

No. 181. An act relating to the Uniform Collateral Consequences of Conviction Act.

(H.413)

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.

§ 8002. DEFINITIONS

As used in this chapter:

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

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

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

(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 chapter by contract, by law other than this chapter, or by ordinance.

(5) “Discretionary disqualification” means a penalty, disability, or disadvantage 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 of an offense. Discretionary disqualifications do not encompass charging decisions, such as the imposition of pre-charge diversion or intervention programs.

(6) “Mandatory sanction” means a penalty, disability, or disadvantage imposed on an individual as a result of the individual’s conviction 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.

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

(8) “Incarceration” means confinement in jail or prison.

(9) “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.

§ 8003. LIMITATION ON SCOPE

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

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

(2) a cause of action for money damages;

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

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

(b) This chapter shall 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 chapter available to an individual convicted of an offense.

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

(a)(1) The Attorney General shall:

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

(B) prepare or compile from available sources a collection of citations to, and the text or short descriptions of, the provisions identified under subdivision (a)(1)(A) of this section not later than January 1, 2016; and

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

(2) In complying with subdivision (a)(1) of this section, the Attorney General may rely on or incorporate the summary of this State's mandatory sanctions, discretionary 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. No. 110 -177, § 510, 121 Stat. 2534 (2008) as it exists and as it may be amended.

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

(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 or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a mandatory sanction or authorizing a discretionary disqualification.

(3) The laws of other jurisdictions that impose additional mandatory sanctions and authorize additional discretionary disqualifications are not included in this collection.

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

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

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

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

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

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

§ 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING

(a) When an individual receives formal notice that the individual is charged with an offense, the Court shall provide either oral or written notice substantially similar to the following to be communicated to the individual:

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

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

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

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

(D) having the government take your property;

(E) being unable to serve in the military or on a jury;

(F) being unable to possess a firearm; and

(G) being unable to exercise your right to vote if you move to another state.

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

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

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

(b) Before the Court accepts a plea of guilty or nolo contendere from an individual, the Court shall:

(1) confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction; and

(2) provide written notice, as part of a written plea agreement or through another form, of the following:

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

(B) the Internet address of the collection of laws published under this chapter;

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

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

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

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES UPON RELEASE

(a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of Corrections shall be given written notice of the following:

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

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

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

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

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

(b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days and at least 10 days before completion of the sentence. If the sentence is for a term of less than 30 days then notice shall be provided when the sentence is completed.

(c) For persons receiving a sentence involving community supervision, such as probation, furlough, home confinement, conditional reentry, or parole, the notice shall be provided by the Department of Corrections in keeping with its mission of ensuring rehabilitation and public safety.

§ 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

AMBIGUITY

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

(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an automatic mandatory sanction or whether it authorizes a

decision-maker to disqualify a person based upon his or her conviction shall be construed as authorizing a discretionary disqualification.

§ 8008. DECISION TO DISQUALIFY

In deciding whether to impose a discretionary 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 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.

§ 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE

UNITED STATES; RELIEVED OR PARDONED CONVICTION

(a) For purposes of authorizing or imposing a collateral consequence in this State, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this state with the same elements. If there is no offense in this State with the same elements, the conviction is deemed a conviction of the most serious offense in this State which is established by the elements of the offense. A misdemeanor in the jurisdiction

of conviction may not be deemed a felony in this State, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction 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 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 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. 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 8012 of this title or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 8010 or 8011 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 8012 of this title, and the Court shall consider that the conviction 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 and imposition of sentence based on successful 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.

§ 8010. ORDER OF LIMITED RELIEF

(a) An individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking an order of relief shall provide the prosecutor's office with notice of his or her petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.

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

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

(2) any restriction imposed pursuant to subsections 8013(a) and (b) of this title.

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

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

§ 8011. CERTIFICATE OF RESTORATION OF RIGHTS

(a) An individual convicted of an offense may petition the Court for a certificate of restoration of rights relieving mandatory sanctions not sooner than five years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from incarceration pursuant to a criminal sentence in any jurisdiction, whichever is later. The individual seeking restoration of rights shall provide the prosecutor's office with notice of his or her petition.

(b) Except as otherwise provided in section 8012 of this title, 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 8015 of

this title or a prosecuting attorney, 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 to any individual.

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

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

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

§ 8012. DISCRETIONARY DISQUALIFICATIONS AND MANDATORY
SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF
OR CERTIFICATE OF RESTORATION OF RIGHTS

(a) An order of limited relief or certificate of restoration of rights may not be issued to relieve the following mandatory sanctions:

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

(2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available; or

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

(b) An order of limited relief or certificate of restoration of rights may not be issued to relieve a discretionary disqualification or mandatory sanction imposed due to:

(1) a conviction of a listed crime as defined in section 5301 of this title; or

(2) a conviction of trafficking of regulated drugs pursuant to 18 V.S.A. chapter 84.

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

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

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

(1) on motion of the Court, the prosecuting attorney who obtained the conviction, 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 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 or modify 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) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.

(d) A criminal history record as defined in 20 V.S.A. § 2056a and a criminal conviction record as defined in 20 V.S.A. § 2056c shall include issuance and modification of orders and certificates.

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

(f) If the Court grants in part or denies a petition under section 8010 or 8011 of this title, the Court may order that the person not petition for relief for that particular offense under either section for a period not to exceed five years.

§ 8014. 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.

§ 8015. VICTIM'S RIGHTS

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

§ 8016. 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.

§ 8017. SAVINGS AND TRANSITIONAL PROVISIONS

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

(b) This chapter does not invalidate the imposition of a mandatory sanction on an individual before July 1, 2014, but a mandatory sanction validly imposed before July 1, 2014 may be the subject of relief under this chapter.

Sec. 2. 2009 Acts and Resolves No. 58, Sec. 14, as amended by 2010 Acts and Resolves No. 66, Sec. 3, is further amended to read:

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The ~~department~~ Department shall electronically post the following information ~~on~~ regarding sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;
- (6) the date and nature of the offender's conviction;
- (7) except as provided in subsection (l) of this section, the offender's

address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high risk by the Department of Corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest;

(D) the offender is subject to the Registry for a conviction of a sex offense against a child under 13 years of age; or

(E) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

(8) if the offender is under the supervision of the Department of Corrections, the name and telephone number of the local Department of Corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the Department of Corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable;

~~(10)~~(11) the reason for which the offender information is accessible under this section;

~~(11)~~(12) whether the offender has been designated ~~high-risk~~ high risk by the Department of Corrections pursuant to section 5411b of this title; and

~~(12)~~(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the Department of Corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

Sec. 3. EFFECTIVE DATES

This act shall take effect on passage except for Sec. 1 (collateral consequences of conviction) which shall take effect on January 1, 2016.

Date Governor signed bill: June 10, 2014