

# Uniform Collateral Consequences of Conviction Act

The key provisions of the UCCCA 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.

Submitted as:

Vermont

[HB 413](#)

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### **Suggested State Legislation**

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]  
2 As used in this chapter:  
3 (1) "Collateral consequence" means a mandatory sanction or a discretionary disqualification.  
4 (2) "Conviction" includes an adjudication for delinquency for purposes of this chapter only,  
5 unless otherwise specified. "Convicted" has a corresponding meaning.  
6 (3) "Court" means the Criminal Division of the Superior Court.  
7 (4) "Decision-maker" means the state acting through a department, agency, officer, or  
8 instrumentality, including a political subdivision, educational institution, board, or  
9 commission, or its employees or a government contractor, including a subcontractor, made  
10 subject to this chapter by contract, by law other than this chapter, or by ordinance.  
11 (5) "Discretionary disqualification" means a penalty, disability, or disadvantage that an  
12 administrative agency, governmental official, or court in a civil proceeding is authorized, but  
13 not required, to impose on an individual on grounds relating to the individual's conviction of  
14 an offense. Discretionary disqualifications do not encompass charging decisions, such as the  
15 imposition of pre-charge diversion or intervention programs.  
16 (6) "Mandatory sanction" means a penalty, disability, or disadvantage imposed on an individual  
17 as a result of the individual's conviction of an offense which applies by operation of law  
18 whether or not the penalty, disability, or disadvantage is included in the judgment or

1 sentence. The term does not include imprisonment, probation, parole, supervised release,  
2 forfeiture, restitution, fine, assessment, or costs of prosecution.

3 (7) "Offense" means a felony, misdemeanor, or delinquent act under the laws of this State,  
4 another state, or the United States.

5 (8) "Incarceration" means confinement in jail or prison.

6 (9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United  
7 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
8 United States.

9  
10 Section 2. [*Limitation on Scope.*]

11 (a) This chapter does not provide a basis for:

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

13 (2) a cause of action for money damages;

14 (3) a claim for relief from or defense to the application of a collateral consequence based on  
15 a failure to comply with this chapter; or

16 (4) seeking relief from a collateral consequence imposed by another state or the United  
17 States or a subdivision, agency, or instrumentality thereof, unless the law of such  
18 jurisdiction provides for such relief.

19 (b) This chapter shall not affect:

20 (1) the duty an individual's attorney owes to the individual;

21 (2) a claim or right of a victim of an offense; or

22 (3) a right or remedy under law other than this chapter available to an individual convicted of  
23 an offense.

24  
25 Section 3. [*Identification, collection, and publication of laws regarding collateral*  
26 *consequences.*]

27 (a)

28 (1) The Attorney General shall:

29 (A) identify or cause to be identified any provision in this State's Constitution, statutes,  
30 and administrative rules which imposes a mandatory sanction or authorizes the  
31 imposition of a discretionary disqualification and any provision of law that may  
32 afford relief from a collateral consequence;

33 (B) prepare or compile from available sources a collection of citations to, and the text or  
34 short descriptions of, the provisions identified under subdivision (a)(1)(A) of this  
35 section not later than [Insert date]; and

36 (C) update the collection provided under subdivision (B) of this subdivision (1) annually  
37 by January 1.

38 (2) In complying with subdivision (a)(1) of this section, the Attorney General may rely on or  
39 incorporate the summary of this State's mandatory sanctions, discretionary  
40 disqualifications, and relief provisions prepared by the National Institute of Justice  
41 described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. No.  
42 110 -177, § 510, 121 Stat. 2534 (2008) as it exists and as it may be amended.

