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The unified voice of criminal justice

**Criminal Justice
Section**

**Collateral Consequences of
Criminal Convictions
Judicial Bench Book**

The National Inventory of
Collateral Consequences of Criminal Convictions



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Introduction

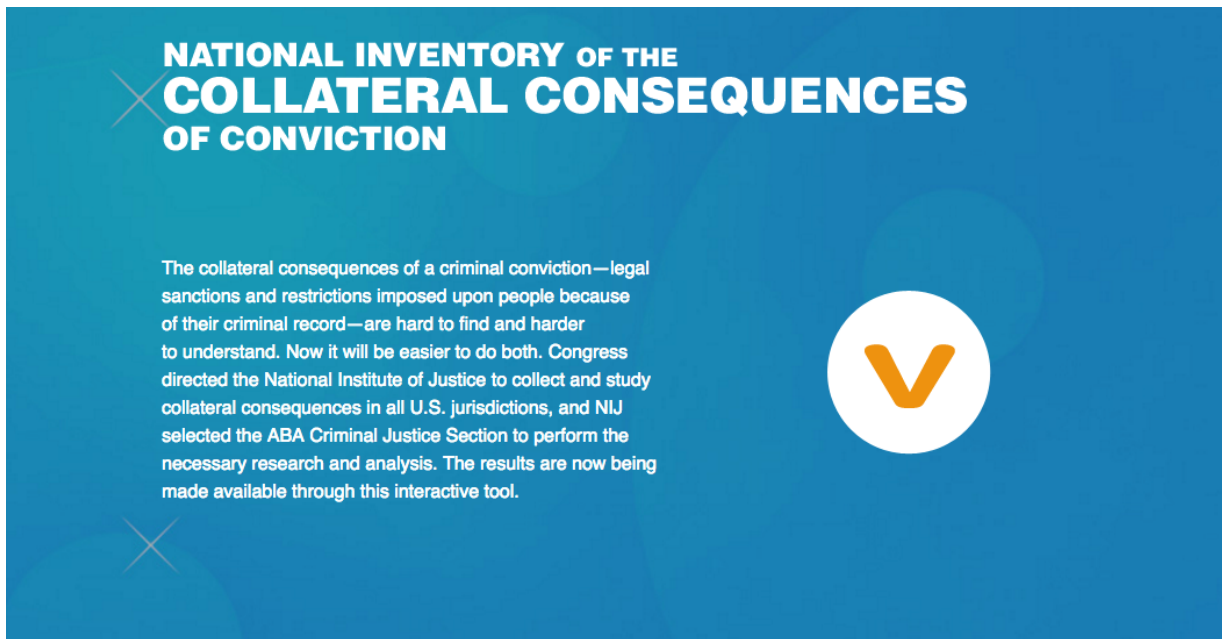
Why a Bench Book?

It is clear that many judges, prosecutors and defense lawyers in many jurisdictions have paid scant attention to the effects that collateral consequences of conviction might have on individuals convicted of crimes. It is easy to know how much jail or prison time a judge imposes, how long a probation period is set, and the amount of a fine or restitution. But it has been difficult for everyone involved in criminal cases to determine what the other consequences of a conviction are—consequences that are fixed by force of law.

