

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

May 16, 2009 Draft for Conference Call

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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May 16, 2009

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UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

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1 **UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT**
2

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

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) “Decision-maker” means the state acting directly or through its departments,
13 agencies, officers, or instrumentalities, including municipalities, political subdivisions,
14 educational institutions, boards, or commissions, or their employees[, and government
15 contractors, including subcontractors, made subject to this [act] by contract, by law other than
16 this [act], or ordinance].

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

21 (5) “Offense” means a felony, misdemeanor, or [insert term for lesser offenses and other
22 adjudications in enacting state] under the law of this state, another state, or the United States.
23 The term includes a juvenile adjudication.

24 (6) “Person” means an individual, corporation, business trust, estate, trust, partnership,

1 limited liability company, association, joint venture, public corporation, government or
2 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

3 **SECTION 3. LIMITATION ON SCOPE.**

4 (a) This [act] does not provide a basis for:

5 (1) invalidating a plea, conviction, or sentence;

6 (2) a cause of action for money damages; or

7 (3) a claim for relief from or defense to the application of a collateral consequence
8 based on a failure to comply with Section 4, 5, or 6.

9 (b) This [act] does not affect:

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

11 (b) a claim or right of a victim of an offense; or

12 (c) a right or remedy available to an individual convicted of an offense under law
13 other than this [act].

14 **SECTION 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF**
15 **LAWS REGARDING COLLATERAL CONSEQUENCES.**

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

17 (1) shall identify or cause to be identified any provision in this state's
18 Constitution, statutes, and administrative rules that imposes a collateral sanction or authorizes the
19 imposition of a disqualification, and any provision of law that may afford relief from them;

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

23 (3) shall update or cause to be updated the collection within [specify period] after

1 each [regular session] of the [legislature]; and

2 (4) in complying with paragraphs (1) and (2), may rely on the study of this state's
3 collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of
4 Justice described in Section 510 of the Court Security Improvements Act of 2007, Pub. L. 110-
5 177.

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

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

11 (2) An error or omission in this collection is not a reason for invalidating a
12 sentence, conviction, or plea or for not imposing a collateral sanction or disqualification.

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

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

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

1 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL**
2 **PROCEEDING.**

3 (a) At or before arraignment for an offense with which the individual is charged, [the
4 designated government agency or official] shall communicate to the individual information
5 substantially similar to the following:

6 **NOTICE OF ADDITIONAL LEGAL CONSEQUENCES**

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

- 10 • being unable to get or keep some licenses, permits, or jobs;
11 • being unable to get or keep benefits such as public housing or education;
12 • receiving a longer sentence if you are convicted of another offense in the future;
13 • having the government take your property; and
14 • being unable to vote or possess a firearm.

15 If you are not a United States citizen, conviction may also result in your deportation, removal,
16 exclusion from admission to the United States, or denial of citizenship.

17 The law may provide ways to obtain some relief from these consequences. Further
18 information about the consequences of conviction is available on the Internet at [insert Internet
19 web address of the collection of laws published under Section 4(c)].

20 **SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING**
21 **OR UPON RELEASE.**

22 (a) An individual convicted of an offense must be given notice as provided in subsection
23 (b):

1 (1) that collateral consequences may apply because of the conviction;

2 (2) of the Internet web address of the collection of laws published under Section

3 4(c);

4 (3) that there may be ways to obtain relief from collateral consequences;

5 (4) of contact information for government or nonprofit agencies, groups, or
6 organizations, if any, offering assistance to individuals seeking relief from collateral
7 consequences; and

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

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

13 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;**
14 **DISQUALIFICATION; AMBIGUITY.**

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

18 (b) In deciding whether to impose a disqualification on an individual, a decision-maker
19 shall undertake an individual assessment to determine whether the benefit or opportunity at issue
20 should be granted. In making that decision, a decision-maker may not consider the fact of a
21 conviction, but may consider the particular facts and circumstances involved in the offense if
22 they are substantially related to the benefit or opportunity at issue. The decision-maker shall also
23 consider other relevant information, including whether the individual has been granted relief

1 such as an order of limited relief or a certificate of restoration of rights.

2 (c) A law creating a collateral consequence that is ambiguous as to whether it imposes a
3 collateral sanction or authorizes a disqualification must be construed as authorizing a
4 disqualification.

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

7 (a) For purposes of authorizing or imposing collateral consequences in this state, a
8 conviction for an offense in a court of another state or the United States is deemed a conviction
9 of the offense in this state with the same elements. If there is no offense in this state with the
10 same elements, the conviction is deemed a conviction of the most serious offense in this state
11 which is established by the elements of the offense. A misdemeanor in the jurisdiction of
12 conviction may not be deemed a felony in this state, and an offense below a misdemeanor in the
13 jurisdiction of conviction may not be deemed a conviction of a crime in this state.

