

S.38

Introduced by Senator Sears

Referred to Committee on

Date:

Subject: Crimes; Uniform Collateral Consequences of Conviction Act

Statement of purpose: This bill proposes to address the various penalties and disqualifications that individuals face incidental to criminal sentencing, which are often known as “collateral consequences.” The act requires that individuals be advised of such penalties, and in some circumstances, offers a mechanism to provide partial relief from the disabilities. The provisions in the act are largely procedural, and designed to clarify policies and provisions which are already widely accepted by many states.

An act relating to the Uniform Collateral Consequences of Conviction Act

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

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

CHAPTER 231. UNIFORM COLLATERAL

CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

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

1     § 8002. DEFINITIONS

2         As used in this chapter:

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

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

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

14            (4) “Decision-maker” means the state acting through a department,  
15    agency, officer, or instrumentality, including a political subdivision,  
16    educational institution, board, or commission, or its employees or contractor.

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

21            (6) “Offense” means a felony, misdemeanor, or delinquent act under the

1 laws of this state, another state, or the United States.

2 (7) "Person" means an individual, corporation, business trust, estate,  
3 trust, partnership, limited liability company, association, joint venture, public  
4 corporation, government or governmental subdivision, agency, instrumentality,  
5 or any other legal or commercial entity.

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

9 § 8003. LIMITATION ON SCOPE

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

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

12 (2) a cause of action for money damages; or

13 (3) a claim for relief from or defense to the application of a collateral  
14 consequence based on a failure to comply with this subchapter.

15 (b) This subchapter shall not affect:

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

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

18 (3) a right or remedy under law other than this subchapter available to  
19 an individual convicted of an offense.

1     § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF  
2             LAWS REGARDING COLLATERAL CONSEQUENCES

3             (a)(1) The attorney general shall:

4                     (A) Identify or cause to be identified any provision in this state's  
5             constitution, statutes, and administrative rules which imposes a collateral  
6             sanction or authorizes the imposition of a disqualification and any provision of  
7             law that may afford relief from a collateral consequence.

8                     (B) Prepare a collection of citations to and the text or short  
9             descriptions of the provisions identified under subdivision (a)(1)(A) of this  
10            section not later than August 1, 2011.

11                    (C) Update the collection provided under subdivision (B) of this  
12            subdivision (1) annually by July 1.

13                    (2) In complying with subdivision (a)(1) of this section, the attorney  
14            general may rely on the study of this state's collateral sanctions,  
15            disqualifications, and relief provisions prepared by the National Institute of  
16            Justice described in Section 510 of the Court Security Improvement Act of  
17            2007, Pub. L. 110-177.

18                    (b) The attorney general shall include or cause to be included the following  
19            statements in a prominent manner at the beginning of the collection required  
20            by subsection (a) of this section:

21                    (1) This collection has not been enacted into law and does not have the

1 force of law.

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

5 (3) The laws of other jurisdictions which impose additional collateral  
6 sanctions and authorize additional disqualifications are not included in this  
7 collection.

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

12 (c) The attorney general shall publish or cause to be published the  
13 collection prepared and updated as required by subsection (a) of this section.  
14 The attorney general shall publish or cause to be published as part of the  
15 collection the title and Internet address, if available, of the most recent  
16 collection of:

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

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

1     § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL  
2             PROCEEDING

3             When an individual receives formal notice that the individual is charged  
4             with an offense, the prosecuting attorney shall cause information substantially  
5             similar to the following to be communicated to the individual:

6                     NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

7             (a) If you plead guilty or are convicted of an offense, you may suffer  
8             additional legal consequences beyond jail or prison, home confinement,  
9             probation, and fines. These consequences may include:

- 10             • Being unable to get or keep some licenses, permits, or jobs.
- 11             • Being unable to get or keep benefits such as public housing or  
12                 education.
- 13             • Receiving a harsher sentence if you are convicted of another offense in  
14                 the future.
- 15             • Having the government take your property.
- 16             • Being unable to possess a firearm.

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

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

21             Further information about the consequences of conviction is available on

1 the Internet at [insert Internet address of the collection of laws published under  
2 this subchapter].

