

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments from June 17, 2016
at the Brady Building, 5th floor conference room

Commissioners absent: Dean Williams, Jeff Jessee, Brenda Stanfill, Greg Razo

Participating: Tayler Matthew, Central Peninsula BH; Doug Wooliver (ACS); Kara Nelson (Haven House); Jimmie Chynoweth (DOC Parole Board); Kathy Hansen, OVR; Deb Periman (UAA)

Staff present: Mary Geddes, Susie Dosik

Next meeting is: TBD

Ban the Box status. Leslie Ridle had written Mary Geddes stating that Ban the Box would be considered by DOA Commissioner and others on June 17. However, we have not yet heard back as to the response.

Barrier Crimes. DHSS proposals to amend its regulations re registry and waiver process for barrier crimes have not yet been finalized. ACJC hopes to work together with DHSS to review the barrier crimes matrix.

Clemency process. The pardon power, except in cases of impeachment, is vested in the Governor alone, “subject to procedure prescribed by law.” Alaska Const. art. III, § 21; AS § 33.20.070. The power has been rarely used, with only 188 grants since statehood and no grants at all since 2006. The last gubernatorial grant of clemency - during the waning days of the Murkowski administration – spurred legislative reforms.

By statute, the governor “may not grant executive clemency to a person” unless the case has first been referred for investigation to the Board of Parole and at least 120 days have passed. § 33.20.080(a). The Board is required to investigate each case so referred and report to governor within 120 days. It must also, within five days of receipt of notice from governor, notify the Department of Law, the Office of Victim’s Rights, and the victim if a crime of violence or arson. § 33.20.080(b).¹

A governor can theoretically grant relief to a class of persons (e.g. like pardoning all persons previously convicted of Minor Consuming). Oregon has recently enacted measures pertaining to marijuana convictions. Deb Periman thinks that the procedures prescribed by the Alaska Legislature in 33.20.080 (a) could arguably bar class-wide relief, since the statutory mechanism requires individual case scrutiny. Mary Geddes thinks that class wide relief could be made conditional, on fulfillment of certain requirements.

Deb Periman noted that clemency can come in many forms (commutation, pardon, etc). Periman mentioned a pending law suit in Virginia challenging that state’s governor’s recent action. He granted a specific form of clemency – to right to vote – to 200,000 persons. In Virginia, both state constitution and statute permanently bar all felons from voting or holding office.² Eligibility for restoration depends upon completing all terms of sentence, including payment of all fines and restitution.

¹From Collateral Consequences Resource Center website pages on Alaska, (<http://ccresourcecenter.org/state-restoration-profiles/alaska-expungment-pardon-sealing/>) citing to Ronald S. Everett & Deborah Periman, “The Governor’s Court of Last Resort:” An Introduction to Executive Clemency in Alaska, 28 Alaska L. Rev. 58 (2011).

²In Alaska, any person convicted of a felony who is in prison, on parole or on probation loses their right to vote, see serve on a jury, and by implication, their right to run or hold public office. Those rights are automatically restored upon completion of sentence.

Kara Nelson asked whether the group had previously discussed certificates of rehabilitation, in the absence of any other clemency measures. She had heard that NY's system works relatively well. Susie Dosik reported on her past study of certificates; she was underwhelmed with their value and with the rate at which they have been issued.

Jimmie Chynoweth from the DOC/Parole Board office reported that the Parole Board continues to receive clemency applications but governors have not chosen to review them for the past ten years. Although there was once a proposal to reform the Executive Branch process, it has not been implemented. Most who apply have finished their sentences. At least half of the persons who applied specifically mention employment barriers. Many are also concerned about the loss of firearm rights. Jimmie noted that a lot of the applicants have only a single conviction. Doug Wooliver asked, if without an accompanying expungement, wouldn't the court system still maintain a court record of conviction, and isn't that the relief that people are really seeking. Deb noted that it's the permanent record of conviction which really disables job seekers. There was further discussion about the difficulty of overcoming the digital footprint. Deb Periman noted that some states do have expungement provisions, and some states deal with the perpetual electronic record problem by granting immunity to employers. Kathy Hansen expressed concern with expungement measures. Perhaps if the act is significant enough to punish, it should not be forgotten. She saw expungement as a last resort.

