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AMENDING THE UNIFORM COLLATERAL CONSEQUENCE OF CONVICTION ACT

by Stephen A. Saltzburg

Introduction

The National Conference of Commissioners on Uniform State Laws (also known as The Uniform Law Commission) approved and amended the Uniform Collateral Consequences of Conviction Act in 2010. The Commission recognized that burdens imposed on individuals convicted for violation of federal and state criminal laws often made it difficult for those individuals to successfully re-enter society after serving their criminal sentences. The Commission wrote:

The growth of the convicted population means that there are literally millions of people being released from incarceration, probation and parole supervision every year. They must successfully reintegrate into society or be at risk for recidivism. Society has a strong interest in preventing recidivism. An individual who could have successfully reentered society but for avoidable cause reoffends generates the financial and human costs of the new crime, expenditure of law enforcement, judicial and corrections resources, and the loss of the productive work that the individual could have contributed to the economy. Society also has a strong interest in seeing that individuals convicted of crimes can regain the legal status of ordinary citizens to prevent the creation of a permanent class of “internal exiles” who cannot establish themselves as law-abiding and productive members of the community.

...[It] has become increasingly difficult to avoid or mitigate the impact of collateral consequences. Most states have not yet developed a comprehensive and effective way of “neutralizing” the effect of a conviction in cases where it is not necessary or appropriate for it to be decisive. In almost every U.S. jurisdiction, offenders seeking to put their criminal past behind them are frustrated by a legal system that is complex and unclear and entirely inad-

equate to the task. As a practical matter, in most jurisdictions people convicted of a crime have no hope of ever being able to fully discharge their debt to society . . . .

The Commission accurately identified the problems that collateral consequences pose for any person seeking to resume a normal life after being convicted of a crime and after serving the criminal penalty a jurisdiction exacts as a consequence of the conviction. The reality for many is that they continue to pay for their crimes without the normal players in the criminal justice system being aware of the impact of collateral consequences. The prosecutor and criminal defense counsel finish their work once a conviction becomes final and a defendant is placed under the control of either a court in the form of judicially supervised probation or a correctional system in either jail or prison. The court generally finishes its work when a defendant completes probation, and the correctional system finishes its work when a convicted defendant is finally released from incarceration and completes any post-incarceration period of parole or supervised release.

Having accurately identified the problems confronting a convicted person seeking to re-enter a community, the Commission makes the following assertion: “The criminal justice system must pay attention to collateral consequences. If the sentence is a reliable indicator, collateral consequences in many instances are what is really at stake, the real point of achieving a conviction.” The Commission’s reasoning for this assertion is based on the fact that in 2004, 60% of individuals convicted of felonies in state courts were not sentenced to prison. Instead, 30% of those individuals were sentenced to probation or other non-incarceration alter-

atives, and the other 30% received jail rather than prison terms. This, according to the Commission, means that “[i]n a high percentage of cases, the real work of the legal system is done not by fine or imprisonment, but by changing the legal status of convicted individuals.”

Many collateral consequences of conviction are unnecessary and could actually have the perverse effect of encouraging convicted individuals to pursue additional criminal acts once they discover that many lawful means of supporting themselves and their families are unavailable to them. But the Commission’s assertion as to “the real point of achieving a conviction” can be read two ways, and neither interpretation finds support in the data relied on by the Commission. One way to read the assertion is that the Commission contends that the criminal justice system is not set up to protect public safety, deter crime, encourage rehabilitation and discourage recidivism, and is actually intended to create a second class category of people, by convicting them of criminal acts and relegating them forever to second class status. Such a stretch would cast doubt on the motives of not only legislators throughout the country, but also on lawyers and judges who participate in the criminal justice system in the belief that it serves legitimate penal purposes.

The other reading of “the real point of achieving a conviction” is the notion that probation, and perhaps jail sentences rather than prison sentences, are not really punishments imposed on individuals. However, this notion reflects a misunderstanding of punishment. After all, when a court puts an individual on probation, there typically are conditions that restrict the individual’s former freedom. Probation is not a pass. It is a serious status that requires behavioral modification and threatens revocation and incarceration as the consequences of violating probation conditions. Similarly, when an individual is sentenced to jail rather than prison, the individual is incarcerated, not sent off to summer camp. The fact is that states may be wise

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2 Id. at 1-4. The Prefatory Note is not part of the legislation that the Commission recommends to the states, but it does purport to set forth the justifications for that legislation. It remains on the Commission’s website and presumably represents the Commission’s official position on the rationales for the Act.

