

Uniform Collateral Consequences of Conviction Act

Issue

Should the State Bar of Michigan support and advocate for state legislation that would implement a Uniform Collateral Consequences of Conviction Act?

Synopsis

The Uniform Collateral Consequences of Conviction Act (“UCCCA”) was drafted by the National Conference of Commissioners on Uniform State Laws and was approved and recommended for enactment in all the states at the Uniform Law Commission’s Annual Conference in July 2009.

The UCCCA is an effort to improve public and individual understanding of the civil collateral consequences of a criminal conviction. The UCCCA implements a series of steps designed to inform individuals of their rights and the rights that may be at stake subsequent to a criminal conviction. The UCCCA also aims to mitigate the previously unexamined impact of collateral consequences, which are believed to be increasing.

The State Bar of Michigan recognizes that there are significant obstacles presented by the collateral consequences of criminal convictions. It supports efforts to clarify and minimize the impact of civil collateral consequences for those with criminal records, largely through the work of its Criminal Issues Initiative, which is charged with examining and educating on this subject.

A criminal conviction results in civil consequences outside of any sanction or punishment that are a direct result of the criminal conviction, and, in many instances, these civil consequences may last longer than the criminal penalty. Federal law, for instance, bars many persons with convictions from employment in many fields, including the military, and restricts access to certain professional licensures. Federal law also limits access to public benefits and federal student loans, restricts access to federally-subsidized housing, and prohibits individuals with felonies from serving on juries. Moreover, a non-citizen convicted of a crime may be deported. See American Bar Association Commission on Effective Criminal Sanctions and Public Defender Service for the District of Columbia, *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations* (Jan. 2009) (<http://www.abanet.org/cecs/internalexile.pdf>). Such barriers to rehabilitation and reintegration often serve to increase the potential for recidivism in formerly convicted individuals.

These corollary results after a criminal conviction have been called “collateral consequences,” “civil disabilities,” and “collateral sanctions.” The term “collateral consequences” is used here to mean a legal disability or disqualification that occurs by operation of civil law because of a criminal conviction, but is not part of the sentence for the crime. It is “collateral” because the resulting consequence is not part of the criminal sentence, and applies solely because of conviction of a criminal offense. Collectively, collateral sanctions, disqualifications, and disabilities are defined as collateral consequences.

In recent years, collateral consequences have been increasing in number and severity. Federal law now imposes dozens of them on state and federal offenders. Like Congress, state legislatures have embraced regulation of convicted individuals. A Michigan study of collateral consequences imposed by state law or regulation revealed hundreds of collateral sanctions and disqualifications. See Michigan Reentry Law Wiki, Michigan Poverty Law Program http://reentry.mplp.org/reentry/index.php/Main_Page. These laws limit the ability of convicted individuals to work in particular fields, obtain state licenses or permits, obtain public benefits such as housing or educational aid, and participate in civic life.

Background

Given the information already collected on collateral consequences in Michigan, a workgroup of the State Bar of Michigan's Criminal Issues Initiative convened in the fall of 2009 to examine the possible benefits of implementing the UCCCA in this state. The workgroup's review favored Michigan enactment, and a proposal to support and advocate for the enactment of the UCCCA in the state was approved by the membership of the Criminal Issues Initiative and the Committee on Justice Initiatives.

A sample version of legislation that could be adopted is provided subsequent to this proposal. It addresses several aspects of the creation and imposition of collateral consequences. The provisions of the UCCCA are largely procedural, and designed to clarify policies and provisions that are already accepted in many states.

Key provisions of the UCCCA:

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, state 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; at the time of a plea, at sentencing, and when leaving custody, so that a defendant can conform his or her conduct to the law. Given that collateral consequences will be collected in a single document, making this information available will not be difficult.

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.

Overturned 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 each jurisdiction a choice about whether to give effect to additional types of relief granted by other jurisdictions (such as expungement or setting aside of the conviction) based on rehabilitation or good behavior.