The group then specifically discussed how an Alaska clemency process might work. Deb Periman likes the Connecticut model which essentially allows the Governor to delegate the function to an executive branch agency, i.e. the Parole Board. The Governor restricts which persons can apply for clemency based on the type of offense and the number of years since it took place. Those restrictions limit eligibility. Having this delegation to the Parole Board insulates the Governor from blowback, by de-politicizing the process and giving it to an agency which already has investigative functions. Our Parole Board does have staff which could be assigned to the clemency function, but clearly a change in the culture might result in a need for more staff.

There was a broad-ranging discussion of whether there should be limits on what offenses might be considered for clemency. Without deciding, we discussed various 'funnels' for clemency eligibility: misdemeanor/felony and unclassified/classified dichotomies; property, non-violent and drug offenses; first-only convictions versus multiple; driving offenses and status offenses.

Jimmie Chynoweth thought it would be important to consider the length of the time elapsed since re-offense (rather than the date of the crime) and that any elapsed time exclude time on probation or parole.

Doug Wooliver suggested that cost has to be a paramount consideration and urged the group to consider universal fixes. For example, the automatic removal of certain barriers after 5 years.

With the Commission's schedule in mind (August plenary meeting) Deb Periman agreed to get deeper into the weeds in terms of looking at other statutory schemes for clemency, either with or without expungement provisions, and to sketch out options for recommendations to the Commission.

There was time allowed for public comment but none was offered.

Administrative Clemency: State Comparison

	Alabama	Connecticut	Georgia	Idaho	S. Carolina	Utah
Issuing Agency	Board of Pardons and Paroles	Board of Pardons and Paroles	Board of Pardons and Paroles	Commission of Pardons and Parole	Board of Probation, Parole, and Pardon Services	Board of Pardons and Parole
Authority	Ala. Const. Art. V, § 124 (AL CONST. Amend. No. 38, CONST. of 1901) (providing legislature instead of governor has power to provide for and regulate pardons, retaining governor's authority to commute and reprieve death sentences); Ala. Code § 15-22-1 et seq.; 15-22-36(a).	C.G.S.A. Const. Art. 4, § 13 (giving governor authority to issue temporary reprieves and implicitly authorizing general assembly authority over final action); Conn. Gen. Stat. § 54-1124a et seq (delegating authority to Board)	GA Const. Art. 4, § 2, ¶ II (Board is vested with power of executive clemency, including pardons and removal of disabilities).	ID Const. Art. IV, § 7 (authorizing legislative Board of Pardons; authorizing governor power to act until next Board session)	S.C. Const. Art. IV, § 14 (reserving to governor reprieves and commute death sentence to life imprisonment); S.C. Code Ann. § 24-21-13 (duty of board to consider cases for pardon and any form of clemency)	U.C. 1953, Const. Art. 7, § 12 (creating Board of Pardons and Parole, authorizing Board to commute punishments and grant pardons, authorizing governor to grant clemency through next board session)
Eligibility	Completion of 3 yrs parole or expiration of sentence that was less than 3 yrs. Pardon based on evidence of innocence any time after clear proof filed and approval of convicting judge	<i>Pardons:</i> expiration of parole or probation and 3 yrs after disposition of most recent misdemeanor conviction/5 yrs after disposition of most recent felony conviction. <i>Clemency:</i> while serving sentence of less than 8 yrs, after 50% of sentence served/while serving sentence of more than 8 yrs, after serving 4 yrs. <i>Certificates of employability:</i> while on parole, after successfully completing 90 days/after supervision, following 90 days in community with no new arrests. <i>Expedited pardons:</i> process likely available July 1, 2016 for nonviolent offenses with no victim interest.	<i>Pardon:</i> 5 yrs after completing sentence w/no intervening offenses and all fines, restitution paid <i>Restoration of Civil Rights:</i> 2 yrs after completion of sentence w/no intervening offenses <i>Sex Offender Pardon:</i> 10 yrs after completion of sentence w/no intervening offenses and fines/restitution paid.	<i>Pardon:</i> 3 yrs after discharge of felony or misdemeanor sentence on non-violent and non-sex offense convictions/5 yrs after discharge of felony or misdemeanor sentence on violent crimes, sex crimes, and crimes against persons	<i>Probationers:</i> after discharge from supervision and restitution paid. <i>Parolees:</i> after 5 yrs successful supervision or if maximum parole period is less than 5 yrs, any time after discharge, completion of parole and any restitution payment. <i>Persons discharged from sentence:</i> any time after discharge once any restitution paid <i>Inmates:</i> any time prior to becoming parole eligible on showing of extraordinary circumstances <i>Inmates w/ terminal illness:</i> any time after afflicted with terminal illness w/ life	5 yrs after termination of all offenses, sentences, and supervision with exemplary citizenship and prior application for Expungement Certificate of Eligibility.