43 (b) The Attorney General shall include or cause to be included the following statements in a  
44 prominent manner at the beginning of the collection required by subsection (a) of this  
45 section:

- 1 (1) This collection has not been enacted into law and does not have the force of law.
- 2 (2) An error or omission in this collection or any reference work cited in this collection is not
- 3 a reason for invalidating a plea, conviction, or sentence or for not imposing a mandatory
- 4 sanction or authorizing a discretionary disqualification.
- 5 (3) The laws of other jurisdictions that impose additional mandatory sanctions and authorize
- 6 additional discretionary disqualifications are not included in this collection.
- 7 (4) This collection does not include any law or other provision regarding the imposition of or
- 8 relief from a mandatory sanction or a discretionary disqualification enacted or adopted
- 9 after [insert date the collection was prepared or last updated].
- 10 (c) The Attorney General shall publish or cause to be published the collection prepared and
- 11 updated as required by subsection (a) of this section.
- 12 (d) The Attorney General shall publish or cause to be published as part of the collection the title
- 13 and Internet address, if available, of the most recent collection of:
- 14 (1) the collateral consequences imposed by federal law; and
- 15 (2) any provision of federal law that may afford relief from a collateral consequence.
- 16 (e) An agency that adopts a rule pursuant to [Insert citation] which implicates collateral
- 17 consequences to a conviction shall forward a copy of the rule to the Attorney General.

18  
19 Section 4. [*Notice of collateral consequences in pretrial proceeding.*]

- 20 (a) When an individual receives formal notice that the individual is charged with an offense, the
- 21 Court shall provide either oral or written notice substantially similar to the following to be
- 22 communicated to the individual:
- 23 (1) If you plead guilty or are convicted of an offense, you may suffer additional legal
- 24 consequences beyond jail or prison, home confinement, probation, and fines. These
- 25 consequences may include:
- 26 (A) being unable to get or keep some licenses, permits, or jobs;
- 27 (B) being unable to get or keep benefits such as public housing or education;
- 28 (C) receiving a harsher sentence if you are convicted of another offense in the future;
- 29 (D) having the government take your property;
- 30 (E) being unable to serve in the military or on a jury;
- 31 (F) being unable to possess a firearm; and
- 32 (G) being unable to exercise your right to vote if you move to another state.
- 33 (2) If you are not a United States citizen, a guilty plea or conviction may also result in your
- 34 deportation, removal, exclusion from admission to the United States, or denial of
- 35 citizenship.
- 36 (3) The law may provide ways to obtain some relief from these consequences.
- 37 (4) Further information about the consequences of conviction is available on the Internet at
- 38 [insert Internet address of the collection of laws published under this chapter].
- 39 (b) Before the Court accepts a plea of guilty or nolo contendere from an individual, the Court
- 40 shall:
- 41 (1) confirm that the individual received the notice required by subsection (a) of this section
- 42 and had an opportunity to discuss the notice with counsel, if represented, and understands
- 43 that there may be collateral consequences to a conviction; and
- 44 (2) provide written notice, as part of a written plea agreement or through another form, of the
- 45 following:

- 1 (A) that collateral consequences may apply because of the conviction;
- 2 (B) the Internet address of the collection of laws published under this chapter;
- 3 (C) that there may be ways to obtain relief from collateral consequences;
- 4 (D) contact information for government or nonprofit agencies, groups, or organizations, if
- 5 any, offering assistance to individuals seeking relief from collateral consequences;
- 6 and
- 7 (E) that conviction of a crime in this State does not prohibit an individual from voting in
- 8 this State.

9  
10 Section 5. [*Notice of collateral consequences upon release*]

- 11 (a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of
- 12 Corrections shall be given written notice of the following:
  - 13 (1) that collateral consequences may apply because of the conviction;
  - 14 (2) the Internet address of the collection of laws published under this chapter;
  - 15 (3) that there may be ways to obtain relief from collateral consequences;
  - 16 (4) contact information for government or nonprofit agencies, groups, or organizations, if
  - 17 any, offering assistance to individuals seeking relief from collateral consequences; and
  - 18 (5) that conviction of a crime in this State does not prohibit an individual from voting in this
  - 19 State.
- 20 (b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days
- 21 and at least 10 days before completion of the sentence. If the sentence is for a term of less
- 22 than 30 days then notice shall be provided when the sentence is completed.
- 23 (c) For persons receiving a sentence involving community supervision, such as probation,
- 24 furlough, home confinement, conditional reentry, or parole, the notice shall be provided by
- 25 the Department of Corrections in keeping with its mission of ensuring rehabilitation and
- 26 public safety.

