

RE-ENTRY TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
June 9, 2017

FY17-RE #01. Allow Orders of Collateral Relief after the time of sentencing.

Recommendation FY17-RE #01

Update orders of collateral relief in statute to:

- Allow eligible individuals to request an order of collateral relief after the time of sentencing,
- Eliminate duplicative statutory language regarding orders of collateral relief; and
- Create an order of collateral relief in the Children's Code.

Encourage the judiciary to develop a mechanism that will allow the identification of instances when orders of collateral relief are requested, granted, or denied.

Discussion

The impact of a criminal conviction or adjudication can be far greater than the sentence imposed by the judge. Hundreds of federal, state, and local laws impose additional sanctions and disqualifications affecting employment, housing, public benefits, and other civil rights and privileges.¹ These collateral consequences can be detrimental to individuals' ability to lead a productive crime-free life,² and can have a negative impact on society as a whole.³

Similar to many other states,⁴ Colorado allows judges to issue orders of collateral relief. The orders can relieve eligible individuals from most collateral consequences, when doing so will improve the individual's likelihood of successful reintegration and is in the public's interest.⁵ This mechanism should serve as a valuable tool for allowing society to punish and deter crime, while simultaneously allowing its members to remain productive citizens.⁶

The current statutory mechanism for orders of collateral relief was enacted in 2013 and has since remained unchanged.⁷ Although well-intentioned, it has several shortfalls that limit the use and effectiveness of the orders.

¹ See Mark Evans, Colo. State Public Defender's Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law* (2014 ed.), available at coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/.

² Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also J.H. Laub & R.J. Sampson (2001). Understanding desistance from crime, *Crime and Justice*, 28(1), 1-69 (doi: [10.1086/652208](https://doi.org/10.1086/652208)); National Research Council (2008), *Parole, Desistance from Crime, and Community Integration*, Committee on Community Supervision and Desistance from Crime (see pp. 23-24 at cdpsdocs.state.co.us/ccij/Resources/Ref/NCR2007.pdf); and J. Radice (2012), Administering justice: Removing statutory barriers to reentry, *University of Colorado Law Review*, 83(3), 715-779 (see p. 719 at colorado.edu/law/sites/default/files/Vol.83.3.pdf).

³ A. Christman & M.N. Rodriguez (2016, August). *Fact Sheet: Research Supports Fair-Chance Policies*. The Nat'l Emp't Law Project (at nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf); J. Roberts (2011), Why misdemeanors matter: Defining effective advocacy in the lower criminal courts, *U.C. Davis Law Review*, 45(2), 277-372 (see pp. 300-301 at lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2_Jenny_Roberts.pdf); J. Schmitt & K. Warner (2010), *Ex-Offenders and the Labor Market*, Center for Econ. & Policy Research (at cepr.net/documents/publications/ex-offenders-2010-11.pdf).

⁴ Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.Y. Correct. Law §§ 700 to 706; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

⁵ §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016.

⁶ M. C. Love (2011, Spring), Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act, *Howard Law Journal*, 54(3), 753-793 (see p. 760-764, at law.howard.edu/sites/default/files/related-downloads/how_54_3.pdf#page=261); Radice, *supra* note 2, at pp. 727-732.

⁷ Ch. 289, sec. 11, § 18-1.3-107, 2013 Colo. Sess. Laws 1548; Ch. 289, sec. 12, § 18-1.3-213, 2013 Colo. Sess. Laws 1550; Ch. 289, sec. 13, § 18-1.3-303, 2013 Colo. Sess. Laws 1553.

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First, courts currently can issue orders of collateral relief only at the time an individual is sentenced.⁸ This can facilitate success for people who are required to serve their sentence in the community. The orders can provide no assistance, however, for people who are attempting to better their lives and move beyond the collateral consequences of a conviction after their sentence has been completed.

Second, the current statutory scheme excludes a successfully completed deferred judgment and sentence (DJS) from the definition of “conviction.”⁹ Hence, an individual who has successfully completed a DJS is ineligible for an order of collateral relief. A successfully completed DJS can, however, have long lasting collateral consequences in licensure, employment, and other areas.¹⁰

Third, orders of collateral relief are currently unavailable for juvenile adjudications. Adjudications can, however, still result in the imposition of collateral consequences.¹¹

Finally, the judiciary does not consistently track when orders of collateral relief are requested or granted.¹² This lack of data renders it virtually impossible to determine whether the orders are serving their intended purpose.

