madison, WI 53701-1688
JOHN M. CARY, 1201 Third Ave., #2812, Seattle, WA 98101
GREG J. CURTIS, P.O. Box 2084, Sandy, UT 84091
BRIAN K. FLOWERS, Council of the District of Columbia, 1350 Pennsylvania Ave. NW, Suite
4, Washington, DC 20004
JESSICA FRENCH, Division of Legislative Services, 910 Capitol St., 2nd Floor, General
Assembly Building, Richmond, VA 23219
ROGER C. HENDERSON, 5861 N. Paseo Niquel, Tucson, AZ 85718
H. LANE KNEEDLER, 901 E. Byrd Street, Suite 1700, Richmond, VA 23219
HARRY D. LEINENWEBER, 219 S. Dearborn St., Suite 1946, Chicago, IL 60604
MARIAN P. OPALA, State Capitol, Room 238, Oklahoma City, OK 73105
RAYMOND G. SANCHEZ, P.O. Box 1966, Albuquerque, NM 87103
ALEXANDRA T. SCHIMMER, Office of the Ohio Attorney General, 30 E. Broad Street, 17th
Flr., Columbus, OH 43215-3428
PAULA TACKETT, Legislative Council Service, State Capitol, Room 411, Santa Fe, NM 87501
MICHELE L. TIMMONS, Office of the Revisor of Statutes, 700 State Office Bldg., 100 Rev.
Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155
JACK CHIN, University of Arizona, 1201 Speedway, P.O. Box 210176, Tucson, AZ 85721,
Reporter

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,
President
JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

MARGARET COLGATE LOVE, 15 Seventh St. NE, Washington, DC 20002, *ABA Advisor*
RODGER DREW, 1430 F St. NE, Washington, DC 20002, *ABA Section Advisor*
THOMAS EARL PATTON, 1747 Pennsylvania Ave. NW, Suite 300, Washington, DC 20006,
ABA Section Advisor
CHARLES M. RUCHELMAN, 1 Thomas Circle NW, Suite 1100, Washington, DC 20005-5894,
ABA Section Advisor

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

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

12 (3) “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 on grounds relating to the
15 individual’s conviction for an offense.

16 (4) “Offense” means a felony, misdemeanor, or [insert term for lesser offenses and other
17 adjudications in enacting state], when referring to the law of this state, or, when referring to the
18 law of another state or the United States, a felony, misdemeanor or lesser offense under the law
19 of that jurisdiction. [A juvenile adjudication is a conviction for an offense if the adjudication
20 authorizes or imposes collateral consequences.]

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

22 (1) provide a basis for:

23 (A) invalidating a conviction or plea;

- 1 (B) a cause of action for money damages; or
2 (C) a claim for relief from or defense to the application of a collateral
3 consequence based on non-compliance with Section 4, 5, or 6; or
4 (2) affect:
5 (A) the duty an individual's attorney owes to the individual;
6 (B) any claim or right held by a victim of an offense; or
7 (C) rights or relief under law other than this [act] available to an individual
8 convicted of an offense.

9 **SECTION 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF**
10 **LAWS REGARDING COLLATERAL CONSEQUENCES.**

- 11 (a) The [designated governmental agency or official]:
12 (1) shall identify or cause to be identified any provision in this state's
13 Constitution, statutes, and administrative rules that imposes a collateral sanction or authorizes the
14 imposition of a disqualification, and any provision of law that may afford relief from them;
15 (2) within [insert number of days] after the effective date of this [act], shall collect
16 or cause to be collected citations to, and the text or short descriptions of, the provisions identified
17 under paragraph (1);
18 (3) shall update or cause to be updated the collection within [specify period] after
19 each [regular session] of the [legislature]; and
20 (4) in complying with paragraphs (1) and (2), may rely on the study of this state's
21 collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of
22 Justice described in Section 510 of the Court Security Improvements Act of 2007, Pub. L. 110-
23 177.

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

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

6 (2) An error or omission in this collection is not a reason for invalidating a
7 conviction or a plea or for not imposing a collateral sanction or disqualification.

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

11 (4) This collection does not include any law or other provision regarding a
12 collateral sanction or a disqualification, or relief from them, enacted or adopted after the
13 collection was last updated.