3 Id. at 4.

4 Id.
THE COMMISSION ACCURATELY IDENTIFIED THE PROBLEMS THAT COLLATERAL CONSEQUENCES POSE FOR ANY PERSON SEEKING TO RESUME A NORMAL LIFE AFTER BEING CONVICTED OF A CRIME AND WHATEVER CRIMINAL PENALTY A JURISDICTION EXACTS AS A CONSEQUENCE OF CONVICTION.

when they determine that punishment short of prison may accomplish the goals of criminal justice and that such punishment is often commensurate with the relatively minor conduct that our society so often has criminalized.

Perhaps the greatest problem with the Commission’s analysis is the assumption that the intent of lawmakers is to impose collateral consequences as a punishment. The reality in many cases is that well-intentioned lawmakers use collateral consequences as a means of protecting society without being fully aware of how many collateral consequences they have imposed and how sweeping the effects can be for those whom the collateral consequences are imposed upon.

Despite the hyperbole in its identification of “the real point of achieving a conviction,” the Act represents an effort to get states to look at their collateral consequences and determine whether they can be eliminated or reduced, and whether they can be tailored to appropriately balance public safety with a former offender’s need for employment, housing, and other benefits. The need for states and the federal government to take a hard look at collateral sanctions is demonstrated by the American Bar Association’s creation of the National Inventory of the Collateral Consequences of Conviction (NICCC). The NICCC demonstrates that there are tens of thousands of collateral consequences throughout the United States and affords legislators a ready vehicle for re-examination and reform.

The Act provides a starting place for interested legislators, but it has become clear that the Act needs further work if it is to adequately deal with the problems associated with collateral consequences. Below, I suggest some of the changes that should be made.

Defining Collateral Consequence

The Commission states in its Prefatory Note to the Act that “[t]he term ‘collateral sanction’ is used here to mean a legal disability that occurs by operation of law because of a conviction but is not part of the sentence for the crime. It is ‘collateral’ because it is not part of the direct sentence.” That is the same basic definition used in the NICCC. Yet, Section 2(2) of the Act defines “collateral sanction” to mean

6 If a user of the website clicks on a state, at the bottom of each page, the user will learn that there are 46,523 total entries, all but several thousand of which are collateral consequences. Attorney General Eric Holder has written to the Attorneys General of every state to encourage them to examine the collateral consequences in their states with an eye to reducing or eliminating those that are unnecessary to protect public safety. One of the reasons that the Department of Justice has supported the NICCC is its judgment that many legislators and law enforcement officials have too little knowledge as to the overall impact of collateral consequences in their jurisdictions.

7 The Act, supra note 1, at 2.

8 ABA N.I.C.C.C, supra note 6, http://www.abacollateralconsequences.org/description. (“Persons convicted of crime are subject to a wide variety of legal and regulatory sanctions and restrictions in addition to the sentence imposed by the court. These so-called ‘collateral consequences’ of conviction . . . .”).
“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.” (Emphasis added).9

The Act’s definition of “collateral sanction” in Section 2 confuses both collateral sanctions and sentencing sanctions, making it impossible to know where the difference lies. This definition contradicts the definition of “collateral sanction” in the Prefatory Note and needs clarification. Surely, nothing is more important in a model act than knowing precisely what it covers. The confusion in the basic definition of a collateral sanction is exacerbated by the Comment which states that the definition in paragraph 2 is taken from Section 19-1.1 of the ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons.10 It turns out that the statement is not exactly correct. Section 19-1.1(a) of the ABA Standards provides: “the term “collateral sanction” means a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.” The ABA Standard is itself confusing because it fails to explain how a sanction can be collateral if it is part of the sentence. The ABA Standard may implicitly say what the Act says explicitly. But, the Act purports to deal with collateral consequences, which it defines in Section 1, (i) as “a collateral sanction or a disqualification.”11 The ABA Standards do not use the term “collateral consequence” in the text of the Standards and only use it in the Commentary.12 The bottom line is that the Act needs to clarify what it means by collateral consequences and what it means by collateral sanctions.

Identification and Collection of Laws Regarding Collateral Consequences

Section 4 of the Act states that a designated government agency or official shall identify all legal provisions that impose collateral consequences or that authorize the imposition of a disqualification resulting from or relating to conviction for an offense.13 It would be difficult, if not impossible, for any official or agency to complete the task without knowing what constitutes a collateral sanction and whether sanctions imposed by courts as part of criminal judgments are direct or collateral sanctions.

