

ARTICLE 6X. COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION

§ 6x.01. Definitions.⁵²

(1) For purposes of this Article, collateral consequences are penalties, disabilities, or disadvantages, however denominated, that are authorized or required by state or federal law as a direct result of an individual's conviction but are not part of the sentence ordered by the court.

(2) For purposes of this Article, a collateral consequence is mandatory if it applies automatically, with no determination of its applicability and appropriateness in individual cases.

(3) For purposes of this Article, a collateral consequence is discretionary if a civil court, or administrative agency or official, is authorized, but not required, to impose the consequence on grounds related to an individual's conviction.

Comment:⁵³

a. Collateral consequences, generally. When the Model Penal Code was adopted in 1962, the primary consequence of conviction was a fine, probation, or a period of incarceration. Collateral consequences were limited in most cases to a temporary loss of the right to vote, hold public office, serve on a jury, and testify in court. Since then collateral consequences have proliferated, and now include mandatory deportation, inclusion on a public registry, loss of access to public housing and benefits, financial aid ineligibility, and occupational licensing restrictions. Some of these consequences last for the duration of the convicted individual's life. This Section, and those that immediately follow (§§ 6x.02-6x.06), address legal mechanisms by which convicted individuals may seek and obtain relief from some types of collateral consequences.

b. Scope. The term of art "collateral consequences" has been defined to include a host of legally imposed or authorized sanctions, usually denominated as civil or regulatory measures triggered by criminal conviction. The Code uses the term to refer specifically to the negative consequences of conviction that are authorized by state or federal law as a result of an individual's conviction. It excludes from the definition of collateral consequences all informal, locally imposed, private, and extralegal consequences of conviction. It also excludes all direct consequences of conviction, that is, those consequences that are authorized by a sentencing court as part of an offender's criminal sentence. (Those direct consequences may include not only fines and terms of community supervision or custody imposed as a penalty for a criminal

⁵² This Section was originally approved in 2014; see Tentative Draft No. 3.

⁵³ This Comment has not been revised since § 6x.01's approval in 2014. All Comments will be updated for the Code's hardbound volumes.

1 offense, but also the conditions of supervision and/or institutional restrictions, such as security
2 classification, imposed in connection with the service of the criminal sentence.)

3 Subsections (2) and (3) define two distinct categories of collateral consequences,
4 distinguished by their legal modes of operation. Mandatory collateral consequences are those
5 imposed automatically by force of law as a result of conviction. The nonindividualized nature of
6 mandatory consequences implicates the Code's policies against mandatory punishments that
7 allow no room for individualization by a sentencing judge; see § 6.06 and Comment *d* (Tentative
8 Draft No. 2, 2011). Discretionary collateral consequences are those consequences that may, but
9 need not, be imposed on an individual as a result of criminal conviction. Although these
10 consequences can be long-lasting, they allow room for consideration of individual circumstances
11 by discretionary decisionmakers, and are therefore less problematic under the Code.

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13 **REPORTERS' NOTE**⁵⁴

14 *a. Collateral consequences, generally.* In America today, estimates suggest that more than one in four adults
15 has a criminal record. Mike Vuolo, Sarah Lageson, and Christopher Uggen, Criminal Record Questions in the Era of
16 "Ban the Box," 16 Criminology & Pub. Pol'y 139 (2017). Increasingly, the harshest and most enduring consequence
17 of conviction is not the sentence imposed by a court, but the penalties and disqualifications imposed by civil statutes
18 and regulatory requirements as a result of conviction. See Margaret Colgate Love, Paying Their Debt to Society:
19 Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act, 54 How. L.J. 753, 754
20 (2011). From registration to limits on occupational licensure, residency, and access to public benefits, collateral
21 consequences play an increasingly important role in preventing those who have committed crimes from successfully
22 reintegrating into the law-abiding community. Michael Pinard, Reflections & Perspectives on Reentry and Collateral
23 Consequences, 100 J. Crim. L. & Criminology 1213, 1219 (2010) ("Given the breadth and permanence of collateral
24 consequences, [convicted] individuals are perhaps more burdened and marginalized by a criminal record today than
25 at any point in U.S. history"); Joan Petersilia, When Prisoners Come Home 136 (2003) (collateral consequences "are
26 growing in number and kind, being applied to a larger percentage of the U.S. population and for longer periods of
27 time than at any point in U.S. history").

28 Collateral consequences arise under both state and federal law. In a typical U.S. state, hundreds of collateral
29 consequences attach to any felony conviction, and there are additional mandatory collateral consequences that attach
30 to particular classes of offenses, such as sexual assaults, see Article 203, and drug-trafficking offenses. Margaret
31 Colgate Love, Jenny Roberts, and Cecelia Klingele, Collateral Consequences of Criminal Conviction: Law, Theory
32 & Practice (2013). A number of federal collateral consequences are also triggered by state conviction. *Id.*

33 Courts have taken the position that collateral consequences are not "punishment" within the meaning of the
34 Eighth Amendment. See *Doe v. Dep't of Pub. Safety and Corr. Servs.*, 430 Md. 535, 600, 62 A.3d 123 (Md. Ct.
35 App. 2013) ("sex offender registration is not punishment, but a collateral consequence of a conviction"); *Green v.*

⁵⁴ This Reporters' Note has been minimally revised since § 6x.01's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.

1 Board of Elections of City of New York, 380 F.2d 445, 451 (2d Cir. 1967) (“Depriving convicted felons of the
2 franchise is not a punishment but rather is a ‘nonpenal exercise of the power to regulate the franchise’”).
3 Nevertheless, those within the criminal-justice system have become increasingly conscious of the punitive weight of
4 these sanctions. Meda Chesney-Lind and Marc Mauer, *Invisible Punishment: The Collateral Consequences of Mass*
5 *Imprisonment* (2003). Major modern developments in charging and sentencing practice, such as the proliferation of
6 deferred-prosecution and deferred-adjudication programs (including “first offender” programs and some problem-
7 solving courts), have been driven by a desire to avoid triggering collateral consequences through formal conviction.
8 See Richard A. Bierschbach and Stephanos Bibas, *Constitutionally Tailoring Punishment*, 112 Mich. L. Rev. 397,
9 445 (2013); Jenny Roberts, *Why Misdemeanors Matter: Defining Advocacy in the Lower Criminal Courts*, 45 U.C.
10 Davis L. Rev. 277, 297 (2011). In light of the degree to which collateral consequences now drive many charging,
11 bargaining, and sentencing decisions, the revised code devotes serious attention to the
12 issue of collateral consequences.

13 *b. Scope.* The definitions used in this Section are distinct from, but consistent with, the definition of collateral
14 consequences adopted by two recent law-reform projects—the American Bar Association’s Standards for
15 Mandatory collateral consequences and Discretionary Disqualification of Convicted Persons (2004) and the Uniform
16 Law Commission, Uniform Collateral Consequences of Conviction Act (2009). The definitions found in this
17 provision draw upon those earlier efforts, but also represent the independent policy assessments of The American
18 Law Institute. In many respects—including, at the most prosaic level, the definitions of terms found in this
19 provision—the Institute has charted its own course. Where differences exist, they spring from the comprehensive
20 scope of the Model Penal Code project, which includes all aspects of formal sentences imposed on offenders,
21 together with alternative dispositions and noncriminal penalties or disqualifications.

