



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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Collateral Consequences of Conviction Act Summary

In 1974, 1.8 million people, or 1.3% of the adult population, had been imprisoned at some point of their life. By 2001 that number rose to number 5.6 million people, or 2.7% of the adult population. The Department of Justice estimates that if the 2001 imprisonment rate remains unchanged, 6.6% of Americans born in 2001 will serve prison time during their lives. In addition to those who have served prison time, an even larger proportion of the population has been convicted of a criminal offense without going to prison. According to a 2003 report of the Department of Justice, nearly 25% of the entire population (some 71 million people) had a criminal record.

Concern about the impact of collateral consequences has grown in recent years as the numbers and complexity of these consequences have mushroomed and the U.S. prison population has grown. Collateral consequences are the legal disabilities that attach as an operation of law when an individual is convicted of a crime but are not part of the sentence for the crime. Examples of collateral consequences include the denial of government issued licenses or permits, ineligibility for public services and public programs, and the elimination or impairment of civil rights. There is a real concern on a societal level that collateral consequences may impose such harsh burdens on convicted persons that they will be unable to reintegrate into society.

Indeed, the judge and lawyers in the case are frequently unaware of collateral consequences that will predictably have a substantial impact upon a defendant. Few jurisdictions provide a reliable way of avoiding or mitigating categorical restrictions based solely on conviction even years after the fact. Fewer still give decision-makers useful guidance in applying discretionary disqualifications on a case-by-case basis, or a measure of protection against liability. Jurisdictions are frequently at a loss about the effect to give relief granted by other jurisdictions.

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009, is an effort to improve public and individual understanding of the nature of this problem and to provide modest means by which people who suffer from these disabilities may, in appropriate circumstances, gain partial relief from those disabilities.

The key provisions of the UCCA are:

Collection

All collateral consequences contained in state laws and regulations, and provisions for avoiding or mitigating them, must be collected in a single document. The compilation must include both collateral sanctions (automatic bars) and disqualifications (discretionary penalties). In fulfilling their obligations under the Uniform Act, jurisdictions will be assisted by the federally-financed effort to compile collateral consequences for each jurisdiction that was authorized by the Court Security Act of 2007.

Notification

Defendants must be notified about collateral consequences at important points in a criminal case: At or before formal notification of charges, so a defendant can make an informed decision about how to proceed; and at sentencing and when leaving custody, so that a defendant can comport his or her conduct to the law. Given that collateral consequences will have been collected in a single document, it will not be difficult to make this information available.

The 2010 Supreme Court decision in *Padilla v. Kentucky* has significantly raised the profile of the problem of collateral consequences with the public and the bar. Judges, prosecutors, and other policy makers who understand the risk that defense counsel's failure to adequately advise as to important and certain collateral consequences will want to put measures in place to be sure that such consequences are addressed. Section 5 of the Act instructs trial courts to confirm that the defendant has received and understood notice of collateral consequences and had an opportunity to discuss them with defense counsel.

The UCCCA facilitates notification of collateral consequences before, during, and after sentencing and aids courts and lawyers in providing the defendant with a constitutionally adequate defense.

Authorization

Collateral sanctions may not be imposed by ordinance, policy or rule, but must be authorized by statute. An ambiguous law will be considered as authorizing only discretionary case-by-case disqualification.

Standards for Disqualification

A decision-maker retains the ability to disqualify a person based on a criminal conviction, but only if it is determined, based on an individual assessment, that the essential elements of the person's crime, or the particular facts and circumstances involved, are substantially related to the benefit or opportunity at issue.

Overtured and Pardoned Convictions; Relief Granted by Other Jurisdictions

Convictions that have been overturned or pardoned, including convictions from other jurisdictions, may not be the basis for imposing collateral consequences. Charges dismissed pursuant to deferred prosecution or diversion programs will not be considered a conviction for purposes of imposing collateral consequences. The Act gives jurisdictions a choice about whether to give effect to other types of relief granted by other jurisdictions based on rehabilitation or good behavior, such as expungement or set-aside.

Relief from Collateral Consequences

The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry (Order of Limited Relief) and the other after a period of law-abiding conduct (Certificate of Restoration of Rights).

- An Order of Limited Relief permits a court or agency to lift the automatic bar of a collateral sanction, leaving a licensing agency or public housing authority, for example, free to consider whether to disqualify a particular individual on the merits.
- A Certificate of Restoration of Rights offers potential public and private employers, landlords and licensing agencies concrete and objective information about an individual under consideration for an opportunity or benefit, and a degree of assurance about that individual's progress toward rehabilitation, and will thereby facilitate the reintegration of individuals whose behavior demonstrates that they are making efforts to conform their conduct to the law.