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. Such a Certificate would offer a degree of assurance about the individual's progress toward rehabilitation, and would 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.

Important provisions of the proposed Act:

The proposed Act can be divided into two main parts. The first part contains provisions related to the collection, notification, and authorization of collateral consequences. The second part provides relief from collateral consequences, including those associated with overturned or pardoned convictions, or those which may have been set aside in other jurisdictions. Important sections of the proposed Act include the following:

Section 3 makes clear that neither the provisions of the Act, nor non-compliance with them, is a basis for invalidating a plea or conviction, making a claim of ineffective assistance of counsel, or suing anyone for money damages.

Section 4 requires collection of collateral sanctions and disqualifications contained in state law, and provisions for avoiding or mitigating them, in a single document. The purpose is to make the law accessible to judges, lawyers, legislators and defendants who need to make decisions based upon it.

Sections 5 and 6 propose to make the existence of collateral consequences known to defendants at important moments in a criminal case: at or before formal notification of charges, so a defendant can make an informed decision about how to proceed (Section 5); at the time of a plea; and at sentencing and when leaving incarceration, so they may conform their conduct to the law (Section 6). This information will be available and will have been codified with the assistance of the current ongoing federally-financed effort to compile collateral consequences for each state jurisdiction, as authorized by the Court Security Act of 2007.

Section 7 is designed to ensure that automatic, blanket collateral sanctions (leaving no room for discretion) are adopted formally, providing that they can be created only by statute, ordinance or formal rule.

Section 8 offers guidance for imposing discretionary disqualifications based on criminal conviction on a case-by-case basis.

Section 9 defines the judgments that count as convictions for purposes of imposing collateral consequences. Sections 9(a) and (b) explain how out-of-state convictions and juvenile adjudications will be used to impose collateral consequences in the enacting state. The rest of the section excludes convictions that have been reversed or otherwise overturned (9(c)), pardoned (9(d)), or did not result in a final conviction because of diversion or deferred adjudication (9(f)). Some states have forms of relief based on rehabilitation or passage of time, allowing convictions to be expunged, sealed, or set aside; in the case of out-of-state convictions, 9(e) asks states to make a choice about whether to give effect to grants of such relief by other states.

Sections 10 and 11 create new mechanisms for relieving collateral sanctions imposed by law. By definition, collateral consequences can only be imposed by state actors, so relieving the sanctions would not impose requirements on private persons or businesses, whose dealing with persons with convictions would be regulated, if at all, by law other than this Act.

Section 10 creates an Order of Limited Relief, aimed at an individual in the process of reentering society. It offers relief from one or more collateral sanctions based on a showing that relief would facilitate reentry. The Order of Limited Relief merely lifts the automatic bar of a collateral sanction, leaving a licensing agency or public housing authority, for example, free to consider on a case-by-case basis whether it is appropriate to deny the opportunity to an individual.

Section 11 creates a Certificate of Restoration of Rights for individuals who can demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. The Certificate of Restoration of Rights offers potential public and private employers, landlords and licensing authorities concrete and objective information about an individual under consideration for an opportunity, and thereby could facilitate the reintegration of individuals with convictions whose behavior demonstrates that they are making efforts to conform their conduct to the law.

The Criminal Issues Initiative proposes that the State Bar of Michigan support and advocate for the legislative enactment of a Uniform Collateral Consequences of Conviction Act.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

Existing staff resources will be allocated for legislative efforts.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on September 30, 2010**

Should the Representative Assembly support and advocate for state legislation that would implement a Uniform Collateral Consequences of Conviction Act?

(a) Yes

or

(b) No

The Criminal Issues Initiative of the State Bar of Michigan has undertaken a project to determine the feasibility of implementing the Uniform Collateral Consequences of Conviction Act (UCCCA) as promulgated by the Uniform Law Commission (ULC) in July of 2009.

