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MEMORANDUM

OFFICE OF THE ATTORNEY GENERAL

TO: House Committee on Judiciary

FROM: John Treadwell, AAG

RE: Uniform Collateral Consequences of Conviction Act (H.413) – Amendments

DATE: February 5, 2014

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The Vermont Attorney General’s Office proposes the following changes to H. 413 as introduced.

I. Definitions – § 8002

- (2) “Collateral sanction” should be amended to “mandatory sanction.”
- (6) “Disqualification” should be amended to “discretionary disqualification.”

The definition of person in subsection (8) is unnecessary. 1 V.S.A. § 128.

II. The obligation to collect and update collateral consequences – § 8004

The Office proposes that collection and publication of such a list would be accomplished by Legislative Counsel. See, e.g., 2 V.S.A. §§ 404 and 421.

III. Procedures for notifying defendants and inmates – §§ 8005 and 8006

The proposal should clarify that the notice is to be provided at the time of initial appearance.

Amending § 8005(a) as follows would clarify this point:

- (a) ~~When an individual receives formal notice that the individual is charged with an offense~~ At the initial appearance to face an information or indictment a defendant shall be provided written notice of potential collateral consequences. The notice shall be attached to the information or indictment and the Court shall cause shall contain information substantially similar to the following to be communicated to the individual:

(1) .....

The provisions relating to changes of plea appear in both § 8005(b) and § 8006(a). I would suggest moving the provisions of § 8006(a) to § 8005. This would make that section refer to notice as part of the adjudicative process. § 8006 then would relate to notice to be provided by the Department of Corrections.

Amending § 8005(b) as follows would accomplish this:

(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.

(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.

Amending § 8006 to specifically address notice to be provided at discharge from custody could be accomplished by amending that section as follows.

(a) Prior to the completion of a sentence an individual in the custody of the Commissioner of Corrections ~~An individual convicted of an offense shall be given written notice, as provided in subsections (b) and (c) of this section,~~ 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) The Court shall provide the notice in subsection (a) of this section as a part of sentencing. For persons sentenced to imprisonment, home confinement, or pre-approved furlough, 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) If an individual is sentenced to imprisonment or home confinement, the Department of Corrections shall provide the notice in subsection (a) of this section not more than 30 days and at least 10 days before discharge or release to community supervision. For persons serving probationary sentences, the notice shall be provided not more than 30 days and at least 10 days before expiration of the term of probation. If probation is for an indeterminate period, notice shall be provided at the time the Court orders discharge from probation.~~

#### IV. Application to Vermont consequences alone - § 8003

The language of the bill should clearly state that relief may only be had from consequences imposed by Vermont law or administrative regulations. Thus, petitioners cannot seek relief from sanctions imposed by federal statutes. Nor could persons seek relief from consequences imposed by private individuals or organizations.

This could be made more explicit by the following amendment to § 8003.

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

...

- (4) seeking relief from a collateral consequence imposed by another State or the United States or a subdivision, agency or instrumentality thereof.
- (5) seeking relief from a collateral consequence imposed except by operation of law or administrative regulation.

#### V. Excluded collateral sanctions § 8012

Motor vehicle license suspensions imposed for DUI and other serious criminal motor vehicle offenses should not be subject to relief.

## VI. Successive filings - § 8013

Specific language will need to be included to provide the Courts with the authority to limit repetitive filings of petitions for relief under the chapter. An amendment to § 8013 would accomplish this.

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