	Alabama	Connecticut	Georgia	Idaho	S. Carolina	Utah
					expectancy of one year or less.	
Offenses Covered	Misdemeanors and felonies (state and federal) (treason and impeachment excluded – sex crimes excluded from voting relief)	Misdemeanors and felonies	Misdemeanors and felonies	All offenses except murder, voluntary manslaughter, rape, kidnapping, lewd conduct w/minor, manufacture or delivery of controlled substance/listed offenses referred to governor for decision w/commission recommendation	Misdemeanors and felonies	Misdemeanors and felonies. Excludes treason and impeachment.
Relief Available	Restoration of voting rights and pardons including relief from civil disabilities w/no expungement (separate expungement procedure available for limited offenses)	Certificate of Employability; full pardon and expungement of record (absolute or conditional); clemency	Pardon and Restoration of Rights w/no expungement. (separate expungement process available)	Pardon w/no expungement; Restoration of Firearms Rights (separate expungement process available)	Pardon w/no expungement (separate expungement process available)	Pardon. Separate application for expungement required.

CLEMENCY DISCUSSION

I. The Public Costs of Barriers to Employment Resulting from a Criminal Record In Alaska

- In 2015 there were over 35,000 admissions of Alaskans to correctional facilities, with an average of 5,023 Alaskans in some type of correctional facility each day (Alaska Dept. of Corrections 2015 Offender Profile).
- More than 81% of Alaska Offenders held in institutions in 2015 were released within 36 months of admission (Alaska Dept. of Corrections 2015 Offender Profile), resulting in thousands of individuals moving from a correctional facility back into Alaska communities each year.
- A Sentencing Project study estimated that as of 2011 there were approximately 1,520 Alaska parents in prison; the majority of Alaskans released from prison each year are of parenting age.
- The American Bar Association’s National Inventory of the Collateral Consequences of Conviction cataloged over 1,500 state and federal statutes and regulations that limit the employment prospects of Alaskans with a criminal record.
- Of more than the 200 clemency petitions currently pending in Alaska,¹ more than 50% are from applicants who have been fully released from the correctional system but are experiencing employment difficulties due to their criminal records.
- Loss of employment resulting from a criminal record adversely impacts Alaska’s economy in significant ways:
 - The lost labor output of former offenders reduces the overall economic productivity of the state – researchers studying the national labor market in 2008 estimated that the inability of former offenders to find employment lowered the total male employment rate by 1.5 to 1.7 percentage points. “In GDP terms, these reductions cost the U.S. Economy between \$57 and \$65 billion in lost output.” (Alaska Prisoner Reentry Task Force Five-Year Prisoner Reentry Strategic Plan, 2011-2016). See also, John Schmitt and Kris Warner, *Ex-offenders and the Labor Market*, Center for Economic and Policy Research, <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf> (estimating that “ex-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; and those of less-educated men as much as 6.1to 6.9 percentage points. These employment losses hit ex-offenders hardest, but also impose a substantial cost on the U.S. economy in the form of lost output of goods and services.”)
 - Public funds are diverted from other projects to support the nutritional, housing, medical, and other needs of the children and other family members of former offenders who are unable to find work, as well as of the former offenders themselves
 - Lack of meaningful employment is a key factor driving up recidivism rates: increased recidivism diverts public funds from other projects to cover resulting increases in policing and correctional costs
 - Lack of meaningful employment is a key factor in relapse or increased levels of substance abuse, resulting in diversion of public funds from other projects to cover increased emergency