14 (c) The [designated governmental agency or official] shall publish, or cause to be
15 published, the collection, created and updated as required under subsection (a). The collection
16 must be available to the public on the Internet without charge within [insert number] of days
17 after it is created or updated.

18 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL**
19 **PROCEEDING.**

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

1 (4) of contact information for government or nonprofit agencies, groups, or
2 organizations, if any, offering assistance to individuals seeking relief from collateral sanctions
3 and disqualifications, and

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

5 (b) The [designated government agency or official] shall provide the information in
6 Paragraph (a) at sentencing if an individual is not sentenced to imprisonment or other
7 incarceration. If an individual is sentenced to imprisonment or other incarceration, the officer or
8 agency releasing the individual shall provide the information in Paragraph (a) not more than [30]
9 days, and, if practicable, at least [10] days before release.

10 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;**
11 **CONSTRUCTION IN CASE OF AMBIGUITY.**

12 (a) The state acting directly or through its departments, agencies, officers, or
13 instrumentalities, including municipalities, political subdivisions, educational institutions,
14 boards, or commissions, or their employees may impose a collateral sanction only pursuant to
15 statute or ordinance, or pursuant to a rule authorized by law and adopted in accordance with
16 [insert citation to State Administrative Procedure Act or any other applicable law].

17 (b) If a law is ambiguous as to whether a collateral consequence is a collateral sanction or
18 disqualification, it must be construed as a disqualification.

19 **SECTION 8. EFFECT OF CONVICTION BY ANOTHER STATE OR THE**
20 **UNITED STATES; VACATED OR PARDONED CONVICTION.**

21 (a) For purposes of imposing or authorizing collateral consequences, a conviction for an
22 offense in a court of another state or the United States is deemed a conviction of the offense in
23 this state with identical elements. If there is no offense in this state with identical elements, the

1 conviction is deemed a conviction for the most serious offense in this state which is necessarily
2 established by the elements of the offense of conviction. An offense graded below a
3 misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a crime in this
4 state, and an offense graded as a misdemeanor in the jurisdiction of conviction may not be
5 deemed a felony in this state.

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

10 (c) A pardon issued by another state or the United States, or an order of a court of
11 competent jurisdiction of another state or the United States expunging, sealing, annulling, setting
12 aside, or otherwise vacating a conviction on grounds of rehabilitation or good behavior, has the
13 same effect for purposes of imposing, authorizing, and relieving collateral consequences in this
14 state as in the issuing jurisdiction.

15 (d) A charge in any jurisdiction that has been finally terminated without a judgment of
16 conviction and imposition of sentence, based on the defendant's participation in a deferred
17 prosecution or diversion program, is not deemed a conviction in this state. This subsection shall
18 not affect the validity of any restrictions or conditions imposed by law as part of participation in
19 the deferred prosecution or diversion program, either before or after the termination of the
20 charge.

21 **SECTION 9. ORDER OF LIMITED RELIEF FROM COLLATERAL**
22 **SANCTIONS.**

23 (a) Except as provided in Section 11, an individual convicted of an offense may petition

1 for an order of limited relief from one or more collateral sanctions related to employment,
2 education, housing, public benefits, or occupational licensing. The petition may be presented to:

3 (1) the sentencing court at or before sentencing; or

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

5 (b) The court or the [designated board or agency] may grant a petition requesting relief,
6 and issue an order of limited relief, from one or more of the collateral sanctions described in
7 subsection (a) if, after reviewing the record, including the individual's criminal history and any
8 other evidence that would constitute a reasonable ground warranting {grant or} denial of the
9 petition, and any filing by a prosecutor or victim, it finds the individual has established by a
10 preponderance of the evidence that:

11 (1) granting the petition will materially assist the individual in obtaining or
12 maintaining employment, education, housing, public benefits, or occupational licensing;

13 (2) the individual has substantial need for the relief requested in order to live a
14 law-abiding life; and

15 (3) granting the petition would not pose an unreasonable risk to the safety or
16 welfare of the public or any individual.

