

2011 DRAFTING REQUEST

Bill

Received: **09/22/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing:

May Contact:

Drafter: **phurley**

Subject: **Criminal Law - sentencing**
Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Uniform Collateral Consequences of Conviction Act

Instructions:

redraft 09 SB 613

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /? | phurley 09/22/2010 | kfollett 09/24/2010 | | _____ | | | S&L |
| /1 | | | rschluet 09/24/2010 | _____ | mbarman 09/24/2010 | lparisi 01/04/2011 | |

FE Sent For:

<END>

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| /? | phurley | 1/EF 9/24 |  |  | _____ | _____ | _____ |
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FE Sent For:

*At intro
11/29/2011*

<END>



other

0111/1
LRB-853971
PJH:cjrs
rmn
Kf

2009 SENATE BILL 613

9-22-10

March 11, 2010 - Introduced by Senators TAYLOR and RISSER, cosponsored by Representatives PARISI, ROYS, PASCH, POPE-ROBERTS, BERCEAU and FIELDS. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

Regen

1 AN ACT to create 976.045 of the statutes; relating to: creating a Uniform
2 Collateral Consequences of Conviction Act and granting rule-making
3 authority.

Analysis by the Legislative Reference Bureau

X This bill addresses the issue of collateral consequences to a conviction or finding of delinquency. The bill defines a collateral consequence as a disqualification or a penalty, disability, or disadvantage imposed by operation of law that a person suffers as a result of being convicted of, or found delinquent for, an offense. A collateral consequence does not include imprisonment, probation, imposition of fine, assessment, or forfeiture, or costs of prosecution.

X X The bill requires the legislative reference bureau and the legislative council staff, under the direction of the joint review committee on criminal penalties, to identify and create a list of collateral consequences that accrue under state law and administrative rules. Under the bill, a person who is charged with or indicted for an offense must receive information about collateral consequences when he or she is charged or indicted.

If a person is convicted or adjudicated delinquent, the bill requires the sentencing court to inform the person that collateral consequences may apply as a result of the conviction or adjudication and that there may be ways to obtain relief from the collateral consequences and to let the person know when he or she may vote and where he or she may find assistance for relief from collateral consequences from a government or nonprofit agency. Under the bill, if a court fails to provide this

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information to a person, or if the person does not receive information about collateral consequences when he or she is charged or indicted, that is not grounds to invalidate a plea or a conviction or adjudication of delinquency or grounds for money damages or a claim for relief from any collateral consequence.

Under the bill, a conviction or adjudication of delinquency in another state has the same effect as a conviction or adjudication of delinquency in this state for an offense that has the same elements. A pardon or vacation of a conviction or adjudication of delinquency that occurs in another state has the same effect as a pardon or vacation of a conviction or adjudication of delinquency in this state.

Under the bill, a person who has been convicted of, or adjudicated delinquent for, an offense may petition the sentencing court, at the time of sentencing, or the court for the county in which he or she lives, after sentencing, for an order of limited relief from one or more collateral consequences that relate to the person's employment, education, housing, public benefits, or occupational licensing. If the court hearing the petition determines that granting the petition of relief would materially assist the person in obtaining employment, education, housing, public benefits, or occupational licensing and not put the public at unreasonable risk, the court may order that certain collateral consequences not apply to the person. The court may not relieve a person of his or her duty to register as a sex offender or, if the person is eligible to apply for an occupational driver's license, reinstate driving privileges.

Under the bill, any person may petition the court for the county in which he or she lives for a certificate of restoration of rights relieving collateral consequences after three years have passed since the person's most recent conviction or adjudication of delinquency or three years have passed since the person was released from confinement, whichever occurs later. The bill requires the court to consider several factors, including the person's criminal record and public safety, and allows the court to grant a complete or partial restoration of rights relieving collateral consequences. In addition, the bill requires a court to issue a certificate of restoration of full rights if a person has been pardoned by a governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 976.045 of the statutes is created to read:
- 2 **976.045 Uniform collateral consequences of conviction act. (1)**
- 3 CITATION. This section may be cited as the "Uniform Collateral Consequences of
- 4 Conviction Act."
- 5 (2) DEFINITIONS. In this section:

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

2 (b) "Collateral sanction" means a penalty, disability, or disadvantage, however
3 denominated, imposed on an individual as a result of the individual's conviction or
4 adjudication of delinquency for an offense that applies by operation of law whether
5 or not it is included in the judgment or sentence. The term does not include
6 imprisonment, probation, parole, extended supervision, forfeiture, restitution, fine,
7 assessment, or costs of prosecution.

