SENATE BILL NO. 395–SENATOR SEGERBLOM

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Collateral Consequences of Conviction Act. (BDR 14-22)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to criminal procedure; enacting the Uniform Collateral Consequences of Conviction Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts the Uniform Collateral Consequences of Conviction Act. **Sections 4, 5 and 8** of this bill define a collateral consequence of conviction as: (1) a legal disability that occurs by operation of law because of a conviction but is not part of the sentence for the crime; or (2) a disadvantage or disability that an administrative agency, civil court or other state actor other than a sentencing court is authorized, but not required, to impose based on a conviction.

Section 13 of this bill requires the Attorney General to prepare and publish a collection of the provisions of existing law which impose or authorize a collateral consequence of conviction and any provisions of existing law allowing relief from those collateral consequences. Under **section 24** of this bill, the first such collection must be prepared on or before January 1, 2014, and under **section 13**, the Attorney General must update the collection not later than 45 days after each regular legislative session. **Section 13** also requires the collection to be made available on the Internet not later than 14 days after it is created or updated.

Sections 14 and 15 of this bill require notice of collateral consequences of conviction to be provided to a defendant during a criminal case. **Section 14** requires the court to provide notice of collateral consequences at the time a person receives formal notice of criminal charges against him or her. **Sections 15 and 22** of this bill require certain information concerning collateral consequences to be provided at sentencing and before release from incarceration.

Section 16 of this bill allows a collateral consequence that is a legal disability occurring by operation of law as a result of a conviction to be imposed only by statute, ordinance or formally adopted regulation. **Section 17** of this bill requires governmental decision makers to consider certain information when deciding whether to impose a legal disadvantage or disability that the decision maker is authorized, but not required, to impose based on a conviction.

Section 18 of this bill defines the judgments that constitute convictions for the purposes of imposing collateral consequences. **Section 18** further prescribes the manner in which out-of-state convictions and juvenile adjudications will be used to impose collateral consequences in this State. **Section 18** also excludes convictions which have been overturned or pardoned or which did not result in a final conviction because of diversion or deferred adjudication. Under **section 18**, if another state has granted certain types of relief from a conviction based on rehabilitation or the passage of time, that relief has the same effect in this State as in the other state, except that the relief does not remove the requirements for sex offender registration or the prohibition against certain convicted persons being employed as a peace officer.

Section 19 of this bill allows the sentencing court to provide, at the time of sentencing, relief from collateral consequences of conviction related to employment, education, housing, public benefits or occupational licensing. Under **section 19**, such relief lifts the automatic bar of a collateral consequence and leaves an agency free to consider on a case-by-case basis whether it is appropriate to deny the opportunity to an individual.

Section 12 of this bill provides that neither the provisions of this bill nor noncompliance with them are a basis for invalidating a plea or conviction, making a claim of ineffective assistance of counsel or suing anyone for money damages.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 14 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. ***This chapter may be cited as the Uniform Collateral Consequences of Conviction Act.***

Sec. 3. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 11, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 4. ***"Collateral consequence" means a collateral sanction or a disqualification.***

Sec. 5. ***"Collateral sanction" means a penalty, disability or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, administrative assessment or costs of prosecution.***

Sec. 6. ***"Conviction" includes, without limitation, an adjudication of delinquency by a court having jurisdiction over juveniles. "Convicted" has a corresponding meaning.***

Sec. 7. ***"Decision maker" means the State acting through a department, agency, officer or instrumentality, including, without***

limitation, a political subdivision, educational institution, board or commission or its employees.

Sec. 8. *"Disqualification" means a penalty, disability 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.*

Sec. 9. *"Offense" means a felony, gross misdemeanor, misdemeanor or delinquent act for which a child may be adjudicated delinquent under the law of this State, another state or the United States.*

Sec. 10. *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.*

Sec. 11. *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.*

Sec. 12. *1. This chapter does not provide a basis for:*

(a) Invalidating a plea, conviction or sentence;

(b) A cause of action for money damages; or

(c) A claim for relief from or defense to the application of a collateral consequence based on a failure to comply with section 13, 14 or 15 of this act.

2. This chapter does not affect:

(a) The duty an individual's attorney owes to the individual;

(b) A claim or right of a victim of an offense; or

(c) A right or remedy under law other than this chapter available to an individual convicted of an offense.

Sec. 13. *1. The Attorney General:*

(a) Shall identify or cause to be identified any provision in the Nevada Constitution, the Nevada Revised Statutes and the Nevada Administrative Code which imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision of law that may afford relief from a collateral consequence;

(b) Shall prepare or cause to be prepared a collection of citations to, and the text or short descriptions of, the provisions identified under paragraph (a);

(c) Shall update or cause to be updated the collection within 45 days after each regular session of the Legislature; and

(d) In complying with paragraphs (a) and (b), may rely on the study of this State's collateral sanctions, disqualifications and relief provisions prepared by the National Institute of Justice

described in section 510 of the Court Security Improvement Act of 2007, Public Law 110-177.

