

Table 1. Operative Provisions of the 2010 Uniform Act

This table presents an abbreviated description of the operative provisions of the 2010 Uniform Act. Readers should refer to the pdf version of the Act at the University of Pennsylvania Law School's web site for the complete text and accompanying commentary to the revised Act. http://www.law.upenn.edu/bll/archives/ulc/ucsada/2010final_amends.pdf.

Omitted sections relate to matters associated with statutory interpretation.

Section 4. Identification, Collection, and Publication of Laws Regarding Collateral Consequences.

Requires state to identify all state laws, whether constitutional, statutory, or regulatory, that impose a collateral sanction on criminal offenders (and any provisions that may afford relief from such a consequence) and compile a list of citations to these provisions together with the provisions' text or a summary. This list and summary must be published on the Internet and available to the public. Its purpose is to assist judges, prosecutors, defense lawyers, probation and parole officers, legislators, and offenders. Collecting these laws in one place and describing them "in simple, plain language, would make the formal written law knowable" to offenders and assist them in understanding the consequences of a plea. (Drafting Committee Comment, Section 4.)

Section 5. Notice of Collateral Consequences in Pretrial Proceeding and at Guilty Plea.

Mandates that individuals charged with an offense receive explicit notice about collateral consequences in a form substantially similar to the following: "If you plead guilty or are convicted of an offense you may suffer additional legal consequences beyond [criminal penalties]. These consequences may include: being unable to get or keep some license, permits, or jobs...." The notice must include a warning that non-citizens may be deported or denied citizenship. (Note that Alaska already requires this notice to non-citizens. See Alaska R. Crim. P. 11(c)(3)(C).) The warning must also direct offenders to the web site where all of the collateral consequences are listed. Judges must confirm that offenders received and understood this warning before accepting a plea.

Section 6. Notice of Collateral Consequences at Sentencing and Upon Release.

Ensures that at sentencing and upon release offenders receive notice of possible collateral consequences, the Internet address where collateral consequences are listed, and that there may be ways to obtain relief from these consequences. They must also be given contact information for any agencies that assist individuals in obtaining such relief. In addition, the notice must include information on when an individual convicted of an offense may vote under state law.

Section 7. Authorization Required for Collateral Sanction; Ambiguity.

Limits imposition of blanket collateral sanctions to those specifically created by statute or ordinance, or through formal regulatory rulemaking. Any sanction that is ambiguous in whether it is mandatory or discretionary shall be construed to be discretionary only. (Drafting Committee Comment, Section 7.)

Section 8. Decision to Disqualify.

Addresses discretionary disqualification of offenders from state benefits or opportunities. It requires that those entrusted with deciding whether to impose a disqualification make an individualized assessment of whether a particular offender should be denied the benefit or opportunity at issue. Among the factors the decision-maker must consider are the particular facts of the offense and their relation to the benefit or opportunity at issue, the effect the decision might have on third parties, and whether the offender has been granted some type of relief from collateral consequences. This section would not "change existing law to the extent that it allows rejection of an applicant based on lack of qualification or misconduct unrelated to a criminal conviction," nor would it authorize or require "preferences for applicants who have criminal convictions." (Drafting Committee Comment, Section 8.)

Section 9. Effect of Conviction by Another State or the United States; Relieved or Pardoned Conviction.

Treats a conviction under federal law or in another state like a conviction in Alaska for purposes of imposing a collateral consequence under Alaska law. A conviction that has been vacated, reversed, or overturned on grounds other than rehabilitation or good behavior may not serve as a basis for imposition of collateral consequences. A pardon issued by another state or the federal government would have the same effect as a pardon issued in Alaska. This section also provides several alternative provisions states might consider in addressing the effect of out of jurisdiction restoration of rights and related issues. This section does not address the effect of judgments of tribal courts; the significant disparity among states in how tribal court judgments are treated was deemed to preclude a uniform model. (Drafting Committee Comment, Section 9.)

Section 10. Order of Limited Relief.

Provides a mechanism pursuant to which offenders may petition a court or a designated board or agency for "an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing." This would lift the automatic bar of a collateral sanction, but allow agencies to decide on an individualized basis whether a benefit or opportunity should be denied to a former offender.

Section 11. Certificate of Restoration of Rights.

Would establish a designated board or agency authorized to issue a certificate of restoration of rights to those convicted of a criminal offense. Such a certificate would relieve the holder of all collateral sanctions other than those specifically excluded in the certificate, and those designated by statute as not subject to an order of limited relief or restoration of rights. (See following section.) Restoration of rights would be available only where an individual's petition establishes that a statutorily specified time period has elapsed since the individual's most recent conviction and release from confinement, and that the individual is engaged in lawful, productive activity and does not pose an unreasonable public risk.

Section 12. Collateral Sanctions not Subject to Order of Limited Relief or Certificate of Restoration of Rights.

Lists those collateral sanctions that cannot be avoided under an order of limited relief or certificate of restoration of rights. Examples listed include sex offender registration requirements and motor vehicle license actions resulting from driving under the influence convictions. If the state constitution imposes collateral consequences (such as the restrictions on felon voting under the Alaska Constitution) relief under this Act would not remove them. (Drafting Committee Comments, Section 12.)

Section 13. Issuance, Modification, and Revocation of Order of Limited Relief and Certificate of Restoration of Rights.

Sets out process for granting, modifying, or revoking relief from collateral consequences and identifies standards for restriction or revocation of an order of relief. Such orders could not be granted without notice to the prosecuting agency. Once granted, an order may be restricted or revoked where the issuing board or agency finds "just cause by a preponderance of the evidence." "Just cause includes subsequent conviction of a felony...." Offenders would be entitled to notice of a pending action to restrict or revoke, and a hearing.

Section 14. Reliance on Order or Certificate as Evidence of Due Care.

Provides that in a negligence lawsuit an order of limited relief or certificate of restoration of rights may be introduced as evidence of due care in hiring, licensing, or admitting to a school or program a former offender.

Section 15. Victim's Rights.

Allows victim to participate in proceedings for issuance, modification, or revocation of order of limited relief or certificate of restoration of rights.