¹ Although the Executive Clemency Advisory Committee has an “active” status and two members of the current Administration are named members of the three member board, it has not met since _____.

services, hospital admissions, and other medical, mental health, and social welfare needs of former offenders related to substance abuse and treatment

Loss of employment resulting from a criminal record also reduces public safety in significant ways:

- Criminal behavior is statistically far more likely to be repeated when a former offender lacks meaningful employment.
- Joblessness is associated with increases in psychological and physical aggression.
- Unemployment or underemployment is a key predictor of domestic violence, one of the most significant public health and law enforcement challenges in the state.
- Family economic stress contributes to myriad physical and mental disorders including anxiety, sleep problems, digestive ailments, headaches, and increased drug and alcohol use.

II. Executive Action: Authority in Alaska for Clemency

- Article 2, Section 21 of Alaska Constitution provides that, “[s]ubject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures.” There is no limitation specified on the scope of the power or specification that use of the power is limited to individual cases. The same is true of AS 33.20.070, which codifies this power.
- However, AS 33.20.080, added in 2007, establishes procedures the governor must follow in granting clemency, including providing prior notice to the Board of Parole. The Board, in turn, must provide notice of the proposed clemency to any victims and undertake an investigation of each case. Although the purpose of the statute is purely procedural, and not to control who may be granted clemency, all of the statutory terms are written in the singular, suggesting the legislature’s understanding that grants of clemency are normally individualized. Whether this procedural requirement could be construed to bar acts of clemency providing relief to a class of individuals has not been specifically addressed. Such a conclusion seems unlikely given that it would extend the statute’s reach far beyond its stated purpose. However, it would support an argument that the legislative branch has not viewed the executive clemency power as extending to grants of non-individualized clemency. And certainly it raises a separation of powers question. Moreover, as a practical matter, if the procedural requirements of AS 33.30.080 remain unchanged, the logistics of class clemency would be challenging.

III. Other States’ Experiences with Class Clemency

A. Executive Grant of Class Clemency in Virginia

- In April 2016, Virginia’s governor issued an executive order restoring voting rights to a class of felons instead of individually – covered all felons who’ve completed their sentences and released from probation or parole.
- Whether the governor’s power to grant clemency may be applied to a group or is limited to individual cases will be addressed by the Virginia Supreme Court on July 19, 2016 in the adjudication of a lawsuit brought by the Republican Party.

B. Administrative Approval Mechanism (Delegation of Clemency Power to a Board of Parole)

- Six states -- Alabama, Connecticut, Georgia, Idaho, South Carolina, and Utah -- grant pardons to qualifying individuals through an independent board appointed by the governor. Katie R. Van Camp, *The Pardoning Power: Where does Tradition End and Legal Regulation Begin?*, 83 Miss. L. J. 1271, n.93 (2014).
- Connecticut is among the most active of the above in providing relief. It has for decades authorized a state agency, the Board of Pardons and Paroles, to administratively grant relief from collateral consequences – either through a pardon (full or conditional/provisional) or certificate of employability. (See generally, Connecticut Board of Pardons & Parole Pardon FAQ'S, <http://www.ct.gov/bopp/cwp/view.asp?a=4331&q=508292>)
- Individuals are eligible to apply for a pardon three years after a misdemeanor or five years after a felony conviction.
- It is an individualized review not merely of a criminal record, but of the severity of an offense, and the defendant's efforts at rehabilitation. It allows for input from the victim, the community and the prosecutor.
- This procedure appears to be providing fairly significant relief. Over the last three years the board has granted full pardons to 732 individuals (See attached Conn. Board of Pardons and Parole Pardons Statistics by Fiscal Year.)
- Given the current investigative obligation of the Alaska Board of Parole under AS 33.20.080, it does not appear that it would require a significant expansion of the Board's current role to develop this type of administrative clemency here.