2. The Attorney General shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection 1:

(a) This collection has not been enacted into law and does not have the force of law.

(b) An error or omission in this collection, or in any reference work cited in this collection, is not a reason for invalidating a plea, conviction or sentence or for not imposing a collateral sanction or authorizing a disqualification.

(c) The laws of other jurisdictions and local governments in this State which impose additional collateral sanctions and authorize additional disqualifications are not included in this collection.

(d) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after the date on which the collection was prepared or last updated.

3. The Attorney General shall publish or cause to be published the collection prepared and updated as required by subsection 1. If available, the Attorney General shall also publish or cause to be published, as part of this collection, the title and Internet address of the most recent collection of:

(a) Collateral consequences imposed by federal law; and

(b) Any provision of federal law that may afford relief from a collateral consequence.

4. The collection described in subsection 3 must be available to the public on the Internet without charge not later than 14 days after it is created or updated.

Sec. 14. *1. When an individual receives formal notice that the individual is charged with an offense, the court shall cause information substantially similar to the following to be communicated to the individual:*

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

If you plead guilty or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, probation, periods of parole and fines. These consequences may include:

(a) Being unable to get or keep some licenses, permits or jobs;

(b) Being unable to get or keep benefits such as public housing or education;

(c) Receiving a harsher sentence if you are convicted of another offense in the future;

(d) Having the government take your property; and

(e) Being unable to vote or possess a firearm.

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

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

Further information about the consequences of conviction is available on the Internet at (Internet address of the collection of laws published under subsections 3 and 4 of section 13 of this act).

2. Before a court accepts a plea of guilty, guilty but mentally ill or nolo contendere from an individual, the court shall confirm that the individual received and understands the notice required by subsection 1 and has had an opportunity to discuss the notice with counsel.

Sec. 15. *1. An individual convicted of an offense must be given notice as provided in subsections 2 and 3:*

(a) That collateral consequences may apply because of the conviction;

(b) Of the Internet address of the collection of laws published under subsections 3 and 4 of section 13 of this act;

(c) That there may be ways to obtain relief from collateral consequences;

(d) Of contact information for government or nonprofit agencies, groups or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

(e) Of when an individual convicted of an offense may vote under the laws of this State.

2. The court shall provide the notice in subsection 1 as a part of sentencing.

3. If an individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the individual must provide the notice in subsection 1 not more than 30 days and, if practicable, at least 10 days before release.

Sec. 16. *1. A collateral sanction may be imposed only by statute or ordinance, or by a regulation authorized by law and adopted in accordance with chapter 233B of NRS.*

2. A law creating a collateral consequence that is ambiguous as to whether it imposes a collateral sanction or authorizes a

disqualification must be construed as authorizing a disqualification.

Sec. 17. *In deciding whether to impose a disqualification, a decision maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself may not be considered except as having established the elements of the offense. The decision maker shall also consider other relevant information, including, without limitation, the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief, such as an order of limited relief.*

Sec. 18. *1. For the purposes of authorizing or imposing a collateral consequence in this State, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this State with the same elements. If there is no offense in this State with the same elements, the conviction is deemed a conviction of the most serious offense in this State which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction may not be deemed a felony in this State, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony, gross misdemeanor or misdemeanor in this State.*

2. For the purposes of authorizing or imposing a collateral consequence in this State, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, gross misdemeanor or misdemeanor in this State but may be deemed a juvenile adjudication for the delinquent act in this State with the same elements. If there is no delinquent act in this State with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this State which is established by the elements of the offense.

3. A conviction that is reversed, overturned or otherwise vacated by a court of competent jurisdiction of this State, another state or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this State.

4. A pardon issued by another state or the United States has the same effect for the purposes of authorizing, imposing and relieving a collateral consequence in this State as it has in the issuing jurisdiction.

5. A conviction which has been relieved by expungement, sealing, annulment, set-aside or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for the purposes of authorizing or imposing collateral consequences in this State as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this State for which relief could not be granted under subsection 3 of section 19 of this act or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction.

6. A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this State. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

Sec. 19. *1. At or before sentencing, an individual convicted of an offense may petition the sentencing court for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing.*

2. Except as otherwise provided in subsection 3, at the time the court sentences an individual convicted of an offense, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in subsection 1 if, after reviewing the petition, the individual's criminal history, any view expressed by a victim pursuant to subsection 3 of NRS 176.015 or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

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

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

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

3. An order of limited relief may not be issued to relieve the following collateral sanctions:

(a) Requirements imposed by chapter 179D of NRS.