22 Consistent with the definitions used in the ABA Standards and the Uniform Collateral Consequences of
23 Conviction Act, collateral consequences are defined in this Section as negative repercussions of conviction,
24 authorized by law, that fall outside the direct sentence imposed by the court at sentencing. Collateral consequences
25 do not include informal sanctions, see Wayne Logan, *Informal Collateral Consequences*, 88 Wash. L. Rev. 1103
26 (2013), nor are they defined here to include economic sanctions, imprisonment (and its attendant hardships), or
27 periods of community supervision with their attendant conditions. They do include a broad range of legally imposed
28 restrictions, such as loss of civic rights, limits on occupational licensure, and reporting requirements. This provision
29 distinguishes between mandatory and discretionary collateral consequences. Mandatory consequences are those
30 which are imposed automatically by operation of federal or state law, and include bans on voting by convicted
31 felons, see, e.g., Nev. Const. Art. 2, § 1; N.Y. Const. Art II, § 3; Rev. Code Wash. § 10.64.140; and rules prohibiting
32 individuals convicted of certain offenses from obtaining teaching licenses, see, e.g., 5 Cal. Code Reg. § 80301; 105
33 ILCS 5/21B-15; S.C. Code Ann. § 59-25-280(A). Discretionary consequences are those that permit authorized
34 decisionmakers to deny benefits or opportunities to individuals convicted of certain offenses, but do not require
35 disqualification. See, e.g., Neb. Rev. Stat. § 19-1832 (providing for discretionary discharge of any civil servant
36 convicted of a misdemeanor or felony); N.J. Stat. § 3B:12A-6 (discretionary bar to service as legal guardian for
37 relatives for any misdemeanant or felon). Because discretionary consequences allow decisionmakers to consider the
38 facts underlying an individual conviction when deciding whether a given consequence should be imposed, they

1 provide a safeguard against enforcement of sanctions that do not serve legitimate regulatory purposes in specific
2 cases.

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5 **§ 6x.02. Sentencing Guidelines and Collateral Consequences.⁵⁵**

6 **(1) As part of the sentencing guidelines, the sentencing commission [or other
7 designated agency] shall compile, maintain, and publish a compendium of all collateral
8 consequences contained in [the jurisdiction's] statutes and administrative regulations.**

9 **(a) For each crime contained in the criminal code, the compendium shall set forth
10 all collateral consequences authorized by [the jurisdiction's] statutes and regulations,
11 and by federal law.**

12 **(b) The commission [or designated agency] shall ensure the compendium is kept
13 current.**

14 **(2) The sentencing commission shall provide guidance for courts considering petitions
15 for orders of relief from mandatory collateral consequences under §§ 6x.04 and 6x.05. The
16 commission's guidance shall take into account the extent to which a mandatory
17 consequence is substantially related to the elements and facts of an offense and likely to
18 impose a substantial and unjustified burden on a defendant's reintegration.**

19 **Comment:**⁵⁶

20 *a. Scope.* The goal of this new provision is to aggregate in one location as much information
21 as possible about collateral consequences so that the public, defendants, counsel, and courts can
22 easily access information regarding the full consequences of conviction. This provision requires
23 the sentencing commission to collect and maintain information on all collateral consequences as
24 defined in § 6x.01, whether mandatory or discretionary, and to make that information accessible
25 to the public.

26 The provision requires the commission to regularly maintain and publish its compendium,
27 making it a reliable and easily accessible resource for individuals and their lawyers at every stage
28 of a criminal prosecution, from charging through sentencing.

29 *b. Information collected.* Under subsection (1), the sentencing commission is required to
30 “compile, maintain, and publish a compendium of all legislatively authorized collateral
31 consequences of criminal conviction.” Section 6x.02(1)(a) requires the sentencing commission to

⁵⁵ This Section was provisionally approved in 2014, see Tentative Draft No. 3, with amendments later incorporated and approved by the Council in 2017.

⁵⁶ This Comment has not been revised since § 6x.02’s approval in 2014. All Comments will be updated for the Code’s hardbound volumes.

1 set forth in a compendium “all collateral consequences authorized by [the relevant jurisdiction’s]
2 statutes and regulations, and by federal law.” Excluded from the commission’s compendium are
3 all nonfederal, extra-jurisdictional collateral consequences, and all disqualifications and
4 sanctions not contained in statutes or administrative code provisions, such as municipal
5 ordinances.

6 *c. Distribution.* Subsection (1) requires the sentencing commission to “publish a
7 compendium of all legislatively authorized collateral consequences.” The provision does not
8 mandate how publication should occur or to whom the compendium should be distributed;
9 however, it suggests that the compendium should be made easily accessible to courts,
10 prosecutors, defense counsel, and the general public. Electronic methods of publications may
11 prove most simple, accessible, and cost-effective.

12 *d. Organization.* Subsection (1)(a) requires the sentencing commission to provide
13 information about all mandatory collateral consequences that apply to every offense listed in the
14 criminal code, arranged by crime. This requirement is designed to ensure that the compendium is
15 accessible both to legal professionals and to general users who want to know the full
16 consequences of conviction of any given offense. Cf. ABA Standards on Mandatory collateral
17 consequences, Standard § 19-1.2(a)(iii) (designated agency should “provide the means by which
18 information concerning the mandatory collateral consequences that are applicable to a particular
19 offense is readily available”). Although not required by the Code, the compendium would most
20 usefully be organized to distinguish between mandatory and discretionary collateral
21 consequences in order to provide parties and courts with an easy-to-use reference for
22 determining which consequences can be subject to a petition for relief under § 6x.04(2).

23 *e. Challenges of nonstatutory collateral consequences.* Many collateral consequences
24 (particularly those that relate to residency) are imposed at the local level, by ordinance or
25 common practice. These low-visibility restrictions change often and are difficult to track. In
26 order to ensure that collateral consequences are fairly publicized and scrutinized, states would
27 ideally mandate that all collateral consequences be imposed at the state, rather than the local,
28 level. Nevertheless, recognizing the significant challenges involved in indexing local restrictions
29 as they are currently compiled, subsection (1) requires the sentencing commission to track only
30 those sanctions and disqualifications that are contained in federal and state statutes and
31 regulations.

32 *f. Guiding courts on petitions for relief.* Subsection (2) requires sentencing commissions to
33 develop guidance for courts on how best to exercise their discretion when ruling on petitions for
34 relief from mandatory collateral consequences under § 6x.04(2). This Section allows individual
35 commissions to guide courts by developing standards for determining when there is a clear or
36 close connection between a mandatory collateral consequence and the crime of conviction or the
37 facts underlying the criminal case. The “substantial relationship” standard is meant to embody

1 the type of connection that will warrant imposition of a mandatory consequence and, conversely,
2 that will warrant its relief.

3 Requiring commissions to provide guidance to courts exercising their discretion under
4 § 6x.04(2) furthers the public interest in equitable decisions while preserving judicial discretion.
5 Because such guidance is not currently available from most sentencing commissions, this
6 subsection leaves room for commissions to experiment with offering guidance in forms that
7 differ from traditional structured guidelines.

