

1 H.413

2 Introduced by Representatives Wizowaty of Burlington, Marek of Newfane,

3 and Waite-Simpson of Essex

4 Referred to Committee on

5 Date:

6 Subject: Crimes; Uniform Collateral Consequences of Conviction Act

7 Statement of purpose of bill as introduced: This bill proposes to address the

8 various penalties and disqualifications that individuals face incidental to

9 criminal sentencing, which are often known as “collateral consequences.”

10 The act requires that individuals be advised of such penalties, and in some

11 circumstances, offers a mechanism to provide partial relief from the

12 disabilities. The provisions in the act are largely procedural, and designed to

13 clarify policies and provisions which are already widely accepted by many

14 states.

15 An act relating to the Uniform Collateral Consequences of Conviction Act

16 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 13 V.S.A. chapter 231 is added to read:

2 CHAPTER 231. UNIFORM COLLATERAL

3 CONSEQUENCES OF CONVICTION

4 § 8001. SHORT TITLE

5 This act may be cited as the Uniform Collateral Consequences of
6 Conviction Act.

7 § 8002. DEFINITIONS

8 As used in this chapter:

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

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

17 (3) “Conviction” includes an adjudication for delinquency for purposes
18 of this chapter only, unless otherwise specified. “Convicted” has a
19 corresponding meaning.

20 (4) “Court” means the Criminal Division of the Superior Court.

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

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

10 (7) “Offense” means a felony, misdemeanor, or delinquent act under the
11 laws of this State, another state, or the United States.

12 (8) “Person” means an individual, corporation, business trust, estate,
13 trust, partnership, limited liability company, association, joint venture, public
14 corporation, government or governmental subdivision, agency, instrumentality,
15 or any other legal or commercial entity.

16 (9) “State” means a state of the United States, the District of Columbia,
17 Puerto Rico, the United States Virgin Islands, or any territory or insular
18 possession subject to the jurisdiction of the United States.

19 § 8003. LIMITATION ON SCOPE

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

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

- 1 (2) a cause of action for money damages; or
2 (3) a claim for relief from or defense to the application of a collateral
3 consequence based on a failure to comply with this chapter.

4 (b) This chapter shall not affect:

- 5 (1) the duty an individual's attorney owes to the individual;
6 (2) a claim or right of a victim of an offense; or
7 (3) a right or remedy under law other than this chapter available to an
8 individual convicted of an offense.

9 § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF
10 LAWS REGARDING COLLATERAL CONSEQUENCES

11 (a)(1) The Attorney General shall:

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

16 (B) prepare a collection of citations to and the text or short
17 descriptions of the provisions identified under subdivision (a)(1)(A) of this
18 section not later than October 1, 2013; and

19 (C) update the collection provided under subdivision (B) of this
20 subdivision (1) annually by July 1.

1 (2) In complying with subdivision (a)(1) of this section, the Attorney
2 General may rely on the study of this State's collateral sanctions,
3 disqualifications, and relief provisions prepared by the National Institute of
4 Justice described in Section 510 of the Court Security Improvement Act of
5 2007, Pub. L. No. 110 -177, § 510, 121 Stat. 2534 (2008).

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

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

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

14 (3) The laws of other jurisdictions which impose additional collateral
15 sanctions and authorize additional disqualifications are not included in this
16 collection.

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

1 (c) The Attorney General shall publish or cause to be published the
2 collection prepared and updated as required by subsection (a) of this section.

3 (d) The Attorney General shall publish or cause to be published as part of
4 the collection the title and Internet address, if available, of the most recent
5 collection of:

6 (1) the collateral consequences imposed by federal law; and

7 (2) any provision of federal law that may afford relief from a collateral
8 consequence.

9 (e) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which
10 implicates collateral consequences to a conviction shall forward a copy of the
11 rule to the Attorney General.

12 § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL
13 PROCEEDING

14 (a) When an individual receives formal notice that the individual is charged
15 with an offense, the Court shall cause information substantially similar to the
16 following to be communicated to the individual:

17 (1) If you plead guilty or are convicted of an offense, you may suffer
18 additional legal consequences beyond jail or prison, home confinement,
19 probation, and fines. These consequences may include:

20 (A) being unable to get or keep some licenses, permits, or jobs;

1 (B) being unable to get or keep benefits such as public housing or
2 education;

3 (C) receiving a harsher sentence if you are convicted of another
4 offense in the future;

5 (D) having the government take your property;

6 (E) being unable to possess a firearm; and

7 (F) exercising your right to vote if you move to another state.

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

11 (3) The law may provide ways to obtain some relief from these
12 consequences.

13 (4) Further information about the consequences of conviction is
14 available on the Internet at [insert Internet address of the collection of laws
15 published under this chapter].

