

**A New Look at a Very Old Subject:
The Uniform Collateral Consequences of Conviction Act**

By Margaret Colgate Love¹

In the past twenty years, a relentlessly punitive political environment has given rise to a wide-ranging network of collateral penalties and disqualifications that isolate and stigmatize those convicted of crime long after the sentence imposed by the court has been fully served. As Jeremy Travis, President of John Jay College, has noted, “In this brave new world, punishment for the original offense is no longer enough; one’s debt to society is never paid.” However, a new act approved in July 2009 by the Uniform Law Commission promises to provoke a lively discussion in state legislatures nationwide about how to reconcile collateral consequences with pragmatic data-driven crime reduction strategies.

The Uniform Collateral Consequences of Conviction Act (UCCCA) represents the first systematic effort by a mainstream law reform group to address the barriers to reentry and reintegration that are frequently the most important and lasting results of a conviction. Collateral consequences discourage people with a criminal record from reestablishing themselves as productive members of society, and thereby burden communities with the costs of increased recidivism -- costs that tend to fall disproportionately upon communities of color. Thus, collateral consequences pose issues not simply of fairness to convicted persons and their families, but of public safety and fiscal responsibility as well.

The idea that those convicted of crime could be denied some rights and benefits of citizenship is certainly not new. But in recent years collateral consequences have become more important and more problematic for three reasons: there are more of them, they affect more people, and their effects are more severe and long-lasting. Now that criminal

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background checking has become routine for most benefits and opportunities, it is difficult for anyone who has ever been convicted of a crime to put their past behind them. Aptly described as “invisible punishment,” collateral consequences may restrict a person’s ability to find housing and earn a living, to get an education and serve in the military, to vote and run for public office, to qualify for insurance or a license or a loan, to care for their children and maintain family ties, to become a citizen, and even to volunteer in the community. Non-citizens are automatically subject to deportation upon conviction of almost any felony, no matter how long they have lived in the United States or how strong their ties here. While some collateral consequences are reasonably related to a concern for public safety, most apply entirely without regard to their appropriateness in a particular situation.

Persons charged with a crime are rarely alerted to the fact that upon conviction their legal status will permanently change, sometimes in ways that will be devastating to them and to their families. Indeed, the judge and lawyers in the case are often unaware of collateral consequences that will predictably have a substantial impact upon a defendant. Few jurisdictions provide a reliable way of avoiding or mitigating categorical restrictions based solely on conviction even years after the fact. Fewer still give decision-makers useful guidance in applying disqualifications on a case-by-case basis, or a measure of protection against liability. The UCCCA is designed to address these systemic shortcomings in the legal system.

The key provisions of the UCCA are as follows:

- All collateral consequences contained in state laws and regulations, and provisions for avoiding or mitigating them, must be collected in a single document. In fulfilling their obligations under the Uniform Act, jurisdictions will be assisted by the federally-financed effort to compile collateral consequences for each jurisdiction that was authorized by the Court Security Act of 2007.
- Defendants must be notified about collateral consequences at important points in a criminal case: At or before formal notification of charges, so a defendant

can make an informed decision about how to proceed; and at sentencing and when leaving custody, so that a defendant can conform his or her conduct to the law. Given that collateral consequences will have been collected in a single document, it will not be difficult to make this information available:

- Collateral sanctions may not be imposed by ordinance, policy or rule, but must be authorized by statute. An ambiguous law will be considered as authorizing only discretionary case-by-case disqualification.
- A decision-maker retains the ability to disqualify a person based on a criminal conviction, but only if it is determined, based on an individual assessment, that the essential elements of the person's crime, or the particular facts and circumstances involved, are substantially related to the benefit or opportunity at issue.
- Convictions that have been overturned or pardoned, including convictions from other jurisdictions, may not be the basis for imposing collateral consequences. The Act gives jurisdictions a choice about whether to give effect to other types of relief granted by other jurisdictions based on rehabilitation or good behavior, such as expungement or set-aside. Charges dismissed pursuant to deferred prosecution or diversion programs will not be considered a conviction for purposes of imposing collateral consequences.
- The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry (Order of Limited Relief) and the other after a period of law-abiding conduct (Certificate of Restoration of Rights). The Order of Limited Relief permits a court or agency to lift the automatic bar of a collateral sanction, leaving a licensing agency or public housing authority, for example, free to consider whether to disqualify a particular individual on the merits. A Certificate of Restoration of Rights offers potential public and private employers, landlords and licensing agencies concrete and objective information about an individual under consideration for an opportunity or benefit, and a degree of assurance about that individual's progress toward rehabilitation, and will thereby facilitate the reintegration of individuals whose behavior demonstrates that they are making efforts to conform their conduct to the law.

- 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.

In the coming months and years, as the UCCCA is debated in legislatures across the Nation, law-makers and policy-makers will have an opportunity to take a closer look at the issues of fairness, efficiency, and public safety posed by our present regime of collateral consequences. Adoption of this Act's procedural framework promises to produce a more reasoned and functional approach to the way collateral consequences are interpreted and administered.