8 Alternative formats might take the form of bulletins providing relevant data or supplemental
9 information about the purposes and operation of certain mandatory collateral consequences in
10 terms of their public-safety purposes, and collateral consequences most or least likely to advance
11 public safety for certain categories of offenses or offenders. Thus, for example, a mandatory bar
12 to certification as an operator of a commercial vehicle might have a substantial relationship to a
13 crime involving a driving offense, a tenuous relationship to a crime involving drugs or violence,
14 and little or no relationship to a crime involving theft or false statements. A mandatory bar to
15 public housing might have a substantial relationship to a crime involving serious violence and
16 major drug trafficking, but little or no relationship to dated fraud offenses. A third example is a
17 mandatory bar to a day-care operator's license, which has a clear nexus to violence and sexual
18 assault, but a less clear relationship to a minor drug crime or gambling offense.

19 The commission's guidance to courts considering motions for relief may also take into account a particular defendant's circumstances that bear on public safety risk, such as other criminal history, age at the time of the offense, time elapsed since the offense, participation in treatment for mental-health or substance-abuse problems, and evidence of rehabilitation.

20 It is important to bear in mind that, as provided in § 6x.04(3), an order of relief from a mandatory consequence under § 6x.04(2) does not prevent an authorized decisionmaker from later considering the conduct underlying the conviction when making an individualized determination whether to confer the benefit or opportunity in question. In such cases, the benefit or opportunity may be denied notwithstanding the court's order of relief if the conduct underlying the conviction is determined to be reasonably related to the benefit or opportunity the individual seeks to obtain.

30 **REPORTERS' NOTE**⁵⁷

31 *a. Scope.* The goal of this provision is to aggregate in one location as much information as possible about the collateral consequences of conviction so that defendants, counsel, and courts can easily access information needed for pre- and post-conviction decisions. This provision requires the sentencing commission to collect and maintain information on all mandatory collateral consequences and discretionary collateral consequences that attend conviction, and to make that information accessible to the public.

32 ⁵⁷ This Reporters' Note has been minimally revised since § 6x.02's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.

1 *b. Information collected.* In many jurisdictions, the number of collateral consequences that attach upon
2 conviction number in the hundreds. The laws that authorize these consequences are scattered throughout statutes and
3 regulations; aggregating such a high volume of information is no easy task, particularly given the pace at which such
4 legislation is passed and modified. The information that subsection (1) requires the commission to gather is similar
5 in nature and scope to that required by the Uniform Law Commission's Uniform Collateral Consequences of
6 Conviction Act (UCCCA) § 4 (requiring "designated governmental agency or official" to "identify . . . any provision
7 . . . which imposes a collateral sanction or authorizes the imposition of a disqualification" and "make that
8 information publicly available, along with a link to an online compilation of the most recent collection of the
9 collateral consequences imposed by federal law and any provision of federal law that may afford relief from a
10 collateral consequence").

11 While such a task is daunting, it is not impossible and has been made simpler by recent research efforts. In
12 2007, Congress directed the National Institute of Justice to compile a 50-state inventory of collateral consequences.
13 See Pub. L. 110-177 § 510, 121 Stat. 2534, 2544. Through the efforts of the American Bar Association, the National
14 Inventory of the Collateral Consequences of Conviction was developed and made available online to the public.
15 Since 2017, the repository has been hosted and maintained by the Council of State Governments' Justice Center.
16 The inventory provides a listing of mandatory collateral consequences and discretionary collateral consequences
17 authorized by statute or administrative regulation in every state and in the federal system. Although this resource is
18 one that will require continuous updating, it has removed many of the logistical barriers to the collection of such
19 information that previously existed.

20 *c. Distribution.* There are several existing examples of web-based compilations. The National Inventory of
21 Collateral Consequences, <https://niccc.csgjusticecenter.org/map/>, uses a website to provide a searchable database of
22 information on collateral consequences in a number of jurisdictions, as do Ohio's Civil Impacts of Criminal
23 Convictions (CIVICC) database, <http://civiccohoio.org/>, and Columbia Law School's Collateral Consequences
24 Calculator for New York State, <https://calculator.law.columbia.edu/>.

25 *f. Guiding courts on petitions for relief.* In many states, administrative licensing agencies are called upon to
26 make discretionary decisions about the imposition of employment restrictions for people with criminal records. In
27 doing so, many are guided by statutory standards that permit the imposition of employment and licensing restrictions
28 only when a crime is substantially related to the work for which a license or permit is sought. See generally
29 Margaret Colgate Love, 50-State Comparison Consideration of Criminal Records in Licensing and Employment
30 (2017) (citing Cal. Bus. & Prof. § 490; 74 Del. Laws 262 (2004) (codified in scattered sections of Del. Code. Ann.,
31 tit. 24); N.H. Rev. Stat. Ann. § 332-G:10; Wis. Stat. §§ 111.32, 111.335(1)(c)),
32 <http://ccresourcecenter.org/resources-2/restoration-of-rights/50-state-comparisoncomparison-of-criminal-records-in-licensing-and-employment/>. In determining whether a substantial relationship exists, states look to factors such as
33 the nature of the crime; the relationship of the crime(s) to the activities authorized by the license; the relevance of
34 any conviction to the fitness of the licensee to perform the occupation authorized by the license; the length of time
35 since the conviction; and the behavior and activities of licensee following conviction. Code of Md. Reg.
36 09.01.10.02. See also Colo. Rev. Stat. § 24-5-101(4); Ky. Rev. Stat. Ann. § 335B.020(2); N.D. Cent. Code § 12.1-
37 33-02 (listing similar factors to guide the finding of a "direct relationship" between the crime and the license
38 sought); Tex. Occupations Code Ann. § 53.022 (same); Va. Code Ann. § 54.1-204(B) (same).

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3 **§ 6x.03. Voting and Jury Service.**⁵⁸

4 **(1) No person convicted of a crime shall be disqualified on that basis from exercising**
5 **the right to vote [, except that an individual serving a custodial sentence as a result of a**
6 **felony conviction may be disqualified while incarcerated].**

7 **(2) A person convicted of a crime may be disqualified on that basis from serving on a**
8 **jury only until the sentence imposed by the court, including any period of community**
9 **supervision, has been served.**

10 **Comment:**⁵⁹

11 *a. Scope.* This provision closely tracks § 306.3 of the original Model Penal Code, with one
12 primary difference. The original Code required that incarcerated voters be disqualified from
13 voting, while the proposed draft favors a prohibition on disenfranchisement altogether, and offers
14 a bracketed alternative that permits disenfranchisement only during the period of incarceration
15 for those convicted of felony offenses. The original Code, like the proposed provision, required
16 juror disqualification for the full duration of the sentence. The proposed provision does not
17 permit juror disqualification beyond the termination of sentence.

18 *b. Period of disqualification, voting rights.* This provision offers jurisdictions a choice with
19 respect to voter disqualification. The favored option prohibits disenfranchisement as a
20 consequence of conviction in all cases. Although disenfranchisement has been justified as a
21 fitting punishment for transgressing the rules of civil society, the legal justification for collateral
22 consequences is that they serve regulatory functions, not punitive ones. (This is why collateral
23 consequences can be applied retroactively and are ordinarily not subject to challenge under the
24 Eighth Amendment.) For that reason, punishment alone cannot justify the denial of voting rights
25 to convicted individuals, and there is no evidence suggesting that ballots cast by prisoners are
26 any more likely to be fraudulent than those cast outside prison walls. Furthermore, there are few
27 logistical obstacles to allowing convicted individuals to vote in prison or jail. Two states allow
28 prisoners to vote, Maine and Vermont, and both authorize prisoners to complete absentee ballots.

29 Even though there are few principled or practical arguments in favor of disenfranchising
30 prisoners, a bracketed alternative is included that would authorize disenfranchisement for
31 individuals convicted of felony offenses during the period of imprisonment only. Under this
32 alternative, individuals would regain the right to vote automatically upon release from prison.

⁵⁸ This Section was originally approved in 2014; see Tentative Draft No. 3.

⁵⁹ This Comment has been minimally revised since § 6x.03's approval in 2014. All Comments will be updated for the Code's hardbound volumes.

c. Full opportunity to exercise the right to vote. Retaining the right to vote while incarcerated has little meaning if those behind bars are unable to exercise their civic rights. Subsection (1) specifies that individuals serving jail and prison sentences must be given adequate opportunity to exercise the right to vote. This includes the opportunity to register to vote in the jurisdiction where the prisoner is entitled to vote, and to exercise the right, either by absentee ballot or as otherwise permitted by the jurisdiction in which the prisoner is registered.

d. Period of disqualification, jury service. Recognizing the logistical challenges of arranging for jury service in a custodial setting, this provision allows convicted individuals to be excluded from jury service during the custodial phase of any sentence. Additionally, because jury service (particularly in the context of grand-jury proceedings) may expose jurors to confidential information about law-enforcement operations, subsection (2) allows individuals serving terms of community supervision to be excluded from jury service as well. Once an individual has completed his or her sentence, subsection (2) does not allow the individual to be barred from future jury service on the basis of past conviction alone.

REPORTERS' NOTE⁶⁰

a. Scope. The practice of prohibiting convicted individuals from participating fully in civic life has a long history, with roots in the ancient world. “Civil death”—the loss of the right to hold public office, vote, and bring suit on one’s behalf—was an incident of conviction throughout much of Western European history, and continuing into early America. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789 (2012). Nevertheless, the practice of barring convicted individuals from taking an active role in civic affairs is difficult to square with the principle that collateral consequences are meant to serve a regulatory, rather than a punitive, purpose.

The number of U.S. citizens disenfranchised as a result of past criminal conviction has soared dramatically over the past half century, from an estimated 1.17 million in 1976 to 5.85 million Americans in 2010. Christopher Uggen et al., State-Level Estimates of Felon Disenfranchisement in the United States 2010, The Sentencing Project 1 (2012). One of every 40 adult Americans is disenfranchised by conviction, and one of every 13 African Americans. Id. at 1-2.

Laws governing disenfranchisement vary considerably from one jurisdiction to another. Two states—Maine and Vermont—do not impose any voting restrictions on individuals convicted of crimes. At the other end of the spectrum, 11 states impose lifetime disenfranchisement on at least some convicted individuals. *Id.* at 3. While many of the states that authorize lifetime disenfranchisement have mechanisms for restoring the right to vote, only a small number of individuals see their rights restored. Jessie Allen, Documentary Disenfranchisement, 86 Tul. L. Rev. 389, 391 (2011).

It is important to acknowledge that the use of felon disenfranchisement in the United States has a checkered past. See, e.g., George Brooks, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 Fordham Urban L.

⁶⁰ This Reporters' Note has been minimally revised since § 6x.03's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.

1 Rev. 101, 105-109 (2004). Laws disenfranchising those with criminal records have been used to systematically and
2 disproportionately prevent minority voters from casting ballots. With that history as a backdrop, it seems particularly
3 important to use disenfranchisement sparingly, and only when legitimate regulatory concerns so require. When it
4 comes to regulation, however, there are few reasons why disenfranchisement is required at all. Individuals in prison
5 are well-identified and easily located, so preventing voter fraud is no justification. Moreover, there are few logistical
6 obstacles to voting in prison. In Maine and Vermont, prisoners vote by absentee ballot. For those not serving
7 sentences of confinement, there is no evidence that individuals convicted of criminal offense are more likely to
8 abuse the right to vote than any other citizen.

9 In addition to disenfranchisement, a majority of states impose a lifetime ban on jury service by felons—a
10 practice that, like disenfranchisement, has significant effects on the racial balance of jury pools. Darren Wheelock,
11 A Jury of One’s “Peers”: The Racial Impact of Felon Jury Exclusion in Georgia, 32 Just. Sys. J. 35 (2011) (reporting
12 that “felon jury exclusion dramatically reduces the pool of eligible African-Americans statewide by nearly one-
13 third”). Unlike felony disenfranchisement, which has been the subject of extensive criticism, the practice of barring
14 convicted felons from serving on juries has been largely overlooked by reformers, despite the fact that state laws
15 take a significantly harsher approach to jury service than to voting rights. See Brian C. Kalt, The Exclusion of
16 Felons from Jury Service, 53 AM. U. L. REV. 65, 67 (2003). Felons are excluded from serving on juries in 48 states,
17 and in 13 states, some misdemeanants are also excluded. Anna Roberts, Casual Ostracism: Jury exclusion on the
18 Basis of Criminal Convictions, 8 Minn. L. Rev. 592, 593 (2013).

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

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26
27 **§ 6x.04. Notification of Collateral Consequences; Order of Relief.⁶¹**

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

- 30 **(a) a list of all collateral consequences that apply under state or federal law as a
31 result of the current conviction;**
32 **(b) a warning that the collateral consequences applicable to the offender may
33 change over time;**

⁶¹ This Section was originally provisionally approved in 2014, see Tentative Draft No. 3, with amendments later incorporated and approved by the Council in 2017.

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

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

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

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

12 (b) When a petition is filed, notice of the petition and any related proceedings shall
13 be given to the prosecuting attorney.

14 (c) The court may grant relief from a mandatory collateral consequence if, after
15 considering the guidance provided by the sentencing commission under
16 § 6x.02(2), it finds that the individual has demonstrated by clear and convincing
17 evidence that the consequence is not substantially related to the elements and facts of
18 the offense and is likely to impose a substantial burden on the individual's ability to
19 reintegrate into law-abiding society, and that public-safety considerations do not
20 require mandatory imposition of the consequence.

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

22 (3) An order of relief granted under this Section does not prevent an authorized
23 decisionmaker from later considering the conduct underlying the conviction when making
24 an individualized determination whether to confer a discretionary benefit or opportunity,
25 such as an occupational or professional license. In such cases, the benefit or opportunity
26 may be denied notwithstanding the court's order of relief if the conduct underlying the
27 conviction is determined to be substantially related to the benefit or opportunity the
28 individual seeks to obtain. If the decisionmaker determines that the benefit or opportunity
29 should be denied based upon the conduct underlying the conviction, the decisionmaker
30 shall explain the reasons for the denial in writing.

31 **Comment:**⁶²

32 *a. Scope.* This provision, new to the Code, provides assurance that convicted individuals are
33 made aware of the collateral consequences to which they will be subject, and provides courts
34 with a mechanism for alleviating some types of mandatory collateral consequences on a case-by-
35 case basis. This provision recognizes that although collateral consequences can serve important
36 regulatory goals, there are instances in which the application of a particular collateral

⁶² This Comment has not been revised since § 6x.04's approval in 2014. All Comments will be updated for the Code's hardbound volumes.