27  
28 Section 6. [*Authorization required for mandatory sanction; ambiguity.*]

- 29 (a) A mandatory sanction may be imposed only by statute or ordinance or by a rule adopted in
- 30 the manner provided in [Insert citation]. A law or rule shall impose unambiguously a
- 31 collateral consequence in order for a court to impose a collateral consequence.
- 32 (b) A law creating a collateral consequence that is ambiguous as to whether it imposes an
- 33 automatic mandatory sanction or whether it authorizes a decision-maker to disqualify a
- 34 person based upon his or her conviction shall be construed as authorizing a discretionary
- 35 disqualification.

36  
37 Section 7. [*Decision to disqualify.*]

38 In deciding whether to impose a discretionary disqualification, a decision-maker shall undertake

39 an individualized assessment to determine whether the benefit or opportunity at issue should be

40 denied the individual. In making that decision, the decision-maker may consider, if substantially

41 related to the benefit or opportunity at issue, the particular facts and circumstances involved in

42 the offense and the essential elements of the offense. A conviction itself may not be considered

43 except as having established the elements of the offense. The decision-maker shall also consider

44 other relevant information, including the effect on third parties of granting the benefit or

45 opportunity and whether the individual has been granted relief such as an order of limited relief

46 or a certificate of restoration of rights.

1 Section 8. [*Effect of conviction by another state or the United States; relieved or pardoned*  
2 *conviction.*]

- 3 (a) For purposes of authorizing or imposing a collateral consequence in this State, a conviction  
4 of an offense in a court of another state or the United States is deemed a conviction of the  
5 offense in this state with the same elements. If there is no offense in this State with the same  
6 elements, the conviction is deemed a conviction of the most serious offense in this State  
7 which is established by the elements of the offense. A misdemeanor in the jurisdiction of  
8 conviction may not be deemed a felony in this State, and an offense lesser than a  
9 misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony or  
10 misdemeanor in this State.
- 11 (b) For purposes of authorizing or imposing a collateral consequence in this State, a juvenile  
12 adjudication in another state or the United States may not be deemed a conviction of a  
13 felony, misdemeanor, or offense lesser than a misdemeanor in this State, but may be deemed  
14 a juvenile adjudication for the delinquent act in this State with the same elements. If there is  
15 no delinquent act in this State with the same elements, the juvenile adjudication is deemed an  
16 adjudication of the most serious delinquent act in this State which is established by the  
17 elements of the offense.
- 18 (c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent  
19 jurisdiction of this State, another state, or the United States on grounds other than  
20 rehabilitation or good behavior may not serve as the basis for authorizing or imposing a  
21 collateral consequence in this State.
- 22 (d) A pardon issued by another state or the United States has the same effect for purposes of  
23 authorizing, imposing, and relieving a collateral consequence in this State as it has in the  
24 issuing jurisdiction.
- 25 (e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or  
26 vacation by a court of competent jurisdiction of another state or the United States on grounds  
27 of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute,  
28 has the same effect for purposes of authorizing or imposing collateral consequences in this  
29 State as it has in the jurisdiction of conviction. However, such relief or restoration of civil  
30 rights does not relieve collateral consequences applicable under the law of this State for  
31 which relief could not be granted under section 11 of this title or for which relief was  
32 expressly withheld by the court order or by the law of the jurisdiction that relieved the  
33 conviction. An individual convicted in another jurisdiction may seek relief under section 9 or  
34 10 of this title from any collateral consequence for which relief was not granted in the issuing  
35 jurisdiction, other than those listed in section 11 of this title, and the Court shall consider that  
36 the conviction was relieved or civil rights restored in deciding whether to issue an order of  
37 limited relief or certificate of restoration of rights.
- 38 (f) A charge or prosecution in any jurisdiction which has been finally terminated without a  
39 conviction and imposition of sentence based on successful participation in a deferred  
40 adjudication or diversion program may not serve as the basis for authorizing or imposing a  
41 collateral consequence in this State. This subsection does not affect the validity of any  
42 restriction or condition imposed by law as part of participation in the deferred adjudication or  
43 diversion program, before or after the termination of the charge or prosecution.