Connecticut Board of Pardons and Paroles

**Connecticut Board of Pardons and Parole
Pardons Statistics by Fiscal Year**

PARDONS	2014-2015	2013-2014	2012-2013
Total Applications Received	1103	832	983
Applications Deemed Eligible	963	556	717
Granted (Full, COE/Provisional, Conditional)	317	241	333
Full Pardon	249	206	277
Certificates of Employability/Provisional	68	32	34
Conditional Full Pardons	8	3	22
Total Applications Denied	372	307	381
@ Prescreen	353	293	329
@ Full Hearing	19	14	38
Overall Grant Rate of Pardons	46%	44%	47%
COE Applications Received*	139	*these numbers are part of the total above*	
COE Granted	68		
COE Denied	18		

Please note, in Connecticut an expungement of the applicant’s criminal record is obtained with a Full or Conditional Pardon *only*. Once a Pardon is granted a collaborative effort between Board of Pardons and Paroles, Judicial, State Police, Court Support Services Division, and FBI commences this process. The entire Pardons process can take up to 2 years, depending on the volume of applications received.

As of June 30, 2013 - 175 Granted Pardons pending expungement
As of June 30, 2014 - 262 Granted Pardons pending expungement
As of June 30, 2015 - 178 Granted Pardons pending expungement

CLEMENCY OUTCOMES				
Received Incomplete Denied Granted				
1980-2006	No available Records			
2007	3	0	0	0
2008	11	0	0	0
2009	37	0	37	0
2010	34	3	26	0
2011	85	54	35	0
2012	51	28	13	1
2013	48	26	21	1
2014*	64	38	7	0

All applications received in a calendar year may not be processed that same year.

Talking Points Relief from Collateral Consequences at Sentencing

Model Penal Code/Uniform Collateral Consequences of Conviction Approach

- Both provide mechanism for Defendant to seek relief from collateral consequences at sentencing.
 - Provides holistic sentencing – all sanctions, civil and criminal, are evaluated and considered by sentencing judge
 - Reduces burden on courts by integrating with original sentencing rather than requiring new proceeding. Although existing proposals provide a model for petitioning the court for relief at any time, a narrower statute could be drafted requiring the petition at the time of sentencing if the court system is concerned about the financial costs and scheduling burdens of providing a new post-conviction relief procedure.

- **Sentencing Court Authority to Order Relief:**
 - **Section 306.6 of the Model Penal Code (1962)** provides that in specified cases a sentencing court may order that as long as the defendant is not convicted of another crime, the judgment of conviction will not be deemed a conviction for purposes of any collateral consequence.
 - **Tentative Draft No. 3 of the Proposed Amendments to the Model Penal Code § 6x.04** provides that at the time of sentencing, upon petition by the defendant and notice to the prosecutor, a court may grant an order of relief from an otherwise-applicable mandatory collateral consequence. (text below)
 - **Section 10 of Collateral Consequences of Conviction Act:** at sentencing (or at any point after) defendant may petition court for order of “limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing.” (text below)
 - **State Examples:**
 - 2014 Vermont enacted UCCCA in entirety, including Section 10. See 13 VSA § 8010 (2016) (text below)
 - 2013 Colorado legislation authorizes sentencing court to issue an “order of collateral relief” to “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.” COLO. REV. STAT. §§ 18-1.3-107 (1), (3). (sentencing alternatives), 18-1.3-213(1), (3) (probation), 18-1.3-303(1), (3) (community corrections).
 - 2007 New Jersey amendment to its Rehabilitated Convicted Offenders Act allows sentencing court to issue a certificate “that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.” N.J. STAT. ANN. § 2A:168A-7 .
 - 2016 proposals to adopt section 10 of UCCCA
 - New York SB 355/AO 295 (referred to codes)
 - Pennsylvania SB 1090 (referred to Judiciary)
 - Wisconsin SB677/AB908 (failed to pass)

1 Like disenfranchisement, the justifications for banning convicted individuals from jury service appear
2 primarily punitive. It is not clear what regulatory goals are served by barring felons from jury service, when
3 as a practical matter, they may be struck by the parties during the voir dire process. As did the original
4 Code, this provision takes the position that jury service should be prohibited during the period of the
5 sentence only, because legitimate regulatory concerns justify such a limitation. Individuals who remain in
6 or return to the community following conviction should see their right to jury service retained or restored.

