

To: Uniform Collateral Consequences of Crime Act Work Group of the Oregon Law Commission

Date: October 28, 2014

Re: Summary Report of September 29, 2014 Meeting

From: Brett Smith, Oregon Law Commission Law Clerk

Handouts: Agenda, Work Group membership list, Project Proposal, Uniform Act with comments, Why States should Adopt the UCCCA, and the meeting PowerPoint (available at: <http://www.willamette.edu/wucl/centers/olc/groups/2013-2015/collateral-consequences/pdf/Powerpoint-Collateral-Consequences-9-29-14.pdf>)

1. Introductions

The Uniform Collateral Consequences of Crime Act (UCCCA) Work Group met on September 29, 2014, at the Oregon Civic Justice Center in Salem, OR. The meeting began at 1:30pm when work group chair Julie McFarlane called the meeting to order. The following work group members and interested parties were in attendance: Julie McFarlane, Craig Bazzi, Paul Levy, Paul L. Smith, Erin Galli, Judge Courtland Geyer, Alex Bassos, Gwendolyn Griffith, Steve Elzinga, Lindsay Baker, Nancy Cozin, Cindy Booth, Kristin Winges - Yanez, Bill Steele, Lynne Schroeder, Carolyn Norton, Terri Alexander, Professor Meg Garvin, Madilyn Zike, Lane Shetterly, Rep. Jennifer Williamson, Becky Straus, Sybil Hebb, Megan Hassen, Ariel Nelson, Gail Meyer, Channa Newell, Twyla Lawson, Kimberly Mansfield, Wendy Johnson, Jessica Minifie, and Brett Smith. The following work group members and interested parties attended by phone: DA Aaron Felton, DA Joshua Marquis, and Professor Laura Appleman. (See roster for details of membership, organizations present, etc.)

The Oregon Law Commission process description was then given, detailing the procedure and timing involved with the UCCCA project. Additionally, the work group examined the Project Proposal and the scope and charge of the work group were explained.

Unfortunately the work group meeting was not recorded due to technical error.

2. Staff Overview of Collateral Consequences – Present State of the Law

Wendy Johnson began the discussion on the details of the UCCCA. Her presentation was accompanied by a PowerPoint. She began by first briefly explaining what collateral consequences are. (Beginning on Slide 1 of the PowerPoint). There are three types of collateral consequences: collateral sanctions, discretionary disqualifiers, and social stigma. The UCCCA is mainly concerned with the first two collateral consequences: collateral sanctions and

discretionary disqualifiers. The definitions of these terms is located on Slide 3. She then gave examples of current collateral consequences in Oregon statutes and rules. (Slides 4-6). She continued to explain the notice requirements presented by both current state/federal law. In particular, explaining the requirements courts have found in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) and *Lyons v. Pearce*, 298 Or. 554 (1985) and their effect on notice requirements. (Slides 7-10), continuing into an examination of various bar standards for District Attorneys and Defense Attorneys. (Slides 11-15).

3. Why the Uniform Collateral Consequences of Conviction Act?

Wendy continued her presentation explaining the need for law reform to address collateral consequences; citing several statistics that really shine a light on how restrictive these collateral consequences are and how they pose a barrier to successful reintegration into society. (Slide 16). Additionally, defendants are unaware of the sheer number of consequences that exist, the severity, or the length; as well as judges, district attorneys, and defense attorneys also often being unaware of these collateral consequences because they are not only scattered through state law and rules, but they are also complicated. (Slide 17). One work group member mentioned that Former Chief Justice Paul DeMuniz referred to collateral consequences as “forever consequences” due to their potentially endless duration. Oregon Law Commission staff explain that the real issue with collateral consequences is what collateral consequences should be applied and when do they get lifted? Reference was made to <http://www.abacollateralconsequences.org> as a good resource for not only determining the various collateral consequences in a jurisdiction but also to present the astounding number of different consequences and the complexity in actually organizing and notifying defendants.