1 Section 9. [*Order of limited relief*]

- 2 (a) An individual convicted of an offense may petition for an order of limited relief from one or  
3 more mandatory sanctions related to employment, education, housing, public benefits, or  
4 occupational licensing. The individual seeking an order of relief shall provide the  
5 prosecutor's office with notice of his or her petition. After notice, the petition may be  
6 presented to the sentencing court at or before sentencing or to the Superior Court at any time  
7 after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in  
8 the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment  
9 motion.
- 10 (b) Except as otherwise provided in section 11 of this title, the Court may issue an order of  
11 limited relief relieving one or more of the mandatory sanctions described in this chapter if,  
12 after reviewing the petition, the individual's criminal history record, any filing by a victim  
13 under section 13 of this title, and any other relevant evidence, it finds the individual has  
14 established by a preponderance of the evidence that:
- 15 (1) granting the petition will materially assist the individual in obtaining or maintaining  
16 employment, education, housing, public benefits, or occupational licensing;  
17 (2) the individual has substantial need for the relief requested in order to live a law-abiding  
18 life; and granting the petition would not pose an unreasonable risk to the safety or welfare  
19 of the public or any individual.
- 20 (c) The order of limited relief shall specify:
- 21 (1) the mandatory sanction from which relief is granted; and  
22 (2) any restriction imposed pursuant to subsections 12(a) and (b) of this title.
- 23 (d) An order of limited relief relieves a mandatory sanction to the extent provided in the order.
- 24 (e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may  
25 consider the conduct underlying a conviction as provided in section 7 of this title.

26  
27 Section 10. [*Certificate of restoration of rights.*]

- 28 (a) An individual convicted of an offense may petition the Court for a certificate of restoration of  
29 rights relieving mandatory sanctions not sooner than five years after the individual's most  
30 recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five  
31 years after the individual's release from incarceration pursuant to a criminal sentence in any  
32 jurisdiction, whichever is later. The individual seeking restoration of rights shall provide the  
33 prosecutor's office with notice of his or her petition.
- 34 (b) Except as otherwise provided in section 11 of this title, the Court may issue a certificate of  
35 restoration of rights if, after reviewing the petition, the individual's criminal history, any  
36 filing by a victim under section 14 of this title or a prosecuting attorney, and any other  
37 relevant evidence, it finds the individual has established by a preponderance of the evidence  
38 that:
- 39 (1) the individual is engaged in or seeking to engage in a lawful occupation or activity,  
40 including employment, training, education, or rehabilitative programs, or the individual  
41 otherwise has a lawful source of support;  
42 (2) the individual is not in violation of the terms of any criminal sentence or that any failure  
43 to comply is justified, excused, involuntary, or insubstantial;  
44 (3) a criminal charge is not pending against the individual; and  
45 (4) granting the petition would not pose an unreasonable risk to the safety or welfare of the  
46 public or to any individual.

- 1 (c) A certificate of restoration of rights must specify any restriction imposed and mandatory  
2 sanction from which relief has not been granted under section 12 of this title.  
3 (d) A certificate of restoration of rights relieves all mandatory sanctions, except those listed in  
4 section 11 of this title and any others specifically excluded in the certificate.  
5 (e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may  
6 consider the conduct underlying a conviction as provided in section 7 of this title.  
7

8 Section 11. [*Discretionary disqualifications and mandatory sanctions not subject to order of*  
9 *limited relief or certificate of restoration of rights.*]