3 (b) Before the court accepts a plea of guilty or nolo contendere from an  
4 individual, the court shall confirm that the individual received and understands  
5 the notice required by subsection (a) of this section and had an opportunity to  
6 discuss the notice with counsel.

7 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING  
8 AND UPON RELEASE

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

11 (1) That collateral consequences may apply because of the conviction.

12 (2) The Internet address of the collection of laws published under this  
13 subchapter.

14 (3) That there may be ways to obtain relief from collateral  
15 consequences.

16 (4) Contact information for government or nonprofit agencies, groups,  
17 or organizations, if any, offering assistance to individuals seeking relief from  
18 collateral consequences.

19 (5) That conviction of a crime in this state does not prohibit an  
20 individual from voting in this state.

21 (b) The court shall provide the notice in subsection (a) of this section as a

1 part of sentencing.

2 (c) If an individual is sentenced to imprisonment or home confinement, the  
3 department of corrections shall provide the notice in subsection (a) of this  
4 section not more than 30 days and at least 10 days before discharge or release  
5 to community supervision.

6 § 8007. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION;

7 AMBIGUITY

8 (a) A collateral sanction may be imposed only by statute or ordinance or by  
9 a rule authorized by law.

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

13 § 8008. DECISION TO DISQUALIFY

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



1 effect on third parties of granting the benefit or opportunity and whether the  
2 individual has been granted relief such as an order of limited relief or a  
3 certificate of restoration of rights.

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

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

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

1 by the elements of the offense.

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

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

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

1 the court shall consider that the conviction was relieved or civil rights restored  
2 in deciding whether to issue an order of limited relief or certificate of  
3 restoration of rights.

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

17 (b) Except as otherwise provided in section 8012 of this title, the court may  
18 issue an order of limited relief relieving one or more of the collateral sanctions  
19 described in this subchapter if, after reviewing the petition, the individual's  
20 criminal history, any filing by a victim under section 8015 of this title or a  
21 prosecuting attorney, and any other relevant evidence, it finds the individual

1 has established by a preponderance of the evidence that:

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

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

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

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

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

11 (2) any restriction imposed pursuant to section 8018 of this title.

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

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

17 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

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

1 individual's release from confinement pursuant to a criminal sentence in any  
2 jurisdiction, whichever is later.

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

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

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

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

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

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

21 (d) A certificate of restoration of rights relieves all collateral sanctions.

1 except those listed in section 8012 of this title and any others specifically  
2 excluded in the certificate.

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

6 § 8012. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF  
7 LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF  
8 RIGHTS

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

11 (1) Requirements imposed by chapter 167, subchapter 3 of this title (sex  
12 offender registration; law enforcement notification).

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

16 (3) Ineligibility for employment by law enforcement agencies, including  
17 the attorney general's office, state's attorney, police departments, sheriff's  
18 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, condition, or additional requirement. When issuing, denying,  
11            modifying, or revoking an order or certificate, the court may impose conditions  
12            for a subsequent petition.

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

18                 (1) on motion of the court, the prosecuting attorney who obtained the  
19                 conviction, or a government agency designated by that prosecutor;

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

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

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

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

15          (e) The court may adopt rules for application, determination, modification,  
16          and revocation of orders of limited relief and certificates of restoration of  
17          rights.

18          § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF

19                 DUE CARE

20                 In a judicial or administrative proceeding alleging negligence or other fault,  
21                 an order of limited relief or a certificate of restoration of rights may be



1 introduced as evidence of a person's due care in hiring, retaining, licensing,  
2 leasing to, admitting to a school or program, or otherwise transacting business  
3 or engaging in activity with the individual to whom the order was issued, if the  
4 person knew of the order or certificate at the time of the alleged negligence or  
5 other fault.

6 § 8015. VICTIM'S RIGHTS

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

12 § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

16 § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

17 (a) This subchapter applies to collateral consequences whenever enacted or  
18 imposed, unless the law creating the collateral consequence expressly states  
19 that this subchapter does not apply.

20 (b) This subchapter does not invalidate the imposition of a collateral  
21 sanction on an individual before July 1, 2011, but a collateral sanction validly

1     imposed before July 1, 2011 may be the subject of relief under this subchapter.

2     Sec. 2. EFFECTIVE DATE

3     This act shall take effect on July 1, 2011.