17 (c) An order of limited relief from collateral sanctions must specify:

18 (1) the particular collateral sanctions from which relief is granted; and

19 (2) any restrictions imposed pursuant to Section 12(d).

20 (d) An order of limited relief relieves a collateral sanction to the extent provided in the
21 order, permitting the individual to be considered for the relevant employment, education,
22 housing, occupational licensing, or public benefit on the same basis as any other applicant, but
23 the decisionmaker may consider the conduct resulting in the conviction if directly related to the

1 opportunity or benefit sought.

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

3 (a) An individual convicted of an offense may petition the [designated board or agency]
4 for a certificate of restoration of rights relieving collateral sanctions [five] years after the
5 individual's most recent conviction of a felony [or misdemeanor] in any jurisdiction, or the
6 individual's release from confinement pursuant to a criminal sentence in any jurisdiction,
7 whichever is later.

8 (b) Except as otherwise provided in Section 11, the [designated board or agency] may
9 grant a certificate of restoration of rights if it finds that

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

13 (2) the individual has not violated the terms of any criminal sentence, or that any
14 failure to comply is justified, involuntary, or insubstantial;

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

16 (4) granting the petition would not pose an unreasonable risk to the safety or
17 welfare of the public or any individual.

18 (c) A certificate of restoration of rights must specify any restrictions imposed and
19 collateral sanctions from which relief has not been granted under 12(d).

20 (d) A certificate of restoration of rights relieves all collateral sanctions, except those
21 specified in the certificate and those listed in Section 11, permitting the individual to be
22 considered for a benefit or opportunity on the same basis as any other applicant, but the decision-
23 maker may consider the conduct resulting in the conviction if it is determined to be so closely

1 related to the opportunity or benefit at issue that it renders the individual unqualified. In making
2 this determination, the decision-maker may conduct any investigation it considers necessary,
3 may require that an individual applying for an opportunity furnish copies of court records or
4 other relevant information, and shall consider:

5 (1) the individual's age when the offense was committed;
6 (2) the time since commission of the offense and since release from any custody;
7 (3) the length and consistency of the individual's work history, including whether
8 the individual has a recent record of consistent employment;

9 (4) the individual's education and training;
10 (5) the facts underlying the conviction and their relation, if any, to the duties or
11 functions of the opportunity;

12 (6) the individual's other criminal history, if any, and rehabilitation and conduct
13 since the offense, including the individual's receipt of an order of limited relief from collateral
14 sanctions, a certificate of restoration of rights, a pardon, or other relief; and

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

18 (e) If a certificate of restoration of rights is issued and unrevoked at the time of decision,
19 the underlying conviction is inadmissible as evidence that a decisionmaker was negligent or
20 otherwise at fault for hiring, retaining, licensing, leasing to, admitting to a school or program, or
21 otherwise transacting business or engaging in activity with the individual to whom the certificate
22 was issued.

1 **SECTION 11. SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF**
2 **FROM COLLATERAL SANCTIONS OR CERTIFICATE OF RESTORATION OF**

3 **RIGHTS.** An order of limited relief from collateral sanctions or certificate of restoration of
4 rights may not be issued to relieve the following sanctions:

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

7 (2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to
8 [insert citation to state DWI laws], or a motor vehicle license suspension, revocation, limitation,
9 or ineligibility pursuant to [insert citation to provision providing for license suspension for traffic
10 offenses], for which restoration or relief is available pursuant to [insert citation to occupational,
11 temporary, and restricted licensing provisions]; [or]

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

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

18 **SECTION 12. PROCEDURES FOR ISSUANCE, MODIFICATION, AND**
19 **REVOCAION, OF ORDERS OF LIMITED RELIEF FROM COLLATERAL**
20 **SANCTIONS AND CERTIFICATES OF RESTORATION OF RIGHTS; VICTIMS’**
21 **RIGHTS.**

22 (a) The [designated board or agency] shall give notice of the filing of a petition for an
23 order of limited relief from collateral sanctions under Section 9, or for a certificate of restoration

1 of rights under Section 10, to the office that prosecuted the offense for which the order or
2 certificate is sought, and, if the conviction was not obtained in this state, to [the Office of the
3 Attorney General of this state or an appropriate prosecuting office in this state]. If a petition for
4 an order of limited relief from collateral sanctions is filed with the sentencing court, applicable
5 rules of court govern notice. Any prosecutor so notified, and any other prosecuting agency in
6 this state, may participate in the process by which the court or the [designated board or agency]
7 considers the petition.