Section 4(a)(4) of the Act states that in performing the collection task the agency of official “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, Pub. L. 110-177.” The NICCC is that study.

Now that the NICCC has defined collateral consequence (including collateral sanction) as limited to matters not imposed in a judgment of conviction, the Act should be amended so that its definitions are consistent with the NICCC. Alternatively, the Act should be amended to specify which consequences not included in the NICCC definition, should be collected by the agency or official.

Improving Notice

Section 3 provides that if a state adopts the Act as written, in the event of noncompliance with the Act’s requirements, the noncompliance does not provide a basis for invalidating a plea, conviction, or sentence.14 This makes
little sense if, in fact, the effect of collateral consequences may be more devastating than the penalties imposed by a court. Why should there be no consequences for failing to assure that the notice of collateral consequences required by Section 5 is provided to each defendant who pleads guilty or nolo contendere? There is no answer from the Commission, and its failure to include a remedy for what it regards as a fundamentally important notice is inconsistent with its recognition of the important ramifications of collateral consequences.

Pleas already states that defense counsel should advise defendants of the collateral consequences of conviction. There is little reason why the Act should not impose a similar requirement.

In Padilla v. Kentucky, the United States Supreme Court recognized that it was ineffective assistance of counsel for a defense counsel to fail to warn the defendant that a conviction would lead to deportation where that was an obvious consequence of conviction. The end result was to impose a burden on defense counsel and to provide a remedy for a defendant who was not properly advised by defense counsel. The Act indicates that the drafters were aware of the Padilla decision, and yet the drafters imposed no burden on defense counsel to give warnings to defendants and provided no remedy for the failure to give warnings.

Referring to failure to advise about collateral consequences as a “technical deficiency” seems completely out of place in a document that maintains that “it has become increasingly difficult to avoid or mitigate the impact of collateral consequences,” and that “[a]s a practical matter, in most jurisdictions people convicted of a crime have no hope of ever being able to fully discharge their debt to society.” Id. at 4.

The Act does not provide which government agency or official will give the notice required by Section 5, and it is unclear which is most likely to give effective notice. The question arises as to why defense counsel should not be required to give the notice and to assure a court at the time of plea that it has been given, and in the case of pro se litigants why the court should not be required to give the notice. This would ensure that there is a record that notice has been given. If notice is not given, there should be an opportunity for a defendant to move to withdraw a plea in circumstances where the collateral consequences may be more severe than the penalty imposed by the court at sentencing.

See id. § 5(a)-(b) (stating requirements of the designated government agency or official and the court to give notice of collateral consequences in pretrial proceedings and at the guilty plea, respectively).

See id. § 5 cmt. at 17 (stating “[c]ompliance with this provision should be sufficiently simple, that questions of the consequences of non-compliance should rarely arise. However, the criminal justice system depends on the finality

IT WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, FOR ANY OFFICIAL OR AGENCY TO COMPLETE THE TASK WITHOUT KNOWING WHAT CONSTITUTES A COLLATERAL SANCTION AND WHETHER SANCTIONS IMPOSED BY COURTS AS PART OF CRIMINAL JUDGMENTS ARE DIRECT OR COLLATERAL SANCTIONS.

16 See id. § 5(a)-(b) (stating requirements of the designated government agency or official and the court to give notice of collateral consequences in pretrial proceedings and at the guilty plea, respectively).

17 See id. § 5 cmt. at 17 (stating “[c]ompliance with this provision should be sufficiently simple, that questions of the consequences of non-compliance should rarely arise. However, the criminal justice system depends on the finality
Another defect in the Act is that Section 5(b) only requires the court to assure that the defendant has received notice about collateral consequences when the defendant seeks to plead guilty or nolo contendere. In fact, defendants who plead not guilty and seek to go to trial may have every bit as much a need to know about collateral consequences as those who plead guilty because they may not understand that a plea to a different charge might avoid certain consequences that would result from a conviction at trial. If defense counsel were required to give the notice to defendants before they pled, the court would be able to assure itself that the defendant's choice to plead not guilty is not a result of ignorance of collateral consequences. Similarly, a pro se defendant could be warned by the court about collateral consequences before entering a plea and could be given a chance to reconsider whether to request counsel in order to better understand the relative effects of entering a plea versus going to trial.