7
8 **PROPOSED NEW PROVISION**

9 **§ 6x.04. Notification of Collateral Consequences; Order of Relief.**

10 **(1) At the time of sentencing, the court shall confirm on the record that the**
11 **defendant has been provided with the following information in writing:**

12 **(a) A list of all collateral consequences that apply under state or federal**
13 **law as a result of the current conviction;**

14 **(b) a warning that the collateral consequences applicable to the**
15 **offender may change over time;**

16 **(c) a warning that jurisdictions to which the defendant may travel or**
17 **relocate may impose additional collateral consequences; and**

18 **(d) notice of the defendant's right to petition for relief from mandatory**
19 **collateral consequences pursuant to subsection (2) during the period of the**
20 **sentence, and thereafter pursuant to §§ 6x.05 and 6x.06.**

21 **(2) At any time prior to the expiration of the sentence, a person may petition the**
22 **court to grant an order of relief from an otherwise-applicable mandatory collateral**
23 **consequence imposed by the laws of this state that is related to employment,**
24 **education, housing, public benefits, registration, occupational licensing, or the**
25 **conduct of a business.**

26 **(a) The court may dismiss or grant the petition summarily, in whole or in**
27 **part, or may choose to institute proceedings as needed to rule on the merits of**
28 **the petition.**

29 **(b) When a petition is filed, notice of the petition and any related**
30 **proceedings shall be given to the prosecuting attorney;**

31 **(c) The court may grant relief from a mandatory collateral consequence if,**
32 **after considering any guidance provided by the sentencing commission under**
33 **§ 6x.02(2), it finds that the individual has demonstrated by clear and convincing**
34 **evidence that the consequence imposes a substantial burden on the individual's**
35 **ability to reintegrate into law-abiding society, and that public-safety**
36 **considerations do not require mandatory imposition of the consequence.**

37 **(d) Relief should not be denied arbitrarily, or for any punitive purpose.**

1 **(3) When an administrative or other official is required by law to make an**
2 **individualized determination whether a benefit or opportunity should be afforded to**
3 **any individual, an order of relief under this Section does not bar a denial of the**
4 **opportunity or benefit sought.**

5
6 **Comment:**

7 *a. Scope.* This provision, new to the Code, provides assurance that convicted
8 individuals are made aware of the collateral consequences to which they will be subject,
9 and provides courts with a mechanism for alleviating some types of mandatory collateral
10 consequences on a case-by-case basis. This provision recognizes that although collateral
11 consequences can serve important regulatory goals, there are instances in which the
12 application of a particular collateral consequence will unnecessarily impede a convicted
13 individual's successful reintegration into the law-abiding community without advancing
14 public safety. This is likely to be most true when the consequence bears little connection
15 to the individual's risk of criminal re-offending.

16 This Section has two subsections. The first, subsection 6x.04(1), requires courts at
17 sentencing to confirm that defendants have been provided with basic written information
18 about the sources and types of collateral consequences to which they may be subject as a
19 result of criminal conviction. This information, which may come from counsel or the
20 court, includes a comprehensive list of relevant state- and federally-imposed collateral
21 consequences (presumably drawn from the sentencing commission's compendium, see
22 § 6x.02(1)), along with notice that the consequences may change with time or as a
23 convicted person moves from one jurisdiction to another. While this information should
24 be provided to the defendant at earlier points in the criminal process (such as at
25 arraignment and plea), the sentencing court is obliged to confirm at the time of
26 sentencing that the defendant has been given written notice of the laws that will govern
27 his post-sentencing conduct. Such full disclosure is an improvement on current practice
28 in most states, where individuals are provided with no (or very limited) information about
29 the long-term collateral consequences of their convictions.