8 (b) Before issuing a certificate of restoration of rights, the [designated board or agency]
9 shall order preparation of a report of the type required before sentencing an individual convicted
10 of a felony. The court or the [designated board or agency] may order any test, report,
11 investigation, or disclosure by the individual it believes necessary to its decision. If there are
12 disputed issues of fact or law material to the decision, the individual and the prosecutor shall
13 have the opportunity to submit evidence and be heard on those issues before decision.

14 (c) The court or the [designated board or agency] may grant any relief to which the
15 individual is entitled, even if the individual did not request that relief. The [designated board or
16 agency] may modify an order of limited relief from collateral sanctions issued previously by a
17 court or by the [designated board or agency], or a certificate of restoration of rights issued
18 previously by the [designated board or agency] on petition of the individual or the state. A
19 petition for additional relief not included in an earlier order or certificate may be granted if the
20 individual satisfies the requirements for the additional relief under Section 9(b) or Section 10(b).

21 (d) The court or [designated board or agency] may grant relief subject to restriction,
22 condition or additional requirement. If relief is denied, the [designated board or agency] may
23 condition reapplication on satisfaction of additional requirements.

1 (e) The [designated board or agency] may revoke an order for relief from collateral
2 sanctions, or a certificate of restoration of rights, in whole or part, if it finds by a preponderance
3 of the evidence that just cause exists for revocation. Just cause includes subsequent conviction
4 of the holder for a felony in this state, or for an offense in another jurisdiction that would be a
5 felony in this state under section 8(a). An order of revocation may be entered:

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

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

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

12 (f) The [designated board or agency] may adopt rules for application, determination,
13 modification, and revocation of orders for relief from collateral sanctions and certificates of
14 restoration of rights, in accordance with the provisions of [insert reference to state administrative
15 procedure [act]]. The [designated board or agency] is not bound by the rules of evidence except
16 those on privileges. The [designated board or agency] shall maintain a public record of the
17 application, determination, modification, and revocation of orders of relief from collateral
18 sanctions and certificates of restoration of rights. The [state criminal justice record agency] shall
19 include in its system of records issuance, modification, and revocation of orders of limited relief
20 from collateral sanctions and certificates of restoration of rights.

21 (g) An individual holding an order of limited relief from collateral sanctions or a
22 certificate of restoration of rights may seek a declaration that a policy imposing a collateral
23 consequence is invalid because in conflict with this [act]. An individual who shows that an

1 opportunity was denied in violation of this [act] may seek an order that the individual's
2 application be reconsidered in accordance with this [act].

3 **[SECTION 13. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF**
4 **DUE CARE.** In a judicial or administrative proceeding alleging negligence or other fault, an
5 order of limited relief from collateral sanctions or a certificate of restoration of rights may be
6 introduced by a decisionmaker as evidence of the decisionmaker's due care in hiring, retaining,
7 licensing, leasing to, admitting to a school or program, or otherwise transacting business or
8 engaging in activity with the individual to whom the order was issued, if the decisionmaker had
9 knowledge of the order at the time of the alleged negligence or other fault.]

10 **SECTION 14. VICTIM'S RIGHTS.** A victim of an offense shall have the right to be
11 notified of, and participate in, proceedings for issuance, modification, and revocation of orders of
12 limited relief from collateral sanctions and certificates of restoration of rights [pursuant to [insert
13 citation to state crime victim's act]].

14 **SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
15 applying and construing this uniform act, consideration must be given to the need to promote
16 uniformity of the law with respect to its subject matter among states that enact it.

17 **SECTION 16. SAVINGS AND TRANSITIONAL PROVISIONS.**

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

20 (b) This [act] does not invalidate the imposition of a collateral sanction on an individual
21 before [the effective date of this [act]], but a collateral sanction validly imposed before [the
22 effective date of this [act]] may be the subject of relief under this [act].

23 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . .