

NATIONAL INVENTORY OF THE COLLATERAL CONSEQUENCES OF CONVICTION

Project Description

Persons convicted of crime are subject to a wide variety of legal and regulatory sanctions and restrictions in addition to the sentence imposed by the court. These so-called “collateral consequences” of conviction have been promulgated with little coordination in disparate sections of state and federal codes, which makes it difficult for anyone to identify all of the penalties and disabilities that are triggered by conviction of a particular offense. While collateral consequences have been a familiar feature of the American justice system since colonial times, they have become more important and more problematic in the past 20 years for three reasons: they are more numerous and more severe, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of legal limbo because at one point in their past they committed a crime.

Some collateral consequences serve an important and legitimate public safety or regulatory function, such as keeping firearms out of the hands of violent offenders, protecting children or the elderly from persons with a history of abuse, or barring people convicted of fraud from positions of public trust. Others are directly related to the particular crime, such as registration requirements for sex offenders, driver’s license restrictions for those convicted of serious traffic offenses, or debarment of those convicted of procurement fraud. But many others apply across the board to people convicted of crimes, without regard to any relationship between crime and consequence, and frequently without consideration of how long ago the crime occurred or what the individual has managed to accomplish since. Many consist of nothing more than a direction to conduct a criminal background check, and an unspoken warning that it is safest to reject anyone with a record. When convicted persons are limited in their ability to support themselves and to participate in the political process, this has

both economic and public safety implications. When society is discouraged from recognizing and rewarding genuine rehabilitation, this has moral and social implications as well. When particular restrictions have no apparent regulatory rationale, and cannot be avoided or mitigated, they function as additional punishment, though without due process protections.

Of particular relevance in the present context is the fact that collateral consequences are scattered throughout the codebooks and frequently unknown even to those responsible for their administration and enforcement. The Supreme Court has recognized that when a person considering a guilty plea is unaware of severe consequences that will inexorably follow, this raises questions of fairness and implicates the constitutional right to effective assistance of counsel. *See Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). When the obligations and restrictions imposed as a result of conviction are unknown to those individuals directly affected by them, it invites noncompliance with the law. When legislatures and executive officials are unaware of the full range of penalties and disabilities imposed by law on convicted individuals, it is unlikely that they will take the opportunity to reconsider them, in whole or in part.

In 2003 the ABA urged jurisdictions to identify and codify collateral sanctions and to limit the imposition of discretionary disqualifications,¹ and a few years later the Uniform Law Commission made similar recommendations. Section 4 of the Uniform Collateral Consequences of Conviction Act requires each jurisdiction to compile and make available on the internet an inventory of any provision in the state constitution, statutes, and administrative rules that create collateral sanctions and authorize disqualifications with citations and short descriptions.² Understanding that this would be a time-consuming and expensive task for states acting independently, and that the absence of an inventory would likely discourage enactments, the drafters of the

¹ See ABA STANDARDS FOR CRIMINAL JUSTICE, COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS, Standards 19-2.1 and 19-3.1 (3d ed. 2003).

² See UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT § 4 (2010), *available at* http://www.law.upenn.edu/bll/archives/ulc/ucsada/2010_final_amends.pdf#search=%22uniform%22

Uniform Act approached Congress for assistance. The result was a provision in the Court Security Improvement Act of 2007 directing the National Institute of Justice to collect and analyze the collateral consequences for each U.S. jurisdiction.³ The ABA Criminal Justice Section won the contract to perform this work, and the result is the National Inventory of the Collateral Consequences of Conviction.

Through the National Inventory, each jurisdiction's collateral consequences will be made accessible to the public through a website that can be searched and sorted by categories and keywords. The website will make it possible for criminal and civil lawyers to determine which collateral consequences are triggered by particular categories of offenses, for affected individuals to understand the limits on their rights and opportunities, and for lawmakers and policy advocates to understand the full measure of a jurisdiction's sanctions and disqualifications. It will also be possible through the website to perform inter-jurisdictional comparisons and national analyses.

The User Guide posted on the Inventory website contains a set of "frequently asked questions" intended to explain the protocols used in constructing the National Inventory, and the analytical principles and coding conventions used in sorting laws and rules into various categories. A disclaimer states that the information available through the Inventory does not constitute legal advice, that the construction of the database has not included an examination of judicial interpretations, and that it generally describes collateral consequences conservatively, in the sense that ambiguous provisions are interpreted to impose more severe rather than less severe penalties.

Work on the NICCC commenced in early 2012, and it was launched in September 2012 with the collateral consequences from nine states and the federal system. Additional states are being entered into the Inventory database and uploaded to the website as their laws and rules are identified and analyzed. The initial coding effort has a completion date of December 2013, and plans are in the works to secure the Inventory's ongoing maintenance.

³ Pub. L. 110-177 § 510, 121 Stat. 2534, 2544.