SENATE DOCKET, NO. 580 FILED ON: 1/14/2019

SENATE . . . . . No. 827

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the enactment of the Uniform Collateral Consequences of Conviction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Joseph A. Boncore	*First Suffolk and Middlesex*	
José F. Tosado	*9th Hampden*	*1/30/2019*

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SENATE . . . . . No. 827

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 827) of Joseph A. Boncore and José F. Tosado for legislation relative to the enactment of the Uniform Collateral Consequences of Conviction. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the enactment of the Uniform Collateral Consequences of Conviction.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 280 the following chapter:-

Chapter 280A. Uniform Collateral Consequences of Convictions Act.

Section 1. SHORT TITLE. This chapter may be cited as the Uniform Collateral Consequences of Conviction Act.

Section 2. DEFINITIONS. In this chapter:

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

(b) "Collateral sanction" means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is

included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(c) "Conviction" includes adjudication as a juvenile delinquent.

(d) "Convicted" has a corresponding meaning.

(e) "Decision-maker" means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.

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

(g) "Offense" means a felony, misdemeanor, civil infraction, or delinquency under the law of this state, another state, or the United States.

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

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

Section 3. LIMITATION ON SCOPE.

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages; or

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

(b) This chapter does not affect:

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

(2) a claim or right of a victim of an offense; or

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

Section 4. IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES.

(a) The Executive Office of the Trial Court:

(1) shall identify or cause to be identified any provision in this state's Constitution, statutes, and administrative rules which imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision of law that may afford relief from a collateral consequence;

(2) shall prepare or compile a collection of citations to, and the text or short descriptions of, the provisions identified under paragraph (1) not later than (insert date);

(3) shall update the collection provided under paragraph (2) of this section annually by January 1.

(4) in complying with paragraphs (1) and (2) of this section, 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.

(b) The Executive Office of the Trial Court shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a):

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

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

(3) The laws of other jurisdictions and municipalities which impose additional collateral sanctions and authorize additional disqualifications are not included in this collection.

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

(c) The Executive Office of the Trial Court shall publish or cause to be published the collection prepared and updated as required by subsection (a). If available, it shall publish or

cause to be published, as part of the collection, the title and Internet address of the most recent collection of:

(1) the collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

(d) The collection described in subsection (c) must be available to the public on the Internet without charge not later than 30 days after it is created or updated.

Section 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING AND AT GUILTY PLEA.

(a) When an individual receives formal notice that the individual is charged with an offense, Executive Office of the Trial Court shall cause information substantially similar to the following to be communicated to the individual:

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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

(i) being unable to get or keep some licenses, permits, or jobs;

(ii) being unable to get or keep benefits such as public housing or education;

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

(iv) having the government take your property; and

(v) being unable to vote or possess a firearm.

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

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

Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under section 4(c) and (d)].

(b) Before the court accepts a plea of guilty or nolo contendre from an individual, the court shall confirm that the individual received and understands the notice required by subsection (a) and had an opportunity to discuss the notice with counsel.

Section 6. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE.

(a) An individual convicted of an offense shall be given notice as provided in subsections (b) and (c):

(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) of this chapter;

(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.

(b) The Executive Office of the Trial Court shall provide the notice in subsection (a) as a part of sentencing.

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

Section 7. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY.

(a) A collateral sanction may be imposed only by statute or ordinance, or by a rule authorized by law and adopted in accordance with Chapter 30A.

(b) 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.

Section 8. DECISION TO DISQUALIFY.

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.

Section 9. EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES; RELIEVED OR PARDONED CONVICTION.

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

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

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

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

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

Section 10. ORDER OF LIMITED RELIEF.

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

(1) sentencing court at or before sentencing; or

(2) Probation Department at any time after sentencing.

(b) Except as otherwise provided in section 12 of this chapter, the court or the trial court may issue an order of limited relief relieving one or more of the collateral sanctions described in

subsection (a) if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 15 of this chapter or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

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

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

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

(c) the order of limited relief must specify:

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

(2) any restriction imposed pursuant to section 13(a) of this chapter.

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

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

Section 11. CERTIFICATE OF RESTORATION OF RIGHTS.

(a) An individual convicted of an offense may petition the trial court for a certificate of restoration of rights relieving collateral sanctions not sooner than 5 years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five

years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

(b) Except as otherwise provided in section 12 of this chapter, the trial court may issue a certificate of restoration of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 15 of this chapter or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) the individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative 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 insubstantial;

(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.

(c) A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under section 13(a) of this chapter.

(d) A certificate of restoration of rights relieves all collateral sanctions, except those listed in Section 12 and any others specifically excluded in the certificate.

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

Section 12. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS. An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

(1) requirements imposed by G.L. c.265 §§178C-178Q (sex offender registration);

(2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Chapter 90 for which restoration or relief is available.

(3) ineligibility for employment pursuant to by law enforcement agencies, including the Attorney General's Office, District Attorney's offices, police departments, sheriff's departments, State Police, or department of corrections.

Section 13. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS.

(a) When a petition is filed under sections 10 or 11 of this chapter, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of the Commonwealth, the Attorney General. The court may issue an order may issue an order or certificate subject to restriction or condition.

(b) The court may restrict or revoke an order of limited relief or certificate of restoration of rights it issued or an order of limited relief issued by the court if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony or of an

offense in another jurisdiction that is deemed a felony under section 9(a) of this chapter. An order of restriction or revocation may be issued:

(1) on motion of the office of the prosecutor that obtained the conviction, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter; and

(3) after a hearing under chapter 30A of this chapter if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

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

(d) The Executive Office of the Trial Court shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. The criminal history record system must include issuance, modification, and revocation of orders and certificates.

(e) The Executive Office of the Trial Court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights, in accordance with Chapter 30A.

Section 14. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE.

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

Section 15. VICTIM'S RIGHTS.

A victim of an offense may participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to Chapter 279 Section 4b to the extent permitted by rules adopted by the court.

Section 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

Section 17. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) This chapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this chapter does not apply.

(b) This chapter does not invalidate the imposition of a collateral sanction on an individual before (insert date), but a collateral sanction validly imposed before the enactment date may be the subject of relief under this chapter.

Section 18. EFFECTIVE DATE.

This chapter shall take effect no later than two years after enactment.