30 In addition to providing the defendant with notice, § 6x.04(2) authorizes the
31 sentencing court, upon request from the convicted individual at sentencing or at any time
32 during the sentence, to grant relief from the automatic imposition of specific mandatory
33 collateral consequences whose burdens outweigh their regulatory benefits in the
34 particular case. Under § 6x.04(2), a convicted individual may petition the sentencing
35 court, at the time of sentencing or thereafter to grant relief from the mandatory nature of a
36 collateral consequence that is imposed by state law and is related to employment,
37 education, housing, public benefits, registration, occupational licensing, or the conduct of
38 a business. Although the sentencing court is not obliged to grant relief, or even to hold a
39 hearing on the petition, the court may grant relief when it finds, after consulting any

1 guidance offered by the sentencing commission under § 6x.02(2), that the defendant has
2 shown “by clear and convincing evidence that the consequence imposes a substantial
3 burden on the individual’s ability to reintegrate into law-abiding society, and that public-
4 safety considerations do not require mandatory imposition of the consequence.”
5 Section 6x.04(2)(c). When the sentencing court grants relief from a mandatory collateral
6 consequence under § 6x.04(2), the court merely removes the mandatory nature of the
7 consequence: it does not prevent other authorized decisionmakers, such as licensing
8 boards, from later considering the conduct underlying the conviction when deciding
9 whether to confer a discretionary benefit or opportunity. See § 6x.04(3).

Uniform Collateral Consequences of Conviction Act

SECTION 10. ORDER OF LIMITED RELIEF.

(a) An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be presented to the:

- (1) sentencing court at or before sentencing; or
- (2) [designated board or agency] at any time after sentencing.

(b) Except as otherwise provided in Section 12, the court or the [designated board or agency] may issue an order of limited relief relieving one or more of the collateral sanctions described in subsection (a) if, after reviewing the petition, the individual's criminal history, any filing by a victim under Section 15 or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

- (1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;
- (2) the individual has substantial need for the relief requested in order to live a law-abiding life; and
- (3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) the order of limited relief must specify:

- (1) the collateral sanction from which relief is granted; and
- (2) any restriction imposed pursuant to Section 13(a).

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this Section, a decision-maker may consider the conduct underlying a conviction as provided in Section 8.

13 V.S.A. § 8010

§ 8010. Order of limited relief

Currentness

(a) An individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking an order of relief shall provide the prosecutor's office with notice of his or her petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.

(b) Except as otherwise provided in [section 8012](#) of this title, the Court may issue an order of limited relief relieving one or more of the mandatory sanctions described in this chapter if, after reviewing the petition, the individual's criminal history record, any filing by a victim under [section 8014](#) of this title, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the mandatory sanction from which relief is granted; and

(2) any restriction imposed pursuant to subsections 8013(a) and (b) of this title.

(d) An order of limited relief relieves a mandatory sanction to the extent provided in the order.

(e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in subsection 8008¹ of this title.

Credits

[2013, Adj. Sess., No. 181](#), § 1, eff. Jan. 1, 2016.

Editors' Notes

UNIFORM LAW COMMENTS

Sections 10 and 11 attempt to harmonize society's interests in public safety and its interest in offender reentry and reintegrating offenders into society. Sections 10 and 11 create new mechanisms for relief of collateral sanctions under some circumstances. Section 10 is aimed at removing specific legal barriers for individuals first reentering society. It allows an individual to

apply for relief from a collateral sanction relating to employment, education, housing, public benefits, or occupational licensing on a showing that the relief will assist in leading a law-abiding life. Section 11 allows an individual to seek general restoration of rights after a period of time has passed in which the individual has demonstrated adherence to the law.

Sections 10 and 11 are based in part on the Model Sentencing and Corrections Act (“MSCA”), § 4-1005. However, this Act does not identify a list of prohibited collateral consequences, as do the MSCA and the ABA Standards. The MSCA, § 4-1001(b) provides that a convicted individual “retains all rights, political, personal, civil and otherwise”, including, among others it lists, the right to vote. The ABA Standards has a list of sanctions which should never be imposed under any circumstances, such as “deprivation of the right to vote, except during actual confinement.” ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons, Standard 2.6(a) (3d ed. 2004).

Relief under Section 10 (an Order of Limited Relief) may be granted by the court as a part of sentencing, that is, as part of the guilty plea process or after a jury's guilty verdict, until the close of the proceeding at which sentencing is imposed. If the individual does not obtain relief at sentencing, the order can be issued only by the board or agency (in many states it is likely to be the parole board) assigned responsibility for issuing the orders. The board or agency may act after sentencing even if the individual is still on parole, probation, or otherwise under the control of the court for other purposes. The procedure and evidence to be considered is addressed in Section 13.