8 (c) "Decision^emaker" means the state acting directly or through its
9 departments, agencies, officers, or instrumentalities, including political
10 subdivisions, educational institutions, boards, or commissions, or their employees,
11 and government contractors, including subcontractors, made subject to this section
12 by contract, by law other than this section, or by ordinance.

13 (d) "Disqualification" means a penalty, disability, or disadvantage, however
14 denominated, that an administrative agency, governmental official, or a court in a
15 civil proceeding is authorized, but not required, to impose on an individual on
16 grounds relating to the individual's conviction or adjudication of delinquency for an
17 offense.

18 (e) "Offense" means a felony or a misdemeanor under the law of this state,
19 another state, or the United States.

20 (f) "State" means a state of the United States, the District of Columbia, Puerto
21 Rico, the United States Virgin Islands, or any territory or insular possession subject
22 to the jurisdiction of the United States.

23 (3) LIMITATION ON SCOPE. (a) This section does not provide a basis for any of the
24 following:

- 25 1. Invalidating a plea, conviction, adjudication of delinquency, or sentence.

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1 2. A cause of action for money damages.

2 3. A claim for relief from, or defense to, the application of a collateral
3 consequence based on a failure to comply with subs. (4), (5), or (6).

4 (b) This section does not affect any of the following:

5 1. The duty an individual's attorney owes to the individual.

6 2. A claim or right of a victim of an offense.

7 3. A right or remedy under law other than this section available to an individual
8 convicted of or adjudicated delinquent for an offense.

9 (4) IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL
10 CONSEQUENCES. (a) The legislative reference bureau and legislative council staff,
11 under the direction of the joint review committee on criminal penalties, shall do all
12 of the following:

13 1. Identify or cause to be identified any provision in this state's constitution,
14 statutes, and administrative rules that imposes a collateral sanction or authorizes
15 the imposition of a disqualification, and any provision of law that may afford relief
16 from a collateral consequence.

17 2. Within 120 ^{days} after the effective date of this subdivision ... [LRB inserts date],
18 collect or cause to be collected citations to, and the text or short descriptions of, the
19 provisions identified under subd. 1.

20 3. Update or cause to be updated the collection ^{of citations} by December 1 of each
21 even-numbered year.

22 (b) In complying with par. (a) 1. and 2., the legislative reference bureau and
23 legislative council staff may rely on the study of this state's collateral sanctions,
24 disqualifications, and relief provisions prepared by the National Institute of Justice

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1 described in Section 510 of the Court Security Improvements Act of 2007, P.L.
2 110-177.

3 (c) The legislative reference bureau and legislative council staff shall include
4 or cause to be included the following statements in a prominent manner at the
5 beginning of the collection[✓] described in par. (a):

6 1. This collection has not been enacted into law and does not have the force of
7 law.

8 2. An error or omission in this collection is not a reason for invalidating a plea,
9 conviction, adjudication of delinquency, or sentence or for not imposing a collateral
10 sanction or disqualification.

11 3. The laws of the United States, other jurisdictions, and units of local
12 governments that impose additional collateral sanctions and disqualifications are
13 not listed in this collection.

14 4. This collection does not include any law or other provision regarding the
15 imposition of or relief from a collateral sanction or a disqualification enacted or
16 adopted after the collection was prepared or last updated.

17 (d) The joint review committee on criminal penalties shall publish or cause to
18 be published the collection created and updated as required under par. (a). The
19 collection must be available to the public on the Internet without charge within 7
20 days after it is created or updated.

21 **(5) NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING.** At the time
22 an individual is charged with or indicted for an offense, the prosecutor shall attach
23 to the complaint, or the court shall attach to the indictment, information
24 substantially similar to the following:

25 NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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1 If you plead guilty or are convicted of, or adjudicated delinquent for, an offense
2 you may suffer additional legal consequences beyond jail or prison, probation,
3 periods of extended supervision, and fines. These consequences may include:

4 Being unable to get or keep some licenses, permits, or jobs.

5 Being unable to get or keep benefits such as public housing or education.

6 Receiving a harsher sentence if you are convicted of, or adjudicated delinquent
7 for, another offense in the future.

8 Having the government take your property.

9 Being unable to vote or possess a firearm.

10 If you are not a United States citizen, a guilty plea or conviction may also result
11 in your deportation, removal, exclusion from admission to the United States, or
12 denial of citizenship.