1 consequence will unnecessarily impede a convicted individual's successful reintegration into the
2 law-abiding community without advancing public safety. This is likely to be most true when the
3 consequence bears little connection to the individual's risk of criminal re-offending.

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

17 In addition to providing the defendant with notice, § 6x.04(2) authorizes the sentencing
18 court, upon request from the convicted individual at sentencing, or at any time during the
19 sentence, to grant relief from the automatic imposition of specific mandatory collateral
20 consequences whose burdens outweigh their regulatory benefits in the particular case. Under
21 § 6x.04(2), a convicted individual may petition the sentencing court at the time of sentencing or
22 thereafter to grant relief from the mandatory nature of a collateral consequence that is imposed
23 by state law and is related to employment, education, housing, public benefits, registration,
24 occupational licensing, or the conduct of a business. Although the sentencing court is not obliged
25 to grant relief, or even to hold a hearing on the petition, the court may grant relief when it finds,
26 after consulting any guidance offered by the sentencing commission under § 6x.02(2), that the
27 defendant has shown "by clear and convincing evidence that the consequence imposes a
28 substantial burden on the individual's ability to reintegrate into law-abiding society, and that
29 public-safety considerations do not require mandatory imposition of the consequence."
30 Section 6x.04(2)(c). When the sentencing court grants relief from a mandatory collateral
31 consequence under § 6x.04(2), the court merely removes the mandatory nature of the
32 consequence: it does not prevent other authorized decisionmakers, such as licensing boards, from
33 later considering the conduct underlying the conviction when deciding whether to confer a
34 discretionary benefit or opportunity, so long as the facts underlying the conviction are
35 substantially related to the individual's competency to exercise the benefit or opportunity sought.
36 See § 6x.04(3).

37 *b. Notification of collateral consequences.* Under subsection (1), the court must confirm on
38 the record that the defendant has been given written notice of the existence of all mandatory
39 collateral consequences that apply under federal law and the law of the relevant jurisdiction at

1 the time of sentencing. (This information is made available by the sentencing commission, which
2 is charged under § 6x.02(1) with “compil[ing], maintain[ing], and publish[ing] a compendium of
3 all collateral consequences contained in [the jurisdiction’s] statutes and administrative
4 regulations.”) The court must also confirm that the defendant has been informed that
5 discretionary collateral consequences may attend conviction, though it need not specify what
6 those may be. The court must also confirm that the defendant has been given notice of his right
7 to seek relief from any mandatory collateral consequences that are not relieved at the time of
8 sentencing. This notice should include information regarding the offender’s right to petition for
9 relief from specific sanctions under § 6x.05 should a need arise after the time of sentencing, and
10 right to petition for a certificate of relief from disabilities under § 6x.06 when the proscribed
11 amount of time has passed.

12 This provision addresses the obligation of courts to provide information about collateral
13 consequences at the time of sentencing. It is not meant to limit or in any way discourage the
14 practice of providing such information at a much earlier stage of the proceedings. The
15 information about collateral consequences discussed by the court at sentencing should already be
16 familiar to the defendant. Defense counsel should routinely provide and discuss such information
17 with the client at early stages of the prosecution, and before entry of a guilty plea. Even so,
18 ensuring on the record at the time of sentencing that the defendant has been provided with this
19 information in writing guarantees that the individual being sentenced has been given as complete
20 notice as possible of the consequences that attend conviction.

21 *c. The special problem of extra-jurisdictional collateral consequences.* Any attempt to limit
22 the application of mandatory collateral consequences is subject to unavoidable jurisdictional
23 constraints. Although a sentencing court can provide relief from some mandatory collateral
24 consequences imposed by the relevant jurisdiction, it cannot relieve those imposed at the federal
25 level or by other jurisdictions to which the offender may travel or move. Section 6x.04 requires
26 the court to ensure that defendants have been advised of all mandatory federal collateral
27 consequences that attach to them as of the date of sentencing. Subsection (1)(c) requires courts to
28 ensure that defendants are aware that additional mandatory and discretionary collateral
29 consequences may be imposed by other jurisdictions and that the consequences imposed by any
30 jurisdiction may change over time.

31 *d. Limits on court’s power to grant relief from mandatory collateral consequences.* Under
32 § 6x.04(2), the court is only authorized to grant relief from mandatory collateral consequences; it
33 may not remove any discretionary collateral consequences that attend conviction. Furthermore,
34 under this Section the court may only grant relief from mandatory collateral consequences that
35 relate to employment, education, housing, public benefits, registration, occupational licensing, or
36 the conduct of a business. These restrictions ensure that the court’s power to grant relief is
37 directed toward removing significant barriers to successful reintegration, rather than toward
38 addressing collateral consequences that do not significantly impede the convicted person’s
39 ability to function as a law-abiding member of society.

1 *e. Notice.* Subsection (2)(b) requires that the defendant provide the prosecuting attorney
2 with notice of the mandatory collateral consequences from which relief is being sought in order
3 to ensure that the prosecutor is given adequate opportunity to object to or support the petition.

4 *f. Standard for relief.* The strategy of the Model Penal Code is to make the law of collateral
5 consequences consistent with overriding goals of public safety and recidivism prevention. With
6 these objectives in mind, collateral consequences are seen as a negative force whenever they
7 impede the successful reintegration of offenders into law-abiding society without offering a
8 commensurate public-safety benefit. Consequently, § 6x.04(2)(b) allows a court to grant relief
9 from mandatory collateral consequences related to “employment, education, housing, public
10 benefits, registration, occupational licensing, or the conduct of a business” when it finds that the
11 defendant has shown by clear and convincing evidence that “the consequence imposes a
12 substantial burden on the individual’s ability to reintegrate into law-abiding society, and that
13 public-safety considerations do not require mandatory imposition of the consequence.”

14 Applying this standard, courts are most likely to grant relief when a collateral sanction bears
15 little connection to a petitioner’s crime of conviction or the facts underlying the criminal case,
16 and when the burden imposed by the consequence also impedes the individual’s rehabilitative
17 efforts. Conversely, courts are likely to deny relief in cases where there is a clear or close
18 connection between the collateral consequences and a public-safety risk posed by the offender’s
19 criminal conduct. Examples of the latter include the loss of a motor-vehicle license by a person
20 convicted of operating a motor vehicle while intoxicated and prohibiting receipt of a daycare
21 operator’s license by a person convicted of the sexual assault of a minor. The defendant bears the
22 burden of proving both the burden and the lack of an adequate public-safety consideration.

23 *g. Prohibition on arbitrary and punitive purposes.* Courts have often distinguished between
24 the direct and collateral consequences of conviction by observing that direct consequences of
25 conviction—to which constitutional protections such as the Eighth Amendment apply—are
26 intentionally punitive, while collateral consequences are primarily regulatory. The distinction
27 between direct and collateral consequences is often thin, however. Subsection (2)(d) reminds
28 courts that mandatory collateral consequences should never be justified as a way of enhancing
29 the punishment of any offender, or for any arbitrary reason.

