

1 H.413

2 Representative Wizowaty of Burlington moves that the bill be amended by
3 striking out all after the enacting clause and inserting in lieu thereof the
4 following:

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

6 CHAPTER 231. UNIFORM COLLATERAL

7 CONSEQUENCES OF CONVICTION

8 § 8001. SHORT TITLE

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

11 § 8002. DEFINITIONS

12 As used in this chapter:

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

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

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

19 (4) “Decision-maker” means the state acting through a department,
20 agency, officer, or instrumentality, including a political subdivision,
21 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. **Decision-maker**
3 **does not mean the State's Attorney.**

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

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

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

18 (8) “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; or

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.

7 (b) This chapter shall not affect:

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

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

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

12 § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF
13 LAWS REGARDING COLLATERAL CONSEQUENCES

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

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

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

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

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

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

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

14 (2) An error or omission in this collection or any reference work cited in
15 this collection is not a reason for invalidating a plea, conviction, or sentence or
16 for not imposing a mandatory sanction or authorizing a discretionary
17 disqualification.

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

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

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

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

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

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

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

16 § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL
17 PROCEEDING

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

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

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

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

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

9 (D) having the government take your property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) Prior to the completion of a sentence, an individual in the custody of the
4 Commissioner of Corrections shall be given written notice 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) For persons sentenced to incarceration, the notice shall be provided not
15 more than 30 days and at least 10 days before completion of the sentence. If
16 the sentence is for a term of less than 30 days then notice shall be provided
17 when the sentence is completed.

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

1 § 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

2 AMBIGUITY

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

7 (b) A law creating a collateral consequence that is ambiguous as to whether
8 it imposes an automatic mandatory 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 discretionary disqualification.

11 § 8008. DECISION TO DISQUALIFY

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

1 whether the individual has been granted relief such as an order of limited relief
2 or a 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 mandatory 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 mandatory
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 mandatory 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 mandatory sanction to the extent
14 provided in the order.

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.

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 mandatory sanctions not sooner
21 than 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 mandatory 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 mandatory sanctions,
2 except those listed in section 8012 of this title and any others specifically
3 excluded in the certificate.

4 (e) If a mandatory 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. MANDATORY 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 mandatory 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 (3) ineligibility for employment by law enforcement agencies, including
17 the Office of the Attorney General, State's Attorney, police departments,
18 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 (f) If the Court grants in part or denies a petition under section 8010 or
17 8011 of this title, the Court may order that the person not petition for relief for
18 that particular offense under either section for a period not to exceed five
19 years.

1 § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF
2 DUE CARE

3 In a judicial or administrative proceeding alleging negligence or other fault,
4 an order of limited relief or a certificate of restoration of rights may be
5 introduced as evidence of a person’s due care in hiring, retaining, licensing,
6 leasing to, admitting to a school or program, or otherwise transacting business
7 or engaging in activity with the individual to whom the order was issued, if the
8 person knew of the order or certificate at the time of the alleged negligence or
9 other fault.

10 § 8015. VICTIM’S RIGHTS

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

15 § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

1 § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

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

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

8 Sec. 2. EFFECTIVE DATE

9 This act shall take effect on July 1, 2014.