13 The law may provide ways to obtain some relief from these consequences.

14 Further information about the consequences of conviction or an adjudication of
15 delinquency is available on the Internet at [insert Internet web address of the
16 collection of laws published under sub. (4) (d)].

17 **(6) NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE. (a)**
18 The sentencing court shall provide the following information to an individual who
19 is convicted of, or adjudicated delinquent for, an offense when he or she is sentenced:

20 1. That collateral consequences may apply because of the conviction or
21 adjudication.

22 2. That there may be ways to obtain relief from collateral consequences,

23 3. The Internet Web address of the collection of laws published under sub. (4)

24 (d).

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1 4. Contact information for government or nonprofit agencies, groups, or
2 organizations, if any, offering assistance to individuals seeking relief from collateral
3 consequences.

4 5. When the individual may vote under this state's law.

5 (b) If an individual is sentenced to a term of confinement in a jail or a prison,
6 not more than 30 days prior to the individual's release from jail or prison, the
7 department of corrections shall provide to the individual the information described
8 in par. (a).

9 (7) AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY. (a) A
10 collateral sanction may be imposed only by statute or ordinance, or by a rule
11 authorized by law and adopted pursuant to this section.

12 (b) A law creating a collateral consequence that is ambiguous as to whether it
13 imposes a collateral sanction or authorizes a disqualification must be construed as
14 authorizing a disqualification.

15 (8) DECISION TO DISQUALIFY. In deciding whether to impose a disqualification
16 on an individual, a decision maker shall undertake an individual assessment to
17 determine whether the benefit or opportunity at issue should be granted. In making
18 that decision, a decision maker may consider, if substantially related to the benefit
19 or opportunity at issue:

20 (a) The particular facts and circumstances involved in the offense.

21 (b) The essential elements of the offense, except that the conviction or
22 adjudication of delinquency itself may not be considered except as having
23 established the elements of the offense.

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1 (c) Other relevant information, including the effect of granting the benefit or
2 opportunity on 3rd parties and whether the individual has been granted relief such
3 as an order of limited relief or a certificate of restoration of rights.

4 **(9) EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES; VACATED OR**
5 **PARDONED CONVICTION.** (a) For purposes of authorizing or imposing collateral
6 consequences in this state, a conviction for an offense in a court of another state or
7 the United States is deemed a conviction of the offense in this state with the same
8 elements. If there is no offense in this state with the same elements, the conviction
9 is deemed a conviction of the most serious offense in this state which is established
10 by the elements of the offense. A misdemeanor in the jurisdiction of conviction may
11 not be deemed a felony in this state, and an offense below a misdemeanor in the
12 jurisdiction of conviction may not be deemed a conviction of a crime in this state.

13 (b) For purposes of authorizing or imposing collateral consequences in this
14 state, a juvenile adjudication in another state or the United States may not be
15 deemed a felony, misdemeanor, or offense below a misdemeanor in this state, but may
16 be deemed a juvenile adjudication for the juvenile violation in this state with the
17 same elements in the underlying offense. If there is no juvenile violation in this state
18 with the same underlying elements, the juvenile adjudication is deemed an
19 adjudication of the most serious juvenile violation in this state which is established
20 by the underlying elements of the juvenile adjudication.

21 (c) A conviction or adjudication of delinquency that is reversed, overturned, or
22 otherwise vacated by a court of competent jurisdiction of this state, another state, or
23 the United States on grounds other than rehabilitation or good behavior may not
24 serve as the basis for authorizing or imposing a collateral consequence in this state.

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1 (d) A pardon issued by another state or the United States has the same effect
2 for purposes of authorizing, imposing, and relieving collateral consequences in this
3 state as it has in the issuing jurisdiction.