This recommendation includes one non-statutory element:

1. Track orders of collateral relief.

There is currently sparse data on when orders of collateral relief are requested, granted, or denied. While a code currently exists in the judiciary’s case management system to capture when orders are granted (COLR), this code is not reliably used for its intended purpose. Additionally, applications for collateral relief are captured using the generic motion or petition codes. If no relief is granted, this is captured only in a minute order. It is thus difficult to measure how often orders of collateral relief are being used and the scope of their effectiveness. CCJJ recommends that the judiciary develop a mechanism that will allow it to easily identify when orders of collateral relief are requested, granted, or denied.

This recommendation includes three statutory elements (delineated below):

- 1. Amend section 18-1.3-107.**
- 2. Eliminate duplicative statutes.**
- 3. Establish an equivalent mechanism as section 19-2-927 of the Children’s Code.**

⁸ §§ 18-1.3-107(1), 18-1.3-213(1), 18-1.3-303(1), C.R.S. 2016.

⁹ §§ 18-1.3-107(8)(c), 18-1.3-213(8)(c), 18-1.3-303(8)(c), C.R.S. 2016.

¹⁰ See, e.g., § 24-5-101(3)(d), C.R.S. 2016.

¹¹ See Mark Evans, Colo. State Public Defender’s Office, *The Consequences of Adjudication: Sanctions Beyond the Sentence for Juveniles Under Colorado Law* (2014), available at coloradodefenders.us/consequences-of-conviction-2/consequences-of-juvenile-adjudication/.

¹² Sherri Hufford, Colorado Division of Probation Services, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).

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Proposed Statutory Language

These changes would allow courts to grant orders of collateral relief after the time of sentencing, when doing so would improve an individual's likelihood of successfully reintegrating into society and is in the public's interest. They would allow similar orders for people adjudicated for a juvenile offense. The changes would not alter currently-existing eligibility exclusions based on an individual's type of offense, do not expand the types of consequences to which an order of collateral relief can apply, and do not change the standard for granting relief. They simply make this tool available to eligible individuals who, after the time of sentencing, are attempting to obtain the jobs, housing, or benefits they need to be productive members of society.

1. Amend section 18-1.3-107 as follows.

(1) At the time a defendant enters into **A SENTENCE OR AT ANY TIME THEREAFTER** ~~an alternative to sentencing in this part 1,~~ upon the request of the defendant or upon the court's own motion, a court may enter an order of collateral relief **IN THE CRIMINAL CASE** for the purpose of preserving or enhancing the defendant's employment or employment prospects and to improve the defendant's likelihood of success in the **COMMUNITY.** ~~alternative to sentencing program.~~

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent ~~Colorado bureau of investigation fingerprint-based~~ criminal history records check. The state court administrator may produce an application form that an applicant may submit in application.

(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within ten days after filing the application with the court.

(C) ANY APPLICATION FILED AFTER A SENTENCE HAS BEEN IMPOSED SHALL INCLUDE A COPY OF A RECENT COLORADO BUREAU OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK, THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE OF [INSERT AMOUNT] DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE APPLICATION. FILING FEES ARE SUBJECT TO WAIVER UPON A FINDING THAT THE APPLICANT IS INDIGENT.

(3) An order of collateral relief may relieve a defendant of any collateral consequences of the conviction, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the defendant in **REINTEGRATING INTO THE COMMUNITY.** ~~successfully completing probation or a community corrections sentence.~~

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(4)(a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, division of youth corrections in the department of human services, or any other law enforcement agency in the state of Colorado.

(b) A court shall not issue an order of collateral relief if the defendant:

(I) Has been convicted of a felony that included an element that requires a victim to suffer permanent disability;

(II) Has been convicted of a crime of violence as described in section 18-1.3-406; or

(III) Is required to register as a sex offender pursuant to section 16-22-103, C.R.S.