16 (b) Before the Court accepts a plea of guilty or nolo contendere from an
17 individual, the Court shall confirm that the individual received the notice
18 required by subsection (a) of this section and had an opportunity to discuss the
19 notice with counsel, if represented, and understands that there may be
20 collateral consequences to a conviction.

1 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING
2 AND UPON RELEASE

3 (a) An individual convicted of an offense shall be given notice, as provided
4 in subsections (b) and (c) of this section, of the following:

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

6 (2) the Internet address of the collection of laws published under this
7 chapter;

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

9 (4) contact information for government or nonprofit agencies, groups, or
10 organizations, if any, offering assistance to individuals seeking relief from
11 collateral consequences; and

12 (5) that conviction of a crime in this State does not prohibit an
13 individual from voting in this State.

14 (b) The Court shall provide the notice in subsection (a) of this section as a
15 part of sentencing.

16 (c) If an individual is sentenced to imprisonment or home confinement, the
17 Department of Corrections shall provide the notice in subsection (a) of this
18 section not more than 30 days and at least 10 days before discharge or release
19 to community supervision.

1 § 8007. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;

2 AMBIGUITY

3 (a) A collateral sanction may be imposed only by statute or ordinance or by
4 a rule adopted in the manner provided in 3 V.S.A. §§ 836–844. A law or rule
5 shall impose unambiguously a collateral consequence in order for a court to
6 impose a collateral consequence.

7 (b) A law creating a collateral consequence that is ambiguous as to whether
8 it imposes an automatic collateral sanction or whether it authorizes a
9 decision-maker to disqualify a person based upon his or her conviction shall be
10 construed as authorizing a disqualification.

11 § 8008. DECISION TO DISQUALIFY

12 In deciding whether to impose a disqualification, a decision-maker shall
13 undertake an individualized assessment to determine whether the benefit or
14 opportunity at issue should be denied the individual. In making that decision,
15 the decision-maker may consider, if substantially related to the benefit or
16 opportunity at issue, the particular facts and circumstances involved in the
17 offense and the essential elements of the offense. A conviction itself may not
18 be considered except as having established the elements of the offense. The
19 decision-maker shall also consider other relevant information, including the
20 effect on third parties of granting the benefit or opportunity and whether the

1 individual has been granted relief such as an order of limited relief or a
2 certificate of restoration of rights.

3 § 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE
4 UNITED STATES; RELIEVED OR PARDONED CONVICTION

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

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

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

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

8 (e) A conviction that has been relieved by expungement, sealing,
9 annulment, set-aside, or vacation by a court of competent jurisdiction of
10 another state or the United States on grounds of rehabilitation or good
11 behavior, or for which civil rights are restored pursuant to statute, has the same
12 effect for purposes of authorizing or imposing collateral consequences in this
13 State as it has in the jurisdiction of conviction. However, such relief or
14 restoration of civil rights does not relieve collateral consequences applicable
15 under the law of this State for which relief could not be granted under section
16 8012 of this title or for which relief was expressly withheld by the court order
17 or by the law of the jurisdiction that relieved the conviction. An individual
18 convicted in another jurisdiction may seek relief under section 8010 or 8011 of
19 this title from any collateral consequence for which relief was not granted in
20 the issuing jurisdiction, other than those listed in section 8012 of this title, and
21 the Court shall consider that the conviction was relieved or civil rights restored

1 in deciding whether to issue an order of limited relief or certificate of
2 restoration of rights.

3 (f) A charge or prosecution in any jurisdiction which has been finally
4 terminated without a conviction and imposition of sentence based on
5 successful participation in a deferred adjudication or diversion program may
6 not serve as the basis for authorizing or imposing a collateral consequence in
7 this State. This subsection does not affect the validity of any restriction or
8 condition imposed by law as part of participation in the deferred adjudication
9 or diversion program, before or after the termination of the charge or
10 prosecution.

11 § 8010. ORDER OF LIMITED RELIEF

12 (a) An individual convicted of an offense may petition for an order of
13 limited relief from one or more collateral sanctions related to employment,
14 education, housing, public benefits, or occupational licensing. After notice, the
15 petition may be presented to the sentencing court at or before sentencing or to
16 the Superior Court at any time after sentencing.

17 (b) Except as otherwise provided in section 8012 of this title, the Court
18 may issue an order of limited relief relieving one or more of the collateral
19 sanctions described in this chapter if, after reviewing the petition, the
20 individual's criminal history record, any filing by a victim under section 8014

1 of this title, and any other relevant evidence, it finds the individual has
2 established by a preponderance of the evidence that:

3 (1) granting the petition will materially assist the individual in obtaining
4 or maintaining employment, education, housing, public benefits, or
5 occupational licensing;

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

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

10 (c) The order of limited relief shall specify:

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

12 (2) any restriction imposed pursuant to section 8008 of this title.

