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H.413

Representative Koch of Barre Town moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

1 government contractor, including a subcontractor, made subject to this chapter
2 by contract, by law other than this chapter, or by ordinance.

3 (5) “Discretionary disqualification” means a penalty, disability, or
4 disadvantage that an administrative agency, governmental official, or court in a
5 civil proceeding is authorized, but not required, to impose on an individual on
6 grounds relating to the individual’s conviction of an offense. Discretionary
7 disqualifications do not encompass charging decisions, such as the imposition
8 of pre-charge diversion or intervention programs.

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

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

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

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

1 § 8003. LIMITATION ON SCOPE

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

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

4 (2) a cause of action for money damages;

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

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

10 (b) This chapter shall not affect:

11 (1) the duty an individual’s attorney owes to the individual;

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

13 (3) a right or remedy under law other than this chapter available to an
14 individual convicted of an offense.

15 § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF

16 LAWS REGARDING COLLATERAL CONSEQUENCES

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

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

1 (B) prepare or compile from available sources a collection of
2 citations to, and the text or short descriptions of, the provisions identified
3 under subdivision (a)(1)(A) of this section not later than ~~October~~ November 1,
4 2014; and

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

7 (2) In complying with subdivision (a)(1) of this section, the Attorney
8 General may rely on or incorporate the summary of this State’s mandatory
9 sanctions, discretionary disqualifications, and relief provisions prepared by the
10 National Institute of Justice described in Section 510 of the Court Security
11 Improvement Act of 2007, Pub. L. No. 110 -177, § 510, 121 Stat. 2534 (2008)
12 as it exists and as it may be amended.

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

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

18 (2) An error or omission in this collection or any reference work cited in
19 this collection is not a reason for invalidating a plea, conviction, or sentence or
20 for not imposing a mandatory sanction or authorizing a discretionary
21 disqualification.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (D) having the government take your property;

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

16 (F) being unable to possess a firearm; and

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

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

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

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

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

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

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

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

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

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

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

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

6 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING

7 ~~AND~~ UPON RELEASE

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

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

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

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

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

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

19 (b) For persons sentenced to incarceration, the notice shall be provided not
20 more than 30 days and at least 10 days before completion of the sentence. If

1 the sentence is for a term of less than 30 days then notice shall be provided
2 when the sentence is completed.

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

7 § 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

8 AMBIGUITY

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

13 (b) A law creating a collateral consequence that is ambiguous as to whether
14 it imposes an automatic mandatory sanction or whether it authorizes a
15 decision-maker to disqualify a person based upon his or her conviction shall be
16 construed as authorizing a discretionary disqualification.

17 § 8008. DECISION TO DISQUALIFY

18 In deciding whether to impose a discretionary disqualification, a
19 decision-maker shall undertake an individualized assessment to determine
20 whether the benefit or opportunity at issue should be denied the individual. In
21 making that decision, the decision-maker may consider, if substantially related

1 to the benefit or opportunity at issue, the particular facts and circumstances
2 involved in the offense and the essential elements of the offense. A conviction
3 itself may not be considered except as having established the elements of the
4 offense. The decision-maker shall also consider other relevant information,
5 including the effect on third parties of granting the benefit or opportunity and
6 whether the individual has been granted relief such as an order of limited relief
7 or a certificate of restoration of rights.

8 § 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE
9 UNITED STATES; RELIEVED OR PARDONED CONVICTION

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

19 (b) For purposes of authorizing or imposing a collateral consequence in this
20 State, a juvenile adjudication in another state or the United States may not be
21 deemed a conviction of a felony, misdemeanor, or offense lesser than a

1 misdemeanor in this State, but may be deemed a juvenile adjudication for the
2 delinquent act in this State with the same elements. If there is no delinquent
3 act in this State with the same elements, the juvenile adjudication is deemed an
4 adjudication of the most serious delinquent act in this State which is
5 established by the elements of the offense.

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

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

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

1 or by the law of the jurisdiction that relieved the conviction. An individual
2 convicted in another jurisdiction may seek relief under section 8010 or 8011 of
3 this title from any collateral consequence for which relief was not granted in
4 the issuing jurisdiction, other than those listed in section 8012 of this title, and
5 the Court shall consider that the conviction was relieved or civil rights restored
6 in deciding whether to issue an order of limited relief or certificate of
7 restoration of rights.

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

16 § 8010. ORDER OF LIMITED RELIEF

17 (a) An individual convicted of an offense may petition for an order of
18 limited relief from one or more mandatory sanctions related to employment,
19 education, housing, public benefits, or occupational licensing. The individual
20 seeking an order of relief shall provide the prosecutor's office with notice of
21 his or her petition. After notice, the petition may be presented to the

1 sentencing court at or before sentencing or to the Superior Court at any time
2 after sentencing. If the petition is filed prior to sentencing, it shall be treated as
3 a motion in the criminal case. If the petition is filed after sentencing, it shall be
4 treated as a post-judgment motion.