30 *h. Effect of relief.* When a court grants relief from a mandatory collateral consequence
31 pursuant to subsection (2), the defendant is excused from complying with any requirements
32 imposed by the sanction and may not be *automatically* barred from receiving specified
33 opportunities and benefits from which he or she would otherwise be barred by virtue of
34 conviction. As subsection (3) makes clear, however, an order of relief does not prevent
35 authorized decisionmakers from later considering the conduct underlying the conviction when
36 deciding whether to confer a *discretionary* benefit or opportunity, such as occupational licensure.
37 In determining whether the conduct underlying the conviction is substantially related to the
38 benefit or opportunity the individual seeks to obtain, the decisionmaker may consider (a) the

time elapsed since the person's conviction; (b) the person's age at the time of the conviction; (c) the seriousness of the conduct underlying the conviction; (d) the person's conduct following conviction, including the person's progress toward rehabilitation, and any information supplied by individuals familiar with the individual's conduct and character; and (e) any information indicating that granting the benefit or opportunity is likely to pose an unreasonable risk to the safety of the public or of any individual.

REPORTERS' NOTE ⁶³

8 a. *Scope.* Although new to the Code, the type of relief authority conferred by § 6x.04 finds some support in
9 both the original Code and state practice.

The original Code provided a mechanism for relieving mandatory collateral consequences imposed as a result of conviction, allowing courts to order that previously entered judgments should no longer “constitute a conviction for the purpose of any disqualification or disability imposed by law because of the conviction of a crime.” Model Penal Code § 306.6(1) (1962). Such orders were available to individuals who had successfully completed both custodial and noncustodial sentences. Id. In addition to ordering relief from collateral consequences under § 306.6(1), the Code authorized the court to vacate the conviction entirely upon proof that a convicted person had lived a law-abiding life for five years following the completion of sentence (or less, if the person was a young-adult offender). Model Penal Code § 306.6(2) (1962). The revision does not authorize courts to vacate convictions, but instead allows them to grant relief from particular mandatory collateral consequences without disturbing the underlying conviction.

Section 6x.04 authorizes the court, upon petition, to relieve an offender of a mandatory collateral consequence related to employment, education, housing, public benefits, registration, occupational licensing, or the conduct of a business when the consequence imposes a substantial burden on the individual's ability to reintegrate into law-abiding society, and public-safety considerations do not require mandatory imposition. Although the number of states that currently authorize judicial relief from collateral consequences are few, judges in New York and Illinois have long had such authority, see ILCS 5/5-5.5-15 (2010); N.Y. Corr. Law § 702 (2007), and states such as Vermont, Colorado, and Ohio have enacted legislation in recent years that permits courts to grant relief from certain collateral consequences (particularly those related to employment) for designated categories of convicted individuals. See 13 Vermont Stat. Ann. §§ 8001 et seq. (2014); Col. Rev. Stat. § 18-1.3-213 (2013); Ohio Stat. § 2953.25 (2015) (establishing a judicial process for issuing certificates of qualification for employment, which remove specific mandatory collateral consequences related to employment). Much of the ongoing state legislation in this area was catalyzed by the Uniform Collateral Consequences of Conviction Act and the ABA Standards on Collateral Sanctions and Mandatory Disqualifications, both of which urged courts to inform offenders about collateral consequences and mechanisms for relief from them at the time of sentencing, and to provide mechanisms for relieving the burdens imposed by collateral consequences that are essential to public safety.

35 b. *Notification of collateral consequences.* Notice is the first essential safeguard that needs to be addressed at
36 sentencing. For this reason, the ABA Standards and the UCCCA both insist that notice of collateral consequences be

⁶³ This Reporters' Note has been minimally revised since § 6x.04's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.

1 provided at sentencing, if not before. See ABA Standards on Mandatory Collateral Consequences, Standard 19-2.4
2 (“The rules of procedure should require the court to ensure at the time of sentencing that the defendant has been
3 informed of mandatory collateral consequences made applicable to the offense or offenses of conviction under the
4 law of the state or territory where the prosecution is pending, and under federal law”); UCCA § 6(a) (requiring that
5 “[a]n individual convicted of an offense shall be given notice” that collateral consequences may apply, referred to a
6 collection of laws authorizing collateral consequences, and given information about relief mechanisms).

7 With respect to disclosure, this provision requires the court to confirm at sentencing that the defendant has
8 received written information about specific federal and jurisdictional mandatory collateral consequences. The
9 UCCA also requires notification, but does not specify how such information will be provided to offenders; see
10 UCCA § 6(a). Like § 6x.04(1), the ABA Standards on Mandatory Collateral Consequences allow the court to
11 discharge its duty to advise by “confirming on the record that defense counsel has so advised the defendant.” ABA
12 Standards on Mandatory Collateral Consequences, Standard 19-2.4(a).

13 *c. The special problem of extra-jurisdictional collateral consequences.* Among the full range of collateral
14 consequences, the Model Penal Code addresses only targeted subsets—and these only in specific procedural
15 settings. The Code is intended as model state legislation, and is therefore unable to speak to some of the most
16 significant collateral consequences imposed at the federal level, such as deportation. See *Padilla v. Kentucky*, 130 S.
17 Ct. 1473 (2010) (“[A]s a matter of federal law, deportation is an integral part—indeed, sometimes the most
18 important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified
19 crimes.”). Instead, the Code appeals to state legislatures to make improvements in law that are within their powers to
20 effect, through changes in their criminal or civil codes. Further, because governmental power over criminal justice is
21 highly localized in our federal system, with enormous diversity of approach across the states, the Code cannot
22 realistically offer “uniform” recommendations with the expectation that nationwide consistency will be achieved.
23 Thus, in this Article, the Code can speak directly only to collateral consequences that exist under authority of state
24 law within a single jurisdiction. The jurisdiction of state lawmakers does not extend to amendments of federal laws
25 or the laws of other states.

26 *d. Limits on court’s power to grant relief from mandatory collateral consequences.* Under § 6x.04(2), courts are
27 only authorized to grant relief from the mandatory effect of collateral consequences that relate to employment,
28 education, housing, public benefits, registration, occupational licensing, or the conduct of a business. Excluded from
29 that list are consequences pertaining to deportation and gun rights, as well as family-law-related rights (such as
30 adoption, foster parenting, and guardianship), service on advisory boards, and volunteer opportunities. Some of
31 these consequences—immigration in particular—are imposed at the federal level, making them impossible for a
32 state court to remove. Others, such as volunteer and advisory positions, are more peripheral to reintegration, and are
33 therefore best addressed by the legislature directly, rather than on a case-by-case basis by the sentencing court.
34 Family-law-related consequences, implicating as they do the direct interests of vulnerable persons, are not subject to
35 relief under § 6x.04, though they may be removed by a certificate of relief from civil disabilities after the sentence
36 has been fully served and additional time has passed without re-offense. See § 6x.06.

37 *f. Standard for relief.* In deciding whether a collateral sanction is appropriate, the court must consider both the
38 burden the consequence imposes on the individual’s ability to reintegrate into law-abiding society, and any public-
39 safety considerations that might require mandatory imposition of the consequence. The burden of persuasion rests

1 with the petitioner. For an alternative standard, see Ala. Code 1975 § 15-20A-23 (2011) (allowing courts to relieve
2 sex offenders with terminal illness of residency restrictions upon finding by clear and convincing evidence that “the
3 sex offender does not pose a substantial risk of perpetrating any future dangerous sexual offense or that the sex
4 offender is not likely to reoffend”).