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

15 (e) If a collateral sanction has been relieved pursuant to this section, a
16 decision-maker may consider the conduct underlying a conviction as provided
17 in section 8008 of this title.

18 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

19 (a) An individual convicted of an offense may petition the Court for a
20 certificate of restoration of rights relieving collateral sanctions not sooner than
21 five years after the individual's most recent conviction of a felony or

1 misdemeanor in any jurisdiction, or not sooner than five years after the
2 individual's release from confinement pursuant to a criminal sentence in any
3 jurisdiction, whichever is later.

4 (b) Except as otherwise provided in section 8012 of this title, the Court
5 may issue a certificate of restoration of rights if, after reviewing the petition,
6 the individual's criminal history, any filing by a victim under section 8015 of
7 this title or a prosecuting attorney, and any other relevant evidence, it finds the
8 individual has established by a preponderance of the evidence that:

9 (1) the individual is engaged in or seeking to engage in a lawful
10 occupation or activity, including employment, training, education, or
11 rehabilitative programs, or the individual otherwise has a lawful source of
12 support;

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

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

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

19 (c) A certificate of restoration of rights must specify any restriction
20 imposed and collateral sanction from which relief has not been granted under
21 section 8013 of this title.

1 (d) A certificate of restoration of rights relieves all collateral sanctions,
2 except those listed in section 8012 of this title and any others specifically
3 excluded in the certificate.

4 (e) If a collateral sanction has been relieved pursuant to this section, a
5 decision-maker may consider the conduct underlying a conviction as provided
6 in section 8008 of this title.

7 § 8012. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF
8 LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF
9 RIGHTS

10 An order of limited relief or certificate of restoration of rights may not be
11 issued to relieve the following collateral sanctions:

12 (1) requirements imposed by chapter 167, chapter 3 of this title (sex
13 offender registration; law enforcement notification);

14 (2) a motor vehicle license suspension, revocation, limitation, or
15 ineligibility pursuant to Title 23 for which restoration or relief is available,
16 including occupational, temporary, and restricted licensing provisions;

17 (3) ineligibility for employment by law enforcement agencies, including
18 the Office of the Attorney General, state's attorney, police departments,
19 sheriff's departments, State Police, or the Department of Corrections.

1 § 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER
2 OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION
3 OF RIGHTS

4 (a) When a petition is filed under section 8010 or 8011 of this title,
5 including a petition for enlargement of an existing order of limited relief or
6 certificate of restoration of rights, the Court shall notify the office that
7 prosecuted the offense giving rise to the collateral consequence from which
8 relief is sought and, if the conviction was not obtained in a court of this State,
9 the Attorney General. The Court may issue an order or certificate subject to
10 restriction or condition.

11 (b) The Court may restrict an order of limited relief or certificate of
12 restoration of rights if it finds just cause by a preponderance of the evidence.
13 Just cause includes subsequent conviction of a related felony in this State or of
14 an offense in another jurisdiction that is deemed a felony in this State. An
15 order of restriction may be issued:

16 (1) on motion of the Court, the prosecuting attorney who obtained the
17 conviction, or a government agency designated by that prosecutor;

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

20 (3) after a hearing if requested by the individual or the prosecutor that
21 made the motion or any prosecutor that has appeared in the matter.

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

8 (d) The Court shall maintain a public record of the issuance and
9 modification of orders of limited relief and certificates of restoration of rights.
10 A criminal history record as defined in 20 V.S.A. § 2056a and a criminal
11 conviction record as defined in 20 V.S.A. § 2056c shall include issuance and
12 modification of orders and certificates.

13 (e) The Court may adopt rules for application, determination, modification,
14 and revocation of orders of limited relief and certificates of restoration of
15 rights.

16 § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF

17 DUE CARE

18 In a judicial or administrative proceeding alleging negligence or other fault,
19 an order of limited relief or a certificate of restoration of rights may be
20 introduced as evidence of a person's due care in hiring, retaining, licensing,
21 leasing to, admitting to a school or program, or otherwise transacting business

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

4 § 8015. VICTIM'S RIGHTS

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

9 § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

13 § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

14 (a) This chapter applies to collateral consequences whenever enacted or
15 imposed, unless the law creating the collateral consequence expressly states
16 that this chapter does not apply.

17 (b) This chapter does not invalidate the imposition of a collateral sanction
18 on an individual before July 1, 2013, but a collateral sanction validly imposed
19 before July 1, 2013 may be the subject of relief under this chapter.

20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on July 1, 2013.