Issuance of an Order of Limited Relief does not guarantee that an individual will receive the benefit or opportunity sought; it merely allows case-by-case determination under Section 10(e), and Section 8. Thus, while Section 10(d) provides that the state shall not impose a collateral sanction that has been relieved by an Order, Section 10(e) specifically provides that the decision-maker may examine the facts of the holder's misconduct under Section 8. In effect, a Section 10 Order converts a collateral sanction from which relief is granted into a disqualification.

For example, a regulation might prohibit all individuals with felony convictions from being licensed as Paramedics. An individual who had been a paramedic before conviction, or completed paramedic training after conviction, might persuade a court or the designated board or agency that it was appropriate for the individual to be licensed and employed as a paramedic, and therefore to issue an Order of Limited Relief. That would lift the absolute bar, but would not restrict the Paramedic licensing board from considering whether a license should issue, based on the conduct underlying the conviction, and the board's knowledge of the particular duties and functions of licensees. The decision maker is also entitled to consider the conviction conclusive proof that the individual committed every element of the offense of conviction. Agencies may by rule or policy require applicants to provide or disclose information necessary or helpful to the agency's decision.

The individual must show that relief would “materially assist” in obtaining employment, education, housing, public benefits or occupational licensing, and that the individual has “substantial need” for the benefit to live a law-abiding life. The “materially assist” requirement means that with the relief, alone or through satisfaction of additional conditions, the individual would be eligible for the benefit. The “substantial need” requirement means that the individual must show that the benefit is important in the particular case. Having some housing and employment or other lawful support are important to every individual. But if, for example, an individual already had private housing, and sought relief in order to enter public housing, the individual would be required to show that living in public housing will facilitate living a law-

abiding life. This might be shown if the public housing is in a location that will make employment feasible, or move the applicant away from an area that her probation officer says offers too many temptations to crime. A person already employed might nevertheless show substantial need for an occupational license if with the license the individual would earn enough to pay child support, restitution, or educational expenses.

Sections 10 and 11 differ from the MSCA by limiting its coverage to state actors, excluding private employers. Regulation of public employment and licensing is less controversial than would be reaching into the decisions of private businesses. In addition, public employment and licensing are often done with the public interest in mind (for example, in the context of veteran's preferences, or reserved opportunities for the disabled). If any category of employer is going to take a chance by helping individuals with convictions, it is likely to be the public sector. *See, e.g.,* ABA Commission on Effective Criminal Sanctions, Report to the House of Delegates on Employment and Licensure of Persons with a Criminal Record, No. 103C at 7-9 (Feb. 2007) (discussing municipal and state anti-discrimination policies and programs in New York, Florida, Chicago and Boston); Editorial, *Cities that Lead the Way*, N.Y. Times, Mar. 31, 2006 (discussing anti-discrimination policies for city agencies and city contractors in Boston, Chicago and San Francisco).

However, the Act contemplates that enacting states might choose to make private corporations performing government functions or services, by contract or statute, subject to Sections 10 and 11 through the definition of "decision-maker" in Section 2(4). It is far less intrusive to ask private companies who choose to do business with the state to comply with a policy like this; if a private company finds it objectionable, they may forego the business. Further, even if this is not a point upon which uniformity is likely, this section is not meant to discourage states from deciding on their own that private employers as a group should be covered; some now do and there is no reason they should not continue if it is consistent with their public policy. States should examine their laws governing public employment and licensing to ensure that they conform to this policy.

Sections 10 and 11 can be invoked by individuals facing collateral sanctions in the enacting state based on federal or out-of-state convictions. Section 10 relief granted in one state has effect only in that state, because no state has the power to relieve a sanction imposed by the law of a second state, in the second state's territory. Whether Section 11 relief from one state will be given effect in a second state depends on which alternative version of Section 9(e) is in force in the second state.

Vt. Stat. Ann. tit. 13, § 8010 (West)