

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**FEBRUARY 8-9, 2010**

**RECOMMENDATION**

- 1 RESOLVED, That the American Bar Association approves the Uniform Collateral
- 2 Consequences of Conviction Act, promulgated by the National Conference of Commissioners on
- 3 Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific
- 4 substantive law suggested therein.

## REPORT

### Uniform Collateral Consequences of Conviction Act

#### *A 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

# 111B

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 conform 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.

## **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.

### **Defense to Negligence**

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

The work of the Drafting Committee is available at [www.nccusl.org](http://www.nccusl.org), the website of the Conference.

Respectfully submitted,

Robert A Stein  
President  
National Conference of Commissioners  
On Uniform State Laws  
February, 2010

# 111B

## GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Collateral Consequence of Conviction Act by the ABA House of Delegates. The Act was approved by the National Conference in 2009.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2009.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The Act incorporates or otherwise utilizes many of the policies and definitions contained in the the ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Person.

5. What urgency exists which requires action at this meeting of the House

Not applicable.

6. Status of Legislation. (If applicable.)

As of the submission of this report, the Uniform Collateral Consequences of Conviction Act has not been enacted in any state legislature.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at [www.nccusl.org](http://www.nccusl.org), the website of the Conference.

The ABA Advisor for the Uniform Collateral Consequences of Conviction Act was Margaret Colgate Love of the Commission on Effective Criminal Sanctions. Roger Drew was the Judicial Division Section Advisor. Thomas Earl Patton was the Business Section Advisor. Charles M. Ruchelman was the Taxation Section Advisor.

The Report with Recommendations has been referred to the Criminal Justice Section, Section of State and Local Government Law and the Government and Public Sector Lawyers Division.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Robert A Stein, President, National Conference of Commissioners on Uniform State Laws, University of Minnesota Law School, 229 19<sup>th</sup> Ave. S., Minneapolis, MN 55455  
Cell: 612-812-1612

# 111B

## EXECUTIVE SUMMARY

### 1. Summary of the Recommendation

That the ABA approves the Uniform Collateral Consequences of Conviction Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

### 2. Summary of the issue which the recommendation addresses

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. At or before arraignment individuals will be advised of the particular collateral consequences associated with the offense for which they are charged. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. Formal advisement promotes fairness and compliance with the law

The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

### 3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Collateral Consequences of Conviction Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

### 4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.