A Workgroup of the Criminal Issues Initiative has reviewed the UCCCA. As drafted by the ULC, the UCCCA proposed alternative language on various issues, and included a variety of provisions where responsibility for certain tasks needed to be assigned to particular state actors. The Workgroup selected among the UCCCA's options, sought to identify the entities in Michigan most suited to the responsibilities outlined in the Act, and incorporated references to the relevant MCL sections. In addition, the Workgroup has recommended several other changes.

The attached draft bill language does not include comments from the Uniform Law Commission and reflects changes made by the workgroup, which are enumerated below. A copy of the unedited UCCCA including comments from the ULC can be found at http://www.law.upenn.edu/bl/archives/ulc/ucsada/2009_final.htm.

Throughout

Appropriate citations were made to Michigan Compiled Laws and Public Acts as referenced generally by the Uniform Law Commission in its final proposed act.

Section 2(3) and Throughout:

Section 2, subsection (3) of the UCCCA contained definitions of "conviction" and "convicted." Those definitions included adjudication as a juvenile. Under Michigan law, adjudications are not considered "convictions," and the Workgroup was concerned that such a definition could potentially subject juveniles to collateral consequences that are currently only applicable to individuals convicted as adults. At the same time, the Workgroup wanted to ensure, as was intended by the ULC in drafting the UCCCA, that the benefits of that Act are available to juveniles.

The Workgroup removed the definition of "conviction" contained in Section 2, subsection (3). (In order to ensure that the commentary and cross-references are not affected, the section has not been renumbered.) In addition, throughout the Act, the term "conviction" has been amended to read "conviction and adjudication," and the term "convicted" has been amended to read "convicted or adjudicated."

The term adjudication is also intended to encompass proceedings for adults that do not result in a conviction, such as participation in diversionary programs that result in the dismissal of proceedings upon successful completion of probation. Since in some cases even such non-convictions can result in collateral consequences, the proposed language would apply the UCCCA in such situations as well.

Subsection 2(4):

The UCCCA provided several alternative definitions of decision-maker. The alternative adopted by the working group contemplates that local governments might choose to make private corporations performing government functions or services, by contract or statute, subject to Sections 10 and 11 through the definition of "decision-maker." Several cities in Michigan, including Battle Creek and

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Kalamazoo, have already adopted ordinances or contracting policies that might potentially be applicable here.

Section 4. Identification, Collection, and Publication of Laws Regarding Collateral Consequences.

The UCCCA allow states to identify the entity that should be responsible for identification, collection and publication of laws regarding collateral consequences. It should be noted that the American Bar Association is undertaking the compilation of a collateral consequences data on the state level. The project will be completed within two years. However, there will still be ongoing work to keep this compilation up-to-date.

The workgroup believed that the State Court Administrative Office is the most appropriate agency to oversee this function. In Wisconsin, where this bill has been introduced and has passed the Senate, the responsibility for compiling data has been assigned to the courts or prosecutors. However, the workgroup believed it is important for this responsibility to be clearly assigned to one administrative agency, rather than diffused among multiple entities.

Section 5. Notice of Collateral Consequences in Pretrial Proceeding.

This section contains a notice of collateral consequences. An additional bullet point has been added that reads "being subject to sex offender registration and the requirements imposed on registered offenders." Given that sex offender registration can be the most significant consequence of a conviction, the workgroup felt that it was important to add it to the list of potential consequences.

Section 8. Decision to Disqualify.

In order to avoid any potential conflicts between the UCCCA and Michigan's existing Occupational Licensing of Former Offenders Act, the following language was added:

If the disqualification involves a license, the licensing board or agency shall follow both this section and the Occupational Licensing of Former Offenders Act, MCL 338.41 *et. seq.* Any conflicts between these two acts shall be resolved in favor of promoting the employment of former offenders.

Section 9. Effect of Conviction or Adjudication by Another State of the United States; Relieved or Pardoned Conviction or Adjudication.