14 (b) For purposes of authorizing or imposing collateral consequences in this state, a
15 juvenile adjudication in another state or the United States may not be deemed a felony,
16 misdemeanor, or offense below a misdemeanor in this state, but may be deemed a juvenile
17 adjudication for the juvenile violation in this state with the same elements. If there is no juvenile
18 violation in this state with the same elements, the juvenile adjudication is deemed an
19 adjudication of the most serious juvenile violation in this state which is established by the
20 elements of the juvenile adjudication.

21 (c) A conviction that is reversed, overturned, or otherwise vacated by a court of
22 competent jurisdiction of this state, another state, or the United States on grounds other than
23 rehabilitation or good behavior may not serve as the basis for authorizing or imposing a

1 collateral consequence in this state.

2 (d) A pardon issued by another state or the United States has the same effect for purposes
3 of authorizing, imposing, and relieving collateral consequences in this state as it has in the
4 issuing jurisdiction.

5 **ALTERNATIVE A**

6 (e) A conviction that has been expunged, sealed, annulled, set aside, or otherwise
7 vacated by a court of competent jurisdiction of another state or the United States on grounds of
8 rehabilitation or good behavior, or for which civil rights were restored pursuant to statute, has the
9 same effect for purposes of authorizing, imposing, and relieving collateral consequences in this
10 state as it has in the jurisdiction of conviction, except that vacation or restoration of civil rights
11 does not relieve collateral consequences applicable under the law of this state for which relief
12 could not be granted under Section 11, or for which relief was expressly withheld by the court
13 order or by the law of the jurisdiction that vacated the conviction. An individual convicted in
14 another jurisdiction may seek relief under Section 9 or 10 from any collateral consequence for
15 which relief was not granted in the issuing jurisdiction, other than those listed in Section 11, and
16 the [designated board or agency] shall consider that the conviction was vacated or civil rights
17 restored in deciding whether to issue an order of limited relief or certificate of restoration of
18 rights.

19 **ALTERNATIVE B**

20 (e) A conviction that has been expunged, sealed, annulled, set aside, or otherwise
21 vacated by a court of competent jurisdiction of another state or the United States on grounds of
22 rehabilitation or good behavior, or for which civil rights were restored pursuant to statute, is
23 deemed a conviction for purposes of authorizing or imposing collateral consequences in this state

1 as provided in subsection (a). An individual convicted in another jurisdiction may seek relief
2 under Section 9 or 10 from any authorized or imposed collateral consequence, other than those
3 listed in Section 11, and the [designated board or agency] shall consider that the conviction was
4 vacated or civil rights restored in deciding whether to issue an order of limited relief or
5 certificate.

6 (f) A charge or prosecution in any jurisdiction that has been finally terminated without a
7 judgment of conviction and imposition of sentence based on participation in a deferred
8 prosecution or diversion program may not serve as the basis for authorizing or imposing a
9 collateral consequence in this state. This subsection does not affect the validity of any
10 restrictions or conditions imposed by law as part of participation in the deferred prosecution or
11 diversion program, either before or after the termination of the charge or prosecution.

12 **SECTION 9. ORDER OF LIMITED RELIEF.**

13 (a) An individual convicted of an offense may petition for an order of limited relief from
14 one or more collateral sanctions related to employment, education, housing, public benefits, or
15 occupational licensing. The petition may be presented to the:

16 (1) sentencing court at or before sentencing; or

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

18 (b) Except as otherwise provided in Section 11, the court or the [designated board or
19 agency] may issue an order of limited relief relieving one or more of the collateral sanctions
20 described in subsection (a) if, after reviewing the record, including the individual's criminal
21 history, any filing by a prosecutor or victim under Section 14, and any other relevant evidence, it
22 finds the individual has established by a preponderance of the evidence that:

23 (1) granting the petition will materially assist the individual in obtaining or

maintaining employment, education, housing, public benefits, or occupational licensing;

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

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

(c) A decision-maker may consider the conduct underlying a conviction in the same manner as provided in Section 7(b).

(d) The order of limited relief must specify:

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

(2) any restrictions imposed pursuant to Section 12(a).

(e) Issuance of an order of limited relief relieves a collateral sanction to the extent provided in the order.

SECTION 10. CERTIFICATE OF RESTORATION OF RIGHTS.