5 *g. Prohibition on arbitrary and punitive purposes.* As a doctrinal matter, the legal distinction between a
6 “direct” and “collateral” consequence of conviction is whether the law is primarily punitive or primarily regulatory.
7 See, e.g., *Smith v. Doe*, 538 U.S. 84, 92 (2003) (holding that federal sex-offender registration is not “so punitive
8 either in purpose or effect as to negate” Congress’s intent to regulate rather than punish); *Sames v. State*, 805
9 N.W.2d 565, 568 (Minn. Ct. App. 2011) (quoting *Kaiser v. State*, 641 N.W.2d 900, 903-904 (Minn. 2002) (“Direct
10 consequences are those that have ‘a definite, immediate and automatic effect on the range of a defendant’s
11 punishment.’ Collateral consequences, on the other hand, ‘are not punishment’ but, rather, ‘are civil and regulatory
12 in nature and are imposed in the interest of public safety’”). Despite that rule, it is often difficult to discern the
13 regulatory purpose behind many new laws imposing civil restrictions on convicted individuals. Subsection (2)(d)
14 serves as a reminder that punishment cannot serve as the primary justification for retaining a collateral sanction
15 when it otherwise imposes burdens that outweigh its benefits, and that courts should exercise their relief discretion
16 wisely, and not arbitrarily.

17 _____

18

19 **§ 6x.05. Orders of Relief for Convictions from Other Jurisdictions; Relief Following the
20 Termination of a Sentence.**⁶⁴

21 **(1) Any individual who, by virtue of conviction in another jurisdiction, is subject or
22 potentially subject in this jurisdiction to a mandatory collateral consequence related to
23 employment, education, housing, public benefits, registration, occupational licensing, or the
24 conduct of a business, may petition the court for an order of relief if:**

- 25 **(a) The individual is not the subject of pending charges in any jurisdiction;**
26 **(b) The individual resides, is employed or seeking employment, or regularly
27 conducts business in this jurisdiction; and**
28 **(c) The individual demonstrates that the application of one or more mandatory
29 collateral consequences in this jurisdiction will have an adverse effect on the
30 individual’s ability to seek or maintain employment, conduct business, or secure
31 housing or public benefits.**

32 **(2) An individual convicted in this jurisdiction whose sentence has been fully served
33 may petition under this Section for relief from a mandatory collateral sanction if:**

- 34 **(a) No charges are pending against the individual in any jurisdiction; and**

⁶⁴ This Section was originally approved in 2014; see Tentative Draft No. 3.

1 **(b) The individual demonstrates that the application of one or more mandatory**
2 **collateral consequences in this jurisdiction will have an adverse effect on his or her**
3 **ability to seek or maintain employment, conduct business, or secure housing or public**
4 **benefits.**

5 **(3) The court may grant relief if it finds that the petitioner has demonstrated by clear**
6 **and convincing evidence a specific need for relief from one or more mandatory**
7 **consequences, and that public-safety considerations do not require mandatory imposition**
8 **of the consequence. In determining whether to grant relief, the court should give favorable**
9 **consideration to any relief already granted to the petitioner by the jurisdiction in which the**
10 **conviction occurred.**

11 **(4) A petition filed under subsection (1) or (2) shall be decided in accordance with the**
12 **procedures and standards set forth in § 6x.04(2), and an order of relief shall have the effect**
13 **described in § 6x.04(3).**

14 **Comment:**⁶⁵

15 *a. Scope.* Given the length of many criminal sentences, changes occurring after the sentence
16 has ended may turn a mandatory collateral consequence overlooked at the time of sentencing into
17 a significant obstacle to later reintegration. Section 6x.05 allows an individual to petition the
18 court for relief from a mandatory collateral consequence in either of two circumstances.
19 Subsection (1) allows an individual convicted in a foreign jurisdiction to petition the court in the
20 jurisdiction where he “resides, is employed or seeking employment, or regularly conducts
21 business” for relief from one or more mandatory collateral consequences imposed by that
22 jurisdiction. Subsection (2) permits similar petitions from individuals convicted within the
23 jurisdiction whose sentences have expired (and over whom the court has therefore lost
24 jurisdiction in the criminal case). In either case, to secure relief petitioners must demonstrate by
25 clear and convincing evidence both a specific need for relief and “that public-safety
26 considerations do not require mandatory imposition of the consequence” from which relief is
27 sought.

28 *b. Standard for relief.* Unlike petitions for relief from mandatory collateral consequences
29 that are made during the service of a sentence, see § 6x.04(2), petitions made after the sentence
30 has ended or made by individuals convicted in other jurisdictions require a showing of specific
31 need for the relief sought. Section 6x.05(3). This higher standard reflects the administrative
32 burden of opening a new case and obtaining information about the closed case or foreign
33 conviction. In all other ways, the procedures to be followed and effects of a grant of relief are
34 identical to those relevant to a petition for relief under § 6x.04(2).

⁶⁵ This Comment has not been revised since § 6x.05’s approval in 2014. All Comments will be updated for the Code’s hardbound volumes.

1 c. *Consideration of extra-jurisdictional orders of relief.* When a convicted person works,
2 resides, or conducts business in more than one jurisdiction, he or she may seek relief from
3 mandatory collateral consequences in each jurisdiction that imposes such consequences. Section
4 6x.05(3) provides that a court considering a petition under § 6x.05(1) from an individual
5 convicted in another jurisdiction should give favorable weight to any relief that has already been
6 granted by the original jurisdiction.

REPORTERS' NOTE ⁶⁶

8 a. *Scope.* As the notice required by § 6x.04(1)(c) suggests, an individual convicted in one jurisdiction may
9 face different collateral consequences flowing from that conviction in each state where he or she lives, works, or
10 conducts business. This provision provides a way for individuals to seek relief from specific collateral consequences
11 imposed by non-convicting jurisdictions when the consequence is not required for public-safety reasons and imposes
12 a substantial obstacle to successful reintegration. This provision is consistent with the ABA Standards on Mandatory
13 Collateral Sanctions, which provide that “[w]here the collateral sanction is imposed by one jurisdiction based upon a
14 conviction in another jurisdiction, the legislature in the jurisdiction imposing the collateral sanction should authorize
15 a court, a specified administrative body, or both, to enter an order waiving, modifying, or granting timely and
16 effective relief from the collateral sanction.” ABA Standards on Mandatory Collateral Sanctions § 19-2.5(b).

§ 6x.06. Certificate of Restoration of Rights.

(1) Any individual convicted of one or more misdemeanors or felonies may petition the [designated agency or court] in the [county] in which the individual resides for a certificate of restoration of rights, provided that:

(a) No criminal charges against the individual are pending; and

(b) [Four] or more years have passed since the completion of all the individual's past criminal sentences with no further convictions.

(2) When a petition is filed under subsection (1), notice of the petition and any scheduled hearings related to it shall be sent to the prosecuting attorney of the jurisdiction that handled the underlying criminal case.

(3) In ruling on a petition filed under subsection (1), the court shall determine the classification of the most serious offense for which the individual has been convicted.

(a) When the individual has been convicted of one or more [fourth or fifth] degree felonies or misdemeanors, the [court or designated agency] shall issue the

⁶⁶ This Reporters' Note has been not been revised since § 6x.05's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.

⁶⁷ This Section was originally approved in 2014; see Tentative Draft No. 3.

certificate whenever the individual has avoided reconviction during the period following completion of his or her past criminal sentences.