4. The Uniform Act Overview

Continuing her presentation, Wendy approached the UCCCA, explaining that it was promulgated by the Uniform Law Commission in 2009 and amended in 2010 as a model act for states to implement as is or with modifications to address some of the collateral consequence issues. The UCCCA’s goals are to: promote fairness, ensure competent representation, create clarity, promote successful reentry, provide discretionary relief, and reward rehabilitation. (Slide 18). An overview of the Act on Slide 19 explains the key provisions, those being:

- Provides for the collection of collateral consequences by the state.
- Requires notification of collateral consequences to a defendant.
- Restricts authorization of additional laws that will impose collateral consequences unless procedures met. (Section 7).
- Imposes standards for disqualifications based on convictions.
- Addresses overturned and pardoned convictions as well as relief granted by other jurisdictions. (Section 9).
- Provides 2 types of relief from certain collateral consequences: order of limited relief and certificate of restoration of rights.

5. The Uniform Act – Collection of State’s Consequences and Notice to Defendants of these Consequences - Sections

Oregon Law Commission staff then proceeded to run the work group through the key policy sections of Uniform Act, asking for discussion and comments along the way.. Beginning in Section 4 of the Act which deals with the collection of all collateral consequences and disqualifiers in state law and placing them in a single database with regular updates. (Slide 20). Wendy will work with the ULC in Chicago as it is hoped that the ABA’s collection can be imported and used in Oregon. Sections 5 and 6 of the Act deal with the notice requirement. The Act would require defendants to be notified of collateral consequences at important points during a case: at notification of charges, before accepting a guilty plea, at sentencing, and notice before release. (Slide 21). The Work Group will need to determine who will be responsible in Oregon for providing the notice and what it will look like in form and practice. Professor Meg Garvin inquired also about the possibility of looking further into the victim’s right to notification of these consequences as well; there was no disagreement amongst the work group members. The Act addresses victim’s rights, including notice and participation rights, but those sections may need adjustment to work well with Oregon law.

6. The Uniform Act – Moving from Automatic to Discretionary Disqualifications with Individualized Assessments

Staff explained sections 7 and 8 of the Act that deal with the processes behind the imposition of consequences and potential granting of relief. Section 7 states that statute or rule must affirmatively authorize the imposition of a consequence or disqualifier and if the law is ambiguous the default interpretation will be that of a discretionary disqualification and not automatic. (Slide 22). Section 8 deals with the decision-makers discretion and guidance when it comes to imposing consequences or granting relief. (Slide 23). These sections overlap some with the background check work underway by DAS.

7. The Uniform Act – Relief from Collateral Consequences

Staff explained the last sections of the Act, which deal with two new types of relief the Act creates: Orders of Limited Relief and Certificates of Restoration of Rights (Slides 24-34). An order of limited relief is created under Section 10 of the act and is an order issued by a court or board/agency that lifts an automatic imposition of one or more specified collateral consequences (dealing with education, housing, public benefits, occupation licensing, or employment) upon meeting the standard of need and after input from the prosecutor and victim. (Slides 25-28). Certificates of restoration of rights are created under Section 11 of the act and are issued by a board/agency after a specified time; certificates lift most remaining automatic collateral consequences imposed by law. The Act provides for exceptions and provides for input from prosecutors and victims before a certificate is issued. (Slides 29-32). Section 12 deals with

sanctions that are not subject to orders of limited relief or restoration of rights (the exceptions). Section 13 provides additional procedural rules regarding the issuance, modification, or revocation of the two forms of relief created by the Act. (Slide 33). Section 14 provides for protection from tort liability for public and private entities (e.g. employers and landlords) that rely on orders or certificates, providing a method to mitigate risk for dealing with individuals with criminal records. (Slide 34). Finally, Section 15 provides for notice to victims and allows the victims of an offense to participate in a proceeding for issuance, modification, or revocation of an order or certificate of relief. (Slide 33).

8. Set Next Steps

The work group members agreed to focus their work this remaining legislative interim on sections 3 through 8 of the Uniform Collateral Consequences of Crime Act. The hope is to recommend a portion of the Act to the 2015 Legislative Assembly but continue work into the next interim on what is not completed. The relief provisions will require considerably more time and discussion and thus they will be dealt with next session. The Work Group will focus discussion on Sections 3-8 along with necessary definitions at the next meeting, getting into the details of those sections. There was general support of these provisions becoming a part of Oregon law and practice—with practical modifications as needed as there was consensus of the need and the policy within these sections. The next Collateral Consequences work group meeting has been set for November 10, 2014 from 9-11 am.