5 (b) Except as otherwise provided in section 8012 of this title, the Court
6 may issue an order of limited relief relieving one or more of the mandatory
7 sanctions described in this chapter if, after reviewing the petition, the
8 individual's criminal history record, any filing by a victim under section 8014
9 of this title, and any other relevant evidence, it finds the individual has
10 established by a preponderance of the evidence that:

11 (1) granting the petition will materially assist the individual in obtaining
12 or maintaining employment, education, housing, public benefits, or
13 occupational licensing;

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

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

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

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

20 (2) any restriction imposed pursuant to subsection ~~8008~~ 8013(a) and (b)
21 of this title.

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

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

6 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

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

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

20 (1) the individual is engaged in or seeking to engage in a lawful
21 occupation or activity, including employment, training, education, or

1 rehabilitative programs, or the individual otherwise has a lawful source of
2 support;

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

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

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

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

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

15 (e) If a mandatory 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.

1 § 8012. MANDATORY SANCTIONS NOT SUBJECT TO ORDER OF
2 LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF
3 RIGHTS

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

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

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

10 (3) ineligibility for employment by law enforcement agencies, including
11 the Office of the Attorney General, State’s Attorney, police departments,
12 sheriff’s departments, State Police, or the Department of Corrections; or

13 (4) ineligibility for jury service, or loss of the right of any person to
14 possess a firearm.

15 § 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER
16 OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION
17 OF RIGHTS

18 (a) When a petition is filed under section 8010 or 8011 of this title,
19 including a petition for enlargement of an existing order of limited relief or
20 certificate of restoration of rights, the Court shall notify the office that
21 prosecuted the offense giving rise to the collateral consequence from which

1 relief is sought and, if the conviction was not obtained in a court of this State,
2 the Attorney General. The Court may issue an order or certificate subject to
3 restriction or condition.

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

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

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

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

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

1 (d) The Court shall maintain a public record of the issuance and
2 modification of orders of limited relief and certificates of restoration of rights.
3 A criminal history record as defined in 20 V.S.A. § 2056a and a criminal
4 conviction record as defined in 20 V.S.A. § 2056c shall include issuance and
5 modification of orders and certificates.

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

9 (f) If the Court grants in part or denies a petition under section 8010 or
10 8011 of this title, the Court may order that the person not petition for relief for
11 that particular offense under either section for a period not to exceed five
12 years.

13 § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF
14 DUE CARE

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

1 § 8015. VICTIM’S RIGHTS

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

6 § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

10 § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

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

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

17 Sec. 2. 13 V.S.A. § 7601 is amended to read:

18 § 7601. DEFINITIONS

19 As used in this chapter:

20 (1) "Court" means the Criminal Division of the Superior Court.

1 (2) "Criminal history record" means all information documenting an
2 individual's contact with the criminal justice system, including data regarding
3 identification, arrest or citation, arraignment, judicial disposition, custody, and
4 supervision.

5 (3) "Predicate offense" means a criminal offense that can be used to
6 enhance a sentence levied for a later conviction, and includes operating a
7 vehicle under the influence of intoxicating liquor or other substance in
8 violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of
9 this title, and stalking in violation of section 1062 of this title. "Predicate
10 offense" shall not include misdemeanor possession of marijuana.

11 (4) "Qualifying crime" means:

12 (A) a misdemeanor offense which is not a listed crime as defined in
13 subdivision 5301(7) of this title, an offense involving sexual exploitation of
14 children in violation of chapter 64 of this title, an offense involving violation
15 of a protection order in violation of section 1030 of this title, a prohibited act
16 as defined in section 2632 of this title, or a predicate offense;

17 (B) a violation of subsection 3701(a) of this title related to criminal
18 mischief; ~~or~~

19 (C) a violation of section 2501 of this title related to grand larceny; or

20 (D) an offense involving burglary in violation of chapter 23 of this
21 title.

1 Sec. 3. EFFECTIVE DATES

2 This act shall take effect on November 1, 2014, except that in Sec. 1:

3 (1) 13 V.S.A. §§ 8010 (order of limited relief), 8012 (mandatory
4 sanctions not subject to relief), 8013 (issuance, modification, and revocation of
5 relief), 8014 (reliance on order or certificate as evidence of due care), and 8015
6 (victim’s rights) shall take effect on January 1, 2015; and

7 (2) 13 V.S.A. § 8011 (certificate of restoration of rights) shall take effect
8 on July 1, 2015.