(b) When the individual has been convicted of a [first, second, or third] degree felony, the [court or designated agency] may issue a certificate of restoration of rights if, after reviewing the record, it finds by a preponderance of the evidence that the individual has shown proof of successful reintegration into the law-abiding community. In making this determination, the court may consider the amount of time that has passed since the individual's most recent conviction, any subsequent involvement with criminal activity, and when applicable, participation in treatment for mental-health or substance-abuse problems linked to past criminal offending. In assessing postconviction reintegration, the [court or designated agency] should not require extraordinary achievement, and when weighing evidence of reintegration should be sensitive to any cultural, educational, or economic limitations affecting the petitioner.

(4) A certificate of restoration of rights removes all mandatory collateral consequences to which the petitioner would otherwise be subject under the laws of this jurisdiction as a result of prior convictions, except as provided by Article 213. A court may deny a certificate or specify that a certificate should issue with exceptions when there is reason to believe that public-safety considerations require the continuation of one or more mandatory collateral consequences. A certificate does not entitle a recipient to any discretionary benefits or opportunities, though it may be used as proof of rehabilitation for purposes of seeking such benefits or opportunities.

(5) Information regarding the criminal history of an individual who has received a certificate of restoration of rights may not be introduced as evidence in any civil action against an employer or its employees or agents that is based on the conduct of the individual.

Comment:⁶⁸

a. *Scope.* Like the original provision from which it is derived, proposed § 6x.06 “is concerned with relief from disqualifications” and with placing “appropriate limits on . . . such relief.” Model Penal Code § 306.6, Explanatory Note (1962). A certificate of restoration of rights issued under this section has the effect of removing all mandatory collateral consequences, except as provided in Article 213 (now under revision) and with any specific exceptions provided by the court. Unlike §§ 6x.04-6x.05, which are meant to limit the burden of particular collateral consequences, § 6x.06 is a relief mechanism designed to grant broader relief to individuals who have served their sentences and gone on to live law-abiding lives in the

⁶⁸ This Comment has not been revised since § 6x.06’s approval in 2014. All Comments will be updated for the Code’s hardbound volumes.

1 community. As a result, the standard for relief under this section requires proof of law-abiding
2 behavior over a sustained period of time. To qualify, an individual must have served his or her
3 full sentence (including any period of supervised release) and have gone four or more years
4 without reconviction. See § 6x.06(4). The effect of a certificate is to remove most, if not all,
5 collateral consequences and to assist the recipient in obtaining employment by shielding
6 employers from introduction of the petitioner's criminal history "in any civil action against an
7 employer or its employees or agents that is based on the conduct of the employee or former
8 employee." Section 6x.06(5).

9 *b. Eligibility.* Before petitioning for a certificate of restoration of rights, a petitioner must
10 have fully served all of his or her sentences, including any period of supervised release, and have
11 gone four years or more without committing any new offense. No charges may be pending at the
12 time of application. Eligibility standards for individuals seeking a certificate of restoration of
13 rights are divided into two categories based on the classification of the petitioner's most serious
14 crime of conviction. Section 6x.06(3). For those convicted of misdemeanors and lower-level
15 felony offenses who have served their full sentence plus four additional years without
16 reconviction, the certificate is presumptively appropriate. That presumption can, however, be
17 overcome when "the prosecution makes a clear showing why the application of one or more
18 collateral consequences should remain in effect." Section 6x.06(3)(a).

19 The four-year exclusion period in subsection (1)(b) is bracketed, and could easily be
20 shortened. There is no one period of sustained law-abiding conduct that indicates conclusively
21 that any given individual will not return to criminal offending. Research shows, however, that in
22 many (though not all) instances offenders who recidivate are most likely to do so soon after a
23 previous offense and sentence. As multiple years of life in the free community go by without
24 incident, the statistical chances of new criminal behavior begin to decline. While risk of
25 criminality never disappears entirely, over time the risk presented by past offenders comes very
26 close to, or matches, the risk presented by ordinary individuals with no record of criminal
27 involvement. Although these "redemption times" vary depending on age of first offense and the
28 type of crime at issue, four years beyond the completion of any sentence is a conservative period
29 of exclusion, especially for more serious crimes for which the sentence length itself may easily
30 last a decade or more.

31 *c. Standard for relief.* The standard for obtaining relief from collateral consequences may
32 vary depending on the severity of the crime or crimes for which the petitioner has been
33 convicted. For individuals convicted of less serious crimes, it is enough for the petitioner to
34 demonstrate that he or she has avoided reconviction for a prolonged period of time—unless, that
35 is, the state comes forward with clear evidence that one or more collateral consequences should
36 remain in effect based on considerations of public safety. Section 6x.06(4). For those convicted
37 of more serious offenses, a more searching inquiry is required. In cases where a petitioner has
38 been convicted of a third- or higher-degree felony, the [court or designated agency] has
39 discretion to issue a certificate when the petitioner proves by a preponderance of the evidence

that he or she has successfully reintegrated into the law-abiding community. Section 6x.06(3)(b). Rehabilitation is personal, and therefore proof of reintegration will differ from one individual to the next. In determining whether the petitioner has met his or her burden, the [court or designated agency] should consider the lack of reconviction, but may also consider the amount of time that has passed since the individual's most recent conviction, and factors such as participation in treatment for mental-health or substance-abuse problems linked to past criminal offending.

d. Effect of relief. A certificate of restoration of rights removes all mandatory collateral consequences, with two potential exceptions. First, for individuals convicted of sexual offenses, the restrictions on relief set forth in Article 213 apply. Second, the [court or designated agency] may grant the certificate with exceptions “when there is reason to believe that public safety considerations require the continuation of one or more mandatory collateral consequences.” Section 6x.06(4).

Like an order of relief issued under § 6x.04, the effect of a certificate of restoration of rights is to remove the mandatory nature of a collateral consequence, and not to prohibit the imposition of discretionary collateral consequences by authorized decisionmakers. A discretionary decisionmaker may deny a benefit or opportunity notwithstanding the certificate of restoration of rights if it finds that the facts underlying the conviction continue to call into question the individual's competency to exercise the benefit or opportunity the individual seeks to obtain, even in light of the individual's post-sentencing conduct. In evaluating the individual's post-sentencing conduct, weight should be given to the court's issuance of the certificate of restoration of rights, which "may be used as proof of rehabilitation for purposes of seeking such benefits or opportunities." Section 6x.06(4).

e. Protection for employers. In addition to removing all mandatory collateral consequences except as otherwise provided, a certificate of restoration of rights provides protection to employers who hire certificate recipients. Subsection (5) provides that “[i]nformation regarding the criminal history of an individual who has received a certificate of restoration of rights may not be introduced as evidence in any civil action against an employer or its employees or agents that is based on the conduct of the employee or former employee.” Section 6x.06(5).

REPORTERS' NOTE⁶⁹

a. Scope. Section 6x.06 provides a mechanism for erasing the stigma of a criminal conviction without hiding the fact of conviction itself. Section 6x.06 does not authorize the court to vacate a sentence, but it does offer a formal mechanism for ameliorating the effects of collateral consequences on individuals who have succeeded in reintegrating into their communities following criminal conviction. This mechanism provides a way for individuals who have reformed their lives to eliminate any lingering mandatory collateral consequences that may inhibit their social and economic prospects.

⁶⁹ This Reporters' Note has been minimally revised since § 6x.06's approval in 2014. All Reporters' Notes will be updated for the Code's hardbound volumes.