In addition to shifting the burden of providing notice from some unidentified agency or official to defense counsel (or the court in the case of pro se litigants), the Act should be amended to improve the notice that is provided at the time a plea is entered. Section 6 of the Act provides that at sentencing or upon release from incarceration an individual should be provided the following notice:

(1) that collateral consequences may apply because of the conviction;

(2) of the Internet address of the collection of laws published under Section 4(c);\(^\text{22}\)

(3) that there may be ways to obtain relief from collateral consequences;

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

(5) of when an individual convicted of an offense may vote under this state's law.\(^\text{23}\)

Section 5 already requires notice of (1) and (2) at the time of a guilty plea.\(^\text{24}\) Why not require the other information in (3), (4), and (5) to be provided at the same time, and as suggested above, at the time of a not guilty plea as well? The decision whether to plead and incur one or more collateral consequences might be affected by the potential opportunities later to obtain relief from a consequence. There may be various entities better able than a defense lawyer or a judge to assess the future probability of obtaining relief and that may be willing, at least in some instances, to offer an opinion on the prospects for future relief before a defendant actually enters a plea.

The Act offers no justification for holding back this information until someone has already been convicted or has already pled guilty and is about to be sentenced. If the information were provided prior to entry of a plea, there is reason to question whether there would be a need to repeat it “as a part
of sentencing” as Section 6(b) now requires. Section 6(c) requires that an unidentified agency or official must also give the same notice required by Section 6(a) “not more than [30], and, if practicable, at least [10], days before release.”

This makes little sense for an individual who is sentenced to ten, thirty or sixty days in jail and has been given all the same information at sentencing (or as I would require prior to pleading). It does make sense to provide notice to someone who has served a prison sentence of years because circumstances may have changed. The Act treats all defendants alike regardless of how long they serve any form of incarceration without explaining why repetitive notice is necessary.

If one assumes that repetitive notice is a good thing, then the actual notice required by the Act is defective and, surprisingly, deliberately so. The Comment to Section 6 states: “[t]he notice contemplated by this section is modest. It could be printed on a form issued in the ordinary course of sentencing or processing an individual for release.” The notice required by Section 5 of the Act for those pleading guilty or nolo contendere requires that the individual be warned of the possibility of “deportation, removal, exclusion from admission to the United States, or denial of citizenship,” and these additional consequences:

- being unable to get or keep benefits such as public housing or education;
- receiving a harsher sentence if you are convicted of another offense in the future;
- having the government take your property; and
- being unable to vote or possess a firearm.

Why would anyone who believes that repetitive notice is necessary fail to repeat the information that Section 5 indicates is important? The Act provides no answer, and certainly the reason cannot be financial. The Comment anticipates a form that would be distributed to convicted and incarcerated defendants. Such form certainly could include all the information required by Section 5 without increasing the cost of the form to any appreciable extent.

Procedural Due Process

One of the most disappointing aspects of the Act is Section 8, entitled “Decision to Disqualify.” This section governs all disqualifications which Section 2(5) defines as “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.” The Act defines “collateral sanctions” as the consequences that are imposed by operation of law without the exercise of discretion by an agency or official and distinguishes them from the discretionary decisions covered by Sec-

25 The Act § 6(c).
26 The Act § 6 cmt. at 19.
27 Id. § 5(a).
The distinction is an important part of the Act as evinced by Section 7(b), which provides that “[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.” Having drawn the distinction between automatic and discretionary consequences, Section 8 provides no opportunity for the convicted person to be heard before discretion is exercised. It simply states:

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 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 or a certificate of restoration of rights.

Given the importance of collateral consequences and the enormous impact they can have on an individual, the denial of any opportunity for the individual to be heard before a decision is made is striking. The Act strangely provides that the decision-maker should consider “the effect on third parties of granting the benefit or opportunity” and completely omits any requirement that the decision-maker consider the effect on the individual who may be disqualified. At a minimum, the official or agency should be required to give the individual some opportunity, preferably before a decision is made, to address the decision-maker and to provide anything the individual believes should be considered relevant to the discretionary decision. The individual should have the opportunity to address the decision-maker.