(a) An individual convicted of an offense may petition the [designated board or agency] for a certificate of restoration of rights relieving collateral sanctions not sooner than [five] years after the individual's most recent conviction of a felony [or misdemeanor] in any jurisdiction, or not sooner than [five] years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

(b) Except as otherwise provided in Section 11, the [designated board or agency] may issue a certificate of restoration of rights if after reviewing the record, including the individual's criminal history, any filing by a prosecutor or victim under Section 14, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) the individual is engaged in, or seeking to engage in, a lawful occupation or

1 activity, including employment, training, education, or rehabilitative programs, or the individual
2 otherwise has a lawful source of support;

3 (2) the individual is not in violation of the terms of any criminal sentence, or that
4 any failure to comply is justified, excused, involuntary, or insubstantial;

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

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

8 (c) A certificate of restoration of rights must specify any restrictions imposed and
9 collateral sanctions from which relief has not been granted under Section 12(a).

10 (d) Issuance of a certificate of restoration of rights relieves all collateral sanctions,
11 except those listed in Section 11 and any others specifically excluded in the certificate. A
12 decision-maker may consider the conduct underlying the conviction in the same manner as
13 provided in Section 7(b).

14 **SECTION 11. SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF**
15 **OR CERTIFICATE OF RESTORATION OF RIGHTS.** An order of limited relief or
16 certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

17 (1) requirements imposed by [insert citation to state's "Megan's Law" enacted pursuant
18 to 42 U.S.C. Section 14071 or its associated regulations];

19 (2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to
20 [insert citation to state DWI laws], or a motor vehicle license suspension, revocation, limitation,
21 or ineligibility pursuant to [insert citation to provision providing for license suspension for traffic
22 offenses], for which restoration or relief is available pursuant to [insert citation to occupational,
23 temporary, and restricted licensing provisions]; [or]

1 (3) ineligibility for employment pursuant to [insert references to laws restricting
2 employment of convicted individuals by law enforcement agencies including the attorney
3 general, prosecutor's office, police department, sheriff's department, the state police, or the
4 department of corrections[.] [; or

5 (4) ineligibility pursuant to [insert references to constitutionally created collateral
6 sanctions which the legislature has no power to remove, such as those removing or suspending
7 officeholders based on criminal charge or conviction].

8 **SECTION 12. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER**
9 **OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS.**

10 (a) When a petition is filed under Section 9 or 10, including a petition for enlargement of
11 an existing order of limited relief or certificate of restoration of rights, the [designated board or
12 agency] shall notify the office that prosecuted the offense giving rise to the collateral
13 consequence from which relief is sought and, if the conviction was not obtained in a court of this
14 state, the [Office of the Attorney General of this state or an appropriate prosecuting office in this
15 state]. The court or [designated board or agency] may issue an order or certificate subject to
16 restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking
17 an order or certificate, the [designated board or agency] may impose conditions for reapplication.

18 (b) The [designated board or agency] may restrict or revoke an order of limited relief or
19 certificate of restoration of rights it previously issued or an order issued by a court in this state if
20 it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction
21 of the holder for a felony in this state, or for an offense in another jurisdiction that is deemed a
22 felony in this state under Section 8(a). An order of restriction or revocation may be issued:

23 (1) on motion of the [designated board or agency] or the office of the prosecutor

1 that obtained the conviction, or a government agency designated by that prosecutorial office;

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

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

7 (c) The [designated board or agency] shall order any test, report, investigation, or
8 disclosure by the individual it reasonably believes necessary to its decision to issue, modify or
9 revoke an order of limited relief or certificate of restoration of rights. If there are material
10 disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) or
11 another prosecutorial agency designated by a prosecutor notified under subsection (a) shall have
12 the opportunity to submit evidence and be heard on those issues.

13 (d) The [designated board or agency] shall maintain a public record of the issuance,
14 modification, and revocation of orders of limited relief and certificates of restoration of rights.
15 The criminal history record system of the [state criminal justice record agency] shall include
16 issuance, modification, and revocation of orders and certificates.

17 [(e) The [designated board or agency] may adopt rules for application, determination,
18 modification, and revocation of orders of limited relief and certificates of restoration of rights, in
19 accordance with the provisions of [insert reference to state administrative procedure [act]].]

20 **SECTION 13. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF**
21 **DUE CARE.** In a judicial or administrative proceeding alleging negligence or other fault, an
22 order of limited relief or a certificate of restoration of rights may be introduced by a person as
23 evidence of the person's due care in hiring, retaining, licensing, leasing to, admitting to a school

1 or program, or otherwise transacting business or engaging in activity with the individual to
2 whom the order was issued, if the person knew of the order or certificate at the time of the
3 alleged negligence or other fault.

4 **SECTION 14. VICTIM’S RIGHTS.** A victim of an offense may participate in
5 proceedings for issuance, modification, and revocation of orders of limited relief and certificates
6 of restoration of rights [in the same manner as at a sentencing proceeding pursuant to [insert
7 citation to state crime victim’s act]] [to the extent permitted by rules adopted by the [designated
8 board or agency]].

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

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

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

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

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