(5) **Hearing.** (a) The court may conduct a hearing **ON ANY MATTER RELEVANT TO THE GRANTING OR DENYING OF THE APPLICATION** or include a hearing on the matter at the defendant's sentencing hearing, ~~on the application or on any matter relevant to the granting or denying of the application~~ and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear argument from the petitioner and the district attorney.

(6) **Standard for granting relief.** (a) A court may issue an order of collateral relief if the court finds that:

(I) The order of collateral relief is consistent with the applicant's rehabilitation; and

(II) Granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest.

(b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.

(c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or proof that the defendant is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications thereby relieved **MAY** ~~shall~~ be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the defendant noticed in his or her motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the Colorado integrated criminal justice information system to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the applicant's record in the Colorado crime information center that the order of collateral relief was issued.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Collateral consequence" means a collateral sanction or a disqualification.

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(b) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(c) **FOR PURPOSES OF THIS SECTION**, "conviction" or "convicted" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or a conviction of a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a **CRIME, felony or misdemeanor**. "Conviction" or "convicted" also includes having received a deferred judgment and sentence. ~~except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence.~~

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

2. Eliminate duplicative statutes.

When the General Assembly created orders of collateral relief, it enacted substantively duplicative statutes in parts 1, 2, and 3 of article 1.3 of title 18. Presumably the legislature's intent was to ensure the orders were available when eligible defendants were being sentenced to probation, community corrections, or another alternative in sentencing. If the changes proposed above are enacted by the legislature, otherwise eligible defendants will be able to obtain an order of collateral relief after the imposition of any type of sentence. CCJJ recommends the repeal of sections 18-1.3-213 and 18-1.3-303, because these duplicative provisions will no longer be necessary.

3. Establish an equivalent mechanism as section 19-2-927 of the Children's Code.

Orders of collateral relief should be available to eligible individuals who are subject to collateral consequences resulting from a juvenile adjudication. CCJJ recommends enacting section 19-2-927 to facilitate their availability. The proposed text of new section 19-2-927 was created by accepting all proposed changes to section 18-1.3-107, then modifying it to apply to juvenile adjudications.

(1) At the time an individual adjudicated as a juvenile enters into a sentence or at any time thereafter, upon the request of the adjudicated juvenile or upon the court's own motion, a court may enter an order of collateral relief in the juvenile case for the purpose of improving the adjudicated juvenile's likelihood of success in the community.

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent criminal history records check. The state court administrator may produce an application form that an applicant may submit in application.

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(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within ten days after filing the application with the court.

(c) Any application filed after a sentence has been imposed shall include a copy of a recent Colorado bureau of investigation fingerprint-based criminal history records check, the filing fee required by law, and an additional filing fee of [insert amount] dollars to cover the actual costs related to the application. Filing fees are subject to waiver upon a finding that the applicant is indigent.

(3) An order of collateral relief may relieve an adjudicated juvenile of any collateral consequences of the adjudication, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the adjudicated juvenile in successfully reintegrating into the community.

(4)(a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, division of youth corrections in the department of human services, or any other law enforcement agency in the state of Colorado.

(b) A court shall not issue an order of collateral relief if the adjudicated juvenile:

(I) Has been adjudicated for a felony that included an element that requires a victim to suffer permanent disability;

(II) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or

(III) Is required to register as a sex offender pursuant to section 16-22-103, C.R.S.

(5) **Hearing.** (a) The court may conduct a hearing on any matter relevant to the granting or denying of the application, or include a hearing on the matter at the juvenile's sentencing hearing, and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear argument from the petitioner and the district attorney.

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(b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.

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(c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or adjudication or proof that the adjudicated juvenile is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications thereby relieved may be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the adjudicated juvenile noticed in his or her motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the Colorado integrated criminal justice information system to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the applicant's record in the Colorado crime information center that the order of collateral relief was issued.

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(b) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's adjudication for an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(c) For purposes of this section, "adjudication" or "adjudicated" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or an adjudication for a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a crime. "Adjudication" or "adjudicated" also includes having received a deferred adjudication.

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's adjudication for an offense.