The UCCCA contained alternative language in subsection (e) concerning the effect of out-of-state orders for expungement, sealing, annulment, set-aside, or vacation of a conviction or adjudication. The workgroup adopted the alternative which provides that if another state has a relief mechanism in place, the relief granted by the other state would be honored in Michigan.

Section 10. Order of Limited Relief.

The UCCCA provides that an Order for Limited Relief can be obtained at the time of sentencing from the sentencing court, but leaves open the question of what entity will decide petitions after sentencing. The working group believed that courts, which already routinely handle set-aside applications, are best suited to this task. The working group also sought to address jurisdictional issues, so that it is clear in which court a petition must be filed in cases where an individual has multiple prior offenses or out-of-state offenses. The proposed language reads:

(a) An individual convicted or adjudicated of an offense may petition for an order of limited

relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be presented to the:

- (1) sentencing court at or before sentencing; or
- (2) at any time after sentencing:
 - i. the court in which the individual's most recent conviction or adjudication occurred; or
 - ii. the jurisdiction in which the individual resides if the individual has no convictions or adjudications in the state of Michigan.

Section 11. Certificate of Restoration of Rights.

As with the Order of Limited Relief, the UCCCA allows states to designate the appropriate entity for granting Certificates of Restoration of Rights. Here again, the work group believes that the courts are best suited to this task. The proposed language also addresses jurisdictional issues.

The UCCCA also allows states to decide whether misdemeanors will automatically disqualify individuals from obtaining Certificates of Restoration of Rights. The work group adopted the language that allows misdemeanors to be considered on a discretionary basis. While courts would be able to deny the certificate if, for instance, there were multiple or more serious misdemeanors, courts would not be required to deny relief solely based on a misdemeanor offense.

The proposed language reads:

- (a) An individual convicted or adjudicated of an offense may petition the court for a certificate of restoration of rights relieving collateral sanctions not sooner than [five] years after the individual's most recent conviction or adjudication of a felony 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. This petition shall be filed in the court in which the individual's most recent conviction or adjudication occurred, or, if the individual has no convictions or adjudications in the state of Michigan, in the jurisdiction in which the individual resides.

Section 12. Collateral Sanctions Not Subject to Order of Limited Relief or Certificate of Restoration of Rights.

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Section 12 provides that an order of limited relief or a certificate of restoration of rights cannot lift certain specified sanctions in the areas of sex offender registration, motor vehicle licensing, and law enforcement employment. The UCCCA provides for jurisdictions to insert references to the relevant statutes.

With respect to sex offender registration, the work group proposed that relief be barred for any requirements for sex offender registration imposed by Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) or its associated regulations. This language requires compliance with federal sex offender registration laws, while providing a limited judicial safety valve to address a narrow category of extreme situations where registration or registration-related consequences are not federally mandated.

With respect to vehicle offenses, the work group inserted reference to the Motor Vehicle Code.

With respect to prohibitions on law enforcement employment, the work group inserted references to prohibitions on employment with law enforcement and the Department of Corrections.

Section 13. Issuance, Modification, and Revocation of Order of Limited Relief and Certificate of Restoration of Rights.

As elsewhere in the Act, the working group assigned responsibility for issuance, modification, and revocation of orders and certificates to the courts. In subsection (e), responsibility for adoption rules for application, determination, modification and revocation of such orders and certificates was assigned to the Supreme Court.

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) “Collateral consequence” means a collateral sanction or a disqualification.

(2) “Collateral sanction” means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual’s conviction or adjudication of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

~~(3) “Conviction” includes an [adjudication as a juvenile delinquent]. “Convicted” has a corresponding meaning.~~

(4) “Decision-maker” means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this [act] by contract, by law other than this [act], or by ordinance.

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

(6) “Offense” means a felony or misdemeanor under the law of this state, another state, or the United States.

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or

governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

SECTION 3. LIMITATION ON SCOPE.