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28 Id. § 2(2).
29 Id. § 8.
30 The Act § 8.
31 The Supreme Court has made clear that before disqualifying a lawyer in a case for an alleged conflict of interest, a judge has a duty to inquire about the conflict. Holloway v. Arkansas, 435 U.S. 475 (1978). The inquiry is intended to protect the defendant, not the lawyer; the effect of a disqualification is to deny the defendant the benefit of the lawyer he or she desires. The duty of inquiry is incorporated into Fed. R. Crim. P. 44.
dress the impact that disqualification might have on everyone who could be affected by the decision whether or not to disqualify.\(^{32}\)

The failure of the Act to provide any opportunity for a convicted person to participate in the process leading to a discretionary decision is a major defect. Even if there are circumstances in which a decision must be made so quickly that a right to be heard would not be practicable, the right to appeal a decision could be a substitute and still provide some opportunity for the person affected by a disqualification to participate.

The Burden of Persuasion on Relief

Section 10(a) of the Act provides that an individual convicted of an offense may petition for an order of limited relief from a collateral sanction (i.e., a consequence automatically imposed by operation of law) to the sentencing court at or before sentencing or to a designated board or agency at any time after sentencing. Section 10(b) imposes the burden on the petitioning individual to establish 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.\(^{33}\)

It makes some sense to impose the burden of proving (1) and (2) on the petitioning individual, and that burden should be easy to meet in most cases since the individual would not likely file a petition unless he or she believed that one or more collateral consequences was causing substantial problems related to the items specified in (1). If the individual makes the showing as to (1), it will be automatic or virtually so that the individual also satisfies (2). But, there is a strong argument that the burden on (3) should be shifted to the government. This is not simply because proving a negative is often difficult, but it is also because the government should be required to identify the safety issue about which it is concerned so that the decision-maker can consider whether there is a remedy short of leaving the collateral sanction in full effect that would be adequate to protect public safety.\(^{34}\)

A similar argument for shifting the burden can be made with respect to Section 11 of the Act, entitled “Certificate of Restoration of Rights.” That Section provides that an individual may seek a certificate of restoration of rights after a certain period of years following conviction or release from confinement. It requires the individual to prove by a preponderance of the evidence that:

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\(^{32}\) The Comment to Section 8, like the Act itself, makes no mention of a right to be heard. Id. § 6 cnt. at 21-23.

\(^{33}\) Id. § 10(b).

\(^{34}\) See, e.g., 18 U.S.C. §3142 (2008) (implicitly imposing upon the government the burden in many instances of showing that a defendant would pose a threat if released pending trial). See also United States v Vortis, 785 F.2d 327, cert. denied, 479 U.S. 841 (1986) (magistrate correctly found risk of flight by a preponderance of the evidence). Of course, the statute deals with pretrial release while collateral consequences affect those already convicted, but both address community safety.
(1) the individual is
engaged in, or seek-
ing to engage in, a
lawful occupation
or activity, including
employment, training,
education, or rehabili-
tative programs, or the
individual otherwise
has a lawful source of
support;

(2) the individual is not
in violation of the
terms of any criminal
sentence, or that any
failure to comply is
justified, excused,
Involuntary, or insub-
stantial;

(3) a criminal charge is
not pending against
the individual; and

(4) granting the petition
would not pose an
unreasonable risk to
the safety or welfare
of the public or any
individual. 35

It seems fair to require the defendant to
prove (1), (2), and (3), but it would make
more sense to require the government
to prove (4). Neither the Comment to
Section 10 nor the Comment to Section
11 contains even a discussion of the
proper allocation of the burden of
persuasion. This is a glaring omission.

Another defect in the Act is that it
contains no specification as to who bears
the burden of persuasion with respect to
intermediate relief, which relieves some
but not all of the effects of a collateral
sanction or disqualification. Section 11(c)
states that “[a] certificate of restoration
of rights must specify any restriction im-
posed and collateral sanction for which
relief has not been granted under Sec-
tion 13(a).” Section 13(a) refers to petitions
filed pursuant to both Sections 10 and 11
and contains a sentence stating that “[t]he
court may issue an order and the [desig-
nated board or agency] may issue an order
or certificate subject to restriction, con-
dition, or additional requirement.” This
 appears to permit some intermediate
approach, as the Comment to the Section
makes clear in the following language:

Section 13(a) allows the grant of condi-
tional relief. For example, a Certifi-
cate of Restoration of Rights could
withhold the right to seek public hous-
ing in the building
where the victim
lives, or could con-
dition relief on par-
ticipation in a reha-
bilitative program. If
relief is denied, re-
application can also
be conditioned. An
applicant could be
required to wait for
a period of time to
reapply, or to reap-
ply only after Udit-
specified rehabilita-
tion or training. 38

Whose burden is it to suggest restric-
tions or conditions? And what is the
standard of proof? It seems that any
restrictions or conditions would be re-
lated to public safety and welfare con-
cerns, which the government is better
positioned than an individual to address.