(b) A motor vehicle license or driving privilege suspension, revocation, limitation or ineligibility pursuant to:

(1) NRS 62E.640;

(2) NRS 483.448, for which a restricted license is available pursuant to that section;

(3) NRS 483.460, for which restoration or relief is available pursuant to NRS 483.490; or

(4) NRS 483.475, for which a restricted license is available pursuant to that section.

(c) Ineligibility for employment pursuant to NRS 289.555.

4. The order of limited relief must specify:

(a) The collateral sanction from which relief is granted; and

(b) Any restriction imposed pursuant to subsection 5.

5. The court may issue an order or certificate subject to restriction, condition or additional requirement.

6. An order of limited relief relieves a collateral sanction to the extent provided in the order.

7. 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 17 of this act.

8. If the office of the prosecutor who obtained the conviction believes that there is just cause for restricting or revoking an order of limited relief, that office may seek the restriction or revocation of the order by filing a motion in the court which granted the order. After notice to the individual to whom the order of limited relief was issued and a hearing, the court may restrict or revoke the order of limited relief if it finds just cause by a preponderance of the evidence. Just cause includes, without limitation, subsequent conviction of a felony in this State or of an offense in another jurisdiction that is deemed a felony in this State under subsection 1 of section 18 of this act.

9. The court shall order any test, report, investigation or disclosure by the individual it reasonably believes necessary to its decision to issue, modify or revoke an order of limited relief. If there are material disputed issues of fact or law, the individual and the prosecutor may submit evidence and be heard on those issues.

10. If a court issues, modifies or revokes an order of limited relief pursuant to this section:

(a) The court must notify the Central Repository for Nevada Records of Criminal History of the issuance, modification or revocation of the order; and

(b) The Central Repository must include the issuance, modification or revocation of the order in the record of criminal history of the individual to whom the issuance, modification or revocation relates.

Sec. 20. ***In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued, if the person knew of the order at the time of the alleged negligence or other fault.***

Sec. 21. ***In applying and construing the provisions of this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.***

Sec. 22. NRS 209.511 is hereby amended to read as follows:

209.511 1. When an offender is released from prison by expiration of his or her term of sentence, by pardon or by parole, the Director:

(a) May furnish the offender with a sum of money not to exceed $100, the amount to be based upon the offender's economic need as determined by the Director;

(b) Shall give the offender notice of the provisions of chapter 179C of NRS and NRS 202.357 and 202.360;

(c) Shall require the offender to sign an acknowledgment of the notice required in paragraph (b);

(d) Shall give the offender notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;

(e) Shall provide the offender with information relating to obtaining employment, including, without limitation, any programs which may provide bonding for an offender entering the workplace and any organizations which may provide employment or bonding assistance to such a person;

(f) Shall provide the offender with information and reasonable assistance relating to acquiring a valid driver's license or identification card to enable the offender to obtain employment, if the offender:

(1) Requests such information and assistance; and

(2) Is eligible to acquire a valid driver's license or identification card from the Department of Motor Vehicles;

(g) May provide the offender with clothing suitable for reentering society;

(h) May provide the offender with the cost of transportation to his or her place of residence anywhere within the continental United States, or to the place of his or her conviction;

(i) May, but is not required to, release the offender to a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS; ~~[and]~~

(j) Shall require the offender to submit to at least one test for exposure to the human immunodeficiency virus ~~[.]~~ ***; and***

(k) Shall provide the offender with the notice required by subsection 3 of section 15 of this act.

2. The costs authorized in paragraphs (a), (g), (h) and (j) of subsection 1 must be paid out of the appropriate account within the State General Fund for the use of the Department as other claims against the State are paid to the extent that the costs have not been paid in accordance with subsection 5 of NRS 209.221 and NRS 209.246.

3. As used in this section, "facility for transitional living for released offenders" has the meaning ascribed to it in NRS 449.0055.

Sec. 23. 1. Sections 2 to 21, inclusive, of this act apply to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that sections 2 to 21, inclusive, of this act do not apply.

2. Sections 2 to 21, inclusive, of this act do not invalidate the imposition of a collateral sanction on an individual before January 1, 2014, but a collateral sanction validly imposed before January 1, 2014, may be the subject of relief under sections 2 to 21, inclusive, of this act.

Sec. 24. On or before January 1, 2014, the Attorney General shall prepare or cause to be prepared the collection required by paragraph (b) of subsection 1 of section 13 of this act.

Sec. 25. 1. This section and section 24 of this act become effective upon passage and approval.

2. Sections 1 to 12, inclusive, and 14 to 23, inclusive, of this act become effective on January 1, 2014.

3. Section 13 of this act becomes effective upon passage and approval for the purpose of preparing and publishing the collection required by section 13 of this act and on January 1, 2014, for all other purposes.

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