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

- (1) invalidating a plea, conviction, adjudication, or sentence;
- (2) a cause of action for money damages; or
- (3) a claim for relief from or defense to the application of a collateral consequence

based on a failure to comply with Section 4, 5, or 6.

(b) This [act] does not affect:

- (1) the duty an individual's attorney owes to the individual;
- (2) a claim or right of a victim of an offense; or
- (3) a right or remedy under law other than this [act] available to an individual

convicted of an offense.

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

(a) The State Court Administrative Office:

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

(2) not later than [insert number of] days after [insert the effective date of this [act]], shall prepare or cause to be prepared a collection of citations to, and the text or short descriptions of, the provisions identified under paragraph (1);

(3) shall update or cause to be updated the collection within [insert number of] days after each regular session of the legislature; and

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

(b) The State Court Administrative Office shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a):

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

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

(3) The laws of the United States, other jurisdictions, or municipalities which impose additional collateral sanctions and authorize additional disqualifications are not listed in this collection.

(4) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [insert date the collection was prepared or last updated].

(c) The State Court Administrative Office shall publish or cause to be published the collection prepared and updated as required by subsection (a). The collection must be available to the public on the Internet without charge not later than [insert number of] days after it is created or updated.

SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING.

When an individual receives formal notice that the individual is charged with an offense, the courts shall cause information substantially similar to the following to be communicated to the individual:

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

If you plead guilty or are convicted/adjudicated of an offense you may suffer additional legal consequences beyond jail or prison, probation, periods of probation, and fines. These consequences may include:

- being unable to get or keep some licenses, permits, or jobs;
- being unable to get or keep benefits such as public housing or education;
- receiving a harsher sentence if you are convicted/adjudicated of another offense in the future;
- having the government take your property;
- being subject to sex offender registration and the requirements imposed on registered offenders; and
- being unable to vote or possess a firearm.

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

The law may provide ways to obtain some relief from these consequences.

SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE.

(a) An individual convicted or adjudicated of an offense shall be given notice as provided in subsections (b) and (c):

(1) that collateral consequences may apply because of the conviction or adjudication;
(2) of the Internet address of the collection of laws published under Section 4(c);
(3) that there may be ways to obtain relief from collateral consequences;
(4) of contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences;
and

(5) of when an individual convicted or adjudicated of an offense may vote under this state's law.

(b) The court shall provide the notice in subsection (a) as a part of sentencing.

(c) If an individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the individual shall provide the notice in subsection (a) not more than [30], and, if practicable, at least [10], days before release.

SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY.

(a) A collateral sanction may be imposed only by statute or ordinance, or by a rule authorized by law and adopted in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

SECTION 8. DECISION TO DISQUALIFY. In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue: the

particular facts and circumstances involved in the offense, and the essential elements of the offense. A conviction or adjudication itself may not be considered except as having established the elements of the offense. The decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief or a certificate of restoration of rights. If the disqualification involves a license, the licensing board or agency shall follow both this section and the Occupational Licensing of Former Offenders Act, MCL 338.41 *et. seq.* Any conflicts between these two acts shall be resolved in favor of promoting the employment of former offenders.

SECTION 9. EFFECT OF CONVICTION OR ADJUDICATION BY ANOTHER STATE OR THE UNITED STATES; RELIEVED OR PARDONED CONVICTION OR ADJUDICATION.

(a) For purposes of authorizing or imposing a collateral consequence in this state, a conviction or adjudication of an offense in a court of another state or the United States is deemed a conviction or adjudication of the offense in this state with the same elements. If there is no offense in this state with the same elements, the conviction or adjudication is deemed a conviction or adjudication of the most serious offense in this state which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction or adjudication may not be deemed a felony in this state, and an offense lesser than a misdemeanor in the jurisdiction of conviction or adjudication may not be deemed a conviction or adjudication of a felony or misdemeanor in this state.