4 (e) A conviction or adjudication of delinquency that has been expunged, sealed,
5 annulled, set aside, or otherwise vacated by a court of competent jurisdiction of
6 another state or the United States on grounds of rehabilitation or good behavior, or
7 for which civil rights were restored pursuant to statute, has the same effect for
8 purposes of authorizing, imposing, and relieving collateral consequences in this
9 state as it has in the jurisdiction of conviction or adjudication, except that vacation
10 or restoration of civil rights does not relieve collateral consequences applicable under
11 the law of this state for which relief could not be granted under sub. (12), or for which
12 relief was expressly withheld by the court order or by the law of the jurisdiction that
13 vacated the conviction or adjudication. An individual convicted or adjudicated
14 delinquent in another jurisdiction may seek relief under sub. (10) or (11) from any
15 collateral consequence for which relief was not granted in the issuing jurisdiction,
16 other than those listed in sub. (12), and the court shall consider that the conviction
17 or adjudication was vacated or civil rights restored in deciding whether to issue an
18 order of limited relief or certificate of restoration of rights.

19 (f) A charge or prosecution in any jurisdiction that has been finally terminated
20 without a judgment of conviction or adjudication of delinquency and imposition of
21 sentence based on participation in a deferred prosecution or diversion program may
22 not serve as the basis for authorizing or imposing a collateral consequence in this
23 state. This paragraph does not affect the validity of any restrictions or conditions
24 imposed by law as part of participation in the deferred prosecution or diversion
25 program, either before or after the termination of the charge or prosecution.

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1 (10) ORDER OF LIMITED RELIEF. (a) An individual convicted of or adjudicated
2 delinquent for an offense may petition for an order of limited relief from one or more
3 collateral sanctions related to employment, education, housing, public benefits, or
4 occupational licensing. The petition may be presented to any of the following:

5 1. The sentencing court at or before sentencing.

6 2. The court for the county where the individual resides at any time after
7 sentencing.

8 (b) Except as otherwise provided in sub. (12), the court may issue an order of
9 limited relief relieving one or more of the collateral sanctions described in par. (a) if,
10 after reviewing the record, including the individual's criminal history, any filing by
11 a prosecutor or victim under sub. (16), and any other relevant evidence, it finds the
12 individual has established by a preponderance of the evidence that all of the
13 following are true:

14 1. Granting the petition will materially assist the individual in obtaining or
15 maintaining employment, education, housing, public benefits, or occupational
16 licensing.

17 2. The individual has substantial need for the relief requested in order to live
18 a law-abiding life.

19 3. Granting the petition would not pose an unreasonable risk to the safety or
20 welfare of the public or any individual.

21 (c) The court may consider the conduct underlying a conviction or adjudication
22 of delinquency in the same manner as provided in sub. (8).

23 (d) The order of limited relief must specify:

24 1. The particular collateral sanction from which relief is granted.

25 2. Any restrictions imposed pursuant to sub. (14).

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1 (e) Issuance of an order of limited relief relieves a collateral sanction to the
2 extent provided in the order.

3 (11) CERTIFICATE OF RESTORATION OF RIGHTS. (a) An individual convicted of or
4 adjudicated delinquent for an offense may petition the court for the county where he
5 or she resides for a certificate of restoration[✓] of rights relieving collateral sanctions
6 not sooner than 3 years[✓] after the individual's most recent conviction of or
7 adjudication for a felony or misdemeanor in any jurisdiction, or not sooner than 3[✓]
8 years after the individual's release from confinement pursuant to a criminal
9 sentence in any jurisdiction, whichever is later.

10 (b) Except as otherwise provided in sub. (12)[✓], the court may issue a certificate
11 of restoration of rights if after reviewing the record, including the individual's
12 criminal history, any filing by a prosecutor or victim under sub. (16)[✓], and any other
13 relevant evidence, it finds the individual has established by a preponderance of the
14 evidence that all of the following are true:

15 1. The individual is engaged in, or seeking to engage in, a lawful occupation or
16 activity, including employment, training, education, or rehabilitative programs, or
17 the individual otherwise has a lawful source of support.

18 2. The individual is not in violation of the terms of any criminal sentence, or
19 that any failure to comply is justified, excused, involuntary, or insubstantial.

20 3. No criminal charges are pending against the individual.

21 4. Granting the petition would not pose an unreasonable risk to the safety or
22 welfare of the public or any individual.

23 (c) A certificate of restoration of rights must specify any restrictions imposed[✓]
24 and collateral sanctions from which relief has not been granted under sub. (14).

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1 (d) Issuance of a certificate of restoration of rights relieves all collateral
 2 sanctions, except those listed in sub. (12) and any others specifically excluded in the
 3 certificate. The court may consider the conduct underlying the conviction or
 4 adjudication or delinquency in the same manner as provided in sub. (8).