35 The Act § 11(b).
36 Id. § 10 cmt. at 28-30.
37 Id. § 11 cmt. at 31-32.
38 Id. § 13 cmt. at 35.
Sanctions that Cannot Be Relieved

Section 12 of the Act states that an order of limited relief (i.e., turning a sanction into a disqualification) or a certificate of restoration of rights may not be issued to relieve collateral sanctions related to sex offender registration requirements, certain motor vehicle sanctions, or ineligibility for employment in various law enforcement and prosecutor offices. The motor vehicle provision appears harmless as it is designed, as the Comment to Section 12 states, to avoid creating remedies that are duplicative or inconsistent with already available remedies. But, there is nothing in the Comment that explains why sex offender statutes and employment opportunities require insulation from relief provisions. This is especially troublesome in view of the fact that some states have such broad definitions of sex offenses that they cover conduct that other states would regard as harmless and would seem prime candidates for relief from collateral consequences.

As for employment opportunities, the Comment to Section 12 is inconsistent with the Act. The Comment states “[n]othing in this Section prohibits states from permitting law enforcement agencies to consider hiring individuals with criminal records.” But, the Act makes the collateral sanctions (i.e., automatic provisions by operation of law) that restrict employment ineligible for relief, so there is no way an agency can hire someone who is legally barred from employment.

Conclusion

The Act is well intentioned and the Commission deserves credit for recognizing both the important impact that collateral consequences can have on the lives of individuals convicted of criminal acts and for emphasizing how great a contribution that the NICCC has made and will continue to make as legislators are called upon to revisit collateral consequences. According to the Commission’s website, only Vermont has enacted the Uniform Act. It is difficult to determine whether other states have failed to move forward because they have not yet recognized the significance of collateral consequences or they have found the Act to be problematic in at least some of the ways suggested here.

The Commission can always act to improve the Act. The first step is recognizing the problems with it. Those problems include inconsistency, incompleteness, and questionable policy choices. Reasonable minds can debate the policy choices, but inconsistency and incompleteness are deficiencies that should not exist in a Uniform Act.

39 Id. § 12 cmt. at 32-33.
40 Joseph L. Lester, Off to Elba! The Legitimacy of Sex Offender Residence and Employment Restrictions, 40 Akron L. Rev. 339, 342 (2007) (“The definition of what is a sex offense is set forth by statute and varies from state to state. In some states the list is short, while in others the list is extensive.”).
41 The Act § 12 cmt. at 33.
About the AUTHOR

Stephen A. Saltzburg has taught at the George Washington University Law School since 1990. In January 2004, he was named the Wallace and Beverley Woodbury University Professor. From 1990-2004, he was the Howrey Professor of Trial Advocacy, Litigation and Professional Responsibility. Professor Saltzburg founded and became the Director of the Masters Program in Litigation and Dispute Resolution in 1996. Before moving to George Washington, Professor Saltzburg taught at the University of Virginia School of Law from 1972 to 1990. He was named the first Chairholder of the Class of 1962 Endowed Chair. He co-founded the University of Virginia Law School Trial Advocacy Institute in 1980, which became the National Trial Advocacy College at the University of Virginia Law School. He continues to be the Director of the College.

Professor Saltzburg served as Reporter for and then as a member of the Advisory Committee on the Federal Rules of Criminal Procedure and as a member of the Advisory Committee on the Federal Rules of Evidence. He was the Reporter for the Civil Justice Reform Act Committee for the District of Columbia District Court and then became Chair of that Committee. From 1987 to 1988, Professor Saltzburg served as Associate Independent Counsel in the Iran-Contra investigation. In 1988 and 1989, Professor Saltzburg served as Deputy Assistant Attorney General in the Criminal Division of the Department of Justice, and in 1989 and 1990 was the Attorney General’s ex officio representative on the United States Sentencing Commission. In June, 1994, the Secretary of the Treasury appointed Professor Saltzburg as the Director of the Tax Refund Fraud Task Force, a position he held until January, 1995. Professor Saltzburg is the author of numerous books and articles on evidence, procedure, and litigation. He is a member of the ABA House of Delegates from the Criminal Justice Section (which he served as Chair), the ABA Task Force on Cyber Security, and the Commission on the Future of the Legal Profession. He is the Chair of the Advisory Committee for the National Inventory of the Collateral Consequences of Criminal Conviction.