(b) For purposes of authorizing or imposing a collateral consequence in this state, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this state, but may be deemed a juvenile adjudication for the delinquent act in this state with the same elements. If there is no delinquent act

in this state with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this state which is established by the elements of the offense.

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

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

(e) A conviction or adjudication that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this state as it has in the jurisdiction of conviction or adjudication. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this state for which relief could not be granted under Section 12 or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction or adjudication. An individual convicted or adjudicated in another jurisdiction may seek relief under Section 10 or 11 from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in Section 12, and the courts shall consider that the conviction or adjudication was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction or adjudication and imposition of sentence based on participation in a deferred

adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this state. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

SECTION 10. ORDER OF LIMITED RELIEF.

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

- (1) sentencing court at or before sentencing; or
- (2) at any time after sentencing:
 - i. the court in which the individual's most recent conviction or adjudication occurred; or
 - ii. the jurisdiction in which the individual resides if the individual has no convictions or adjudications in the state of Michigan.

(b) Except as otherwise provided in Section 12, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in subsection (a) if, after reviewing the petition, the individual's criminal history, any filing by a victim under Section 15 or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

- (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) the order of limited relief must specify:

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

(2) any restriction imposed pursuant to Section 13(a).

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this Section, a decision-maker may consider the conduct underlying a conviction or adjudication as provided in Section 8.

SECTION 11. CERTIFICATE OF RESTORATION OF RIGHTS.

(a) An individual convicted or adjudicated of an offense may petition the court for a certificate of restoration of rights relieving collateral sanctions not sooner than [five] years after the individual's most recent conviction or adjudication of a felony 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. This petition shall be filed in the court in which the individual's most recent conviction or adjudication occurred, or, if the individual has no convictions or adjudications in the state of Michigan, the jurisdiction in which the individual resides.

(b) Except as otherwise provided in Section 12, the court may issue a certificate of restoration of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim under Section 15 or a prosecutor, 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 activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;

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

(3) a criminal charge is not pending against the individual; and

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

(c) A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under Section 13(a).

(d) A certificate of restoration of rights relieves all collateral sanctions, except those listed in Section 12 and any others specifically excluded in the certificate.

(e) If a collateral sanction has been relieved pursuant to this Section, a decision-maker may consider the conduct underlying a conviction or adjudication as provided in Section 8.

SECTION 12. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS. An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

(1) requirements for sex offender registration imposed by Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) or its associated regulations.

(2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to the Michigan Vehicle Code, MCL 257.1 to 257.923, for which restoration or relief is available under that Code; or

(3) ineligibility for employment in the Department of Corrections pursuant to MCL 791.205a, or in law enforcement, pursuant to Mich. Admin. Code R 28.14203.

SECTION 13. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS.

(a) When a petition is filed under Section 10 or 11, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify any office that prosecuted the offense or offenses giving rise to the collateral consequence from which relief is

sought and, if the conviction or adjudication was not obtained in a court of this state, the Office of the Attorney General of this state or an appropriate prosecuting office in this state. The court may issue an order and may issue an order or certificate subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking an order or certificate, the court may impose conditions for reapplication.

(b) The court may restrict or revoke an order of limited relief or certificate of restoration of rights it issued or an order of limited relief issued by a court in this state if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction or adjudication of a felony in this state or of an offense in another jurisdiction that is deemed a felony in this state under Section 9(a). An order of restriction or revocation may be issued:

(1) on motion of the court, the office of the prosecutor that obtained the conviction or adjudication, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter;
and

(3) after a hearing under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

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

(d) The court shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. The criminal history record system

of the Michigan State Police must include issuance, modification, and revocation of orders and certificates.

(e) The Supreme Court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights, in accordance with Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

SECTION 14. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE. 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, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

SECTION 15. VICTIM'S RIGHTS. A victim of an offense may participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to the William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, MCL 780.751 to 780.834.

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

SECTION 17. SAVINGS AND TRANSITIONAL PROVISIONS.

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

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

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