- 10 (a) An order of limited relief or certificate of restoration of rights may not be issued to relieve  
11 the following mandatory sanctions:  
12 (1) requirements imposed by [sex offender registration, law enforcement notification.]  
13 (2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to  
14 Title 23 for which restoration or relief is available; or  
15 (3) ineligibility for employment by law enforcement agencies, including the Office of the  
16 Attorney General, State's Attorney, police departments, sheriff's departments, State  
17 Police, or the Department of Corrections.  
18 (b) An order of limited relief or certificate of restoration of rights may not be issued to relieve a  
19 discretionary disqualification or mandatory sanction imposed due to:  
20 (1) a conviction of a listed crime as defined in [Insert citation]; or  
21 (2) a conviction of trafficking of regulated drugs pursuant to [Insert citation].  
22

23 Section 12. [*Issuance, modification, and revocation of order of limited relief and certificate of*  
24 *restoration of rights.*]

- 25 (a) When a petition is filed under section 9 or 10 of this title, including a petition for  
26 enlargement of an existing order of limited relief or certificate of restoration of rights, the  
27 Court shall notify the office that prosecuted the offense giving rise to the collateral  
28 consequence from which relief is sought and, if the conviction was not obtained in a court of  
29 this State, the Attorney General. The Court may issue an order or certificate subject to  
30 restriction or condition.  
31 (b) The Court may restrict an order of limited relief or certificate of restoration of rights if it  
32 finds just cause by a preponderance of the evidence. Just cause includes subsequent  
33 conviction of a related felony in this State or of an offense in another jurisdiction that is  
34 deemed a felony in this State. An order of restriction may be issued:  
35 (1) on motion of the Court, the prosecuting attorney who obtained the conviction, or a  
36 government agency designated by that prosecutor;  
37 (2) after notice to the individual and any prosecutor that has appeared in the matter; and  
38 (3) after a hearing if requested by the individual or the prosecutor that made the motion or  
39 any prosecutor that has appeared in the matter.  
40 (c) The Court shall order any test, report, investigation, or disclosure by the individual it  
41 reasonably believes necessary to its decision to issue or modify an order of limited relief or  
42 certificate of restoration of rights. If there are material disputed issues of fact or law, the  
43 individual and any prosecutor notified under subsection (a) of this section or another  
44 prosecutorial agency designated by a prosecutor notified under subsection (a) of this section  
45 may submit evidence and be heard on those issues.

- 1 (d) A criminal history record as defined in [Insert citation] and a criminal conviction record as  
2 defined in [Insert citation] shall include issuance and modification of orders and certificates.  
3 (e) The Court may adopt rules for application, determination, modification, and revocation of  
4 orders of limited relief and certificates of restoration of rights.  
5 (f) If the Court grants in part or denies a petition under section 9 or 10 of this title, the Court  
6 may order that the person not petition for relief for that particular offense under either section  
7 for a period not to exceed five years.  
8

9 Section 13. [*Reliance on order or certificate as evidence of due care.*]

10 In a judicial or administrative proceeding alleging negligence or other fault, an order of limited  
11 relief or a certificate of restoration of rights may be introduced as evidence of a person's due care  
12 in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise  
13 transacting business or engaging in activity with the individual to whom the order was issued, if  
14 the person knew of the order or certificate at the time of the alleged negligence or other fault.  
15

16 Section 14. [*Victim's Rights.*]

17 A victim of an offense may participate in a proceeding for issuance of an order of limited relief  
18 or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant  
19 to section 5321 of this title to the extent permitted by rules adopted by the court.  
20

21 Section 15. [*Uniformity of application and construction.*]

22 In applying and construing this uniform act, consideration must be given to the need to promote  
23 uniformity of the law with respect to its subject matter among states that enact it.  
24

25 Section 16. [*Savings and transitional provisions.*]

- 26 (a) This chapter applies to collateral consequences whenever enacted or imposed, unless the law  
27 creating the collateral consequence expressly states that this chapter does not apply.  
28 (b) This chapter does not invalidate the imposition of a mandatory sanction on an individual  
29 before [Insert date], but a mandatory sanction validly imposed before [Insert date] may be  
30 the subject of relief under this chapter.