5 (12) COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR
 6 CERTIFICATE OF RESTORATION OF RIGHTS. An order of limited relief or certificate of
 7 restoration of rights issued under sub. (10) or (11) may not be issued to relieve the
 8 following collateral sanctions:

9 (a) Requirements imposed by s. 301.45.

10 (b) A motor vehicle license suspension, revocation, limitation, or ineligibility
 11 for which restoration or relief is available pursuant to s. 343.10.

12 (13) EFFECT OF PARDON. If an individual who was convicted of or adjudicated
 13 delinquent for an offense is granted a pardon by the governor of this state for that
 14 offense, the court for the county where he or she resides shall issue a certificate of
 15 restoration of rights relieving all collateral sanctions associated with that offense.

16 (14) ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND
 17 CERTIFICATE OF RESTORATION OF RIGHTS. (a) When a petition is filed under sub. (10) or
 18 (11), including a petition for enlargement of an existing order of limited relief or
 19 certificate of restoration of rights, the court shall notify the office that prosecuted the
 20 offense giving rise to the collateral consequence from which relief is sought and, if
 21 the conviction or adjudication of delinquency was not obtained in a court of this state,
 22 the department of justice. The court may issue an order or certificate subject to
 23 restriction, condition, or additional requirement. When issuing, denying, modifying,
 24 or revoking an order or certificate, the court may impose conditions for reapplication.

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1 (b) The court may restrict or revoke an order of limited relief or certificate of
2 restoration of rights it previously issued or an order issued by a court in this state
3 if it finds just cause by a preponderance of the evidence. Just cause includes
4 subsequent conviction or adjudication of delinquency of the holder for a felony in this
5 state, or for an offense in another jurisdiction that is deemed a felony in this state
6 under sub. (9). An order of restriction or revocation may be issued on motion of the
7 office of the prosecutor that obtained the conviction or adjudication of delinquency,
8 or a government agency designated by that prosecutorial office, after notice to the
9 individual to whom the order or certificate was issued and any other prosecutor that
10 has appeared in the matter, and after a hearing pursuant to rules adopted pursuant
11 to this section if requested by the individual or the prosecutor who made the motion
12 or any prosecutor that has appeared in the matter.

13 (c) The court shall order any test, report, investigation, or disclosure by the
14 individual it reasonably believes necessary to its decision to issue, modify, or revoke
15 an order of limited relief or certificate of restoration of rights. If there are material
16 disputed issues of fact or law, the individual and any prosecutor notified under par.
17 (a) or another prosecutorial agency designated by a prosecutor notified under par. (a)
18 shall have the opportunity to submit evidence and be heard on those issues.

19 (d) The department of justice shall maintain a public record of the issuance,
20 modification, and revocation of orders of limited relief and certificates of restoration
21 of rights.

22 **(15) RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE.** In a judicial
23 or administrative proceeding alleging negligence or other fault, an order of limited
24 relief or a certificate of restoration of rights may be introduced as evidence of a
25 person's due care in hiring, retaining, licensing, leasing to, admitting to a school or

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1 program, or otherwise transacting business or engaging in activity with the
2 individual to whom the order was issued, if the person knew of the order or certificate
3 at the time of the alleged negligence or other fault.

4 (16) VICTIMS RIGHTS. A victim of an offense may participate in proceedings for
5 issuance, modification, and revocation of orders of limited relief and certificates of
6 restoration of rights to the extent permitted by rules adopted by the director of state
7 courts.

8 (17) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing
9 this uniform act, consideration must be given to the need to promote uniformity of
10 the law with respect to its subject matter among states that enact it.

11 (18) SAVINGS AND TRANSITIONAL PROVISIONS. (a) This section applies to collateral
12 consequences whenever enacted or imposed, unless the law creating the collateral
13 consequence expressly states that this section does not apply.

14 (b) This section does not invalidate the imposition of a collateral sanction on
15 an individual before January 1, 2011, but a collateral sanction validly imposed before
16 January 1, 2011, may be the subject of relief under this section.

17 SECTION 2. Effective dates. This act takes effect on January 1, 2011, except
18 as follows:

19 (1) The creation of section 976.045 (4) of the statutes takes effect on the day
20 after publication.

21 (END)

Parisi, Lori

From: Peterson, Eric
Sent: Tuesday, January 04, 2011 12:26 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-0111/1 Topic: Uniform Collateral Consequences of Conviction Act

Please Jacket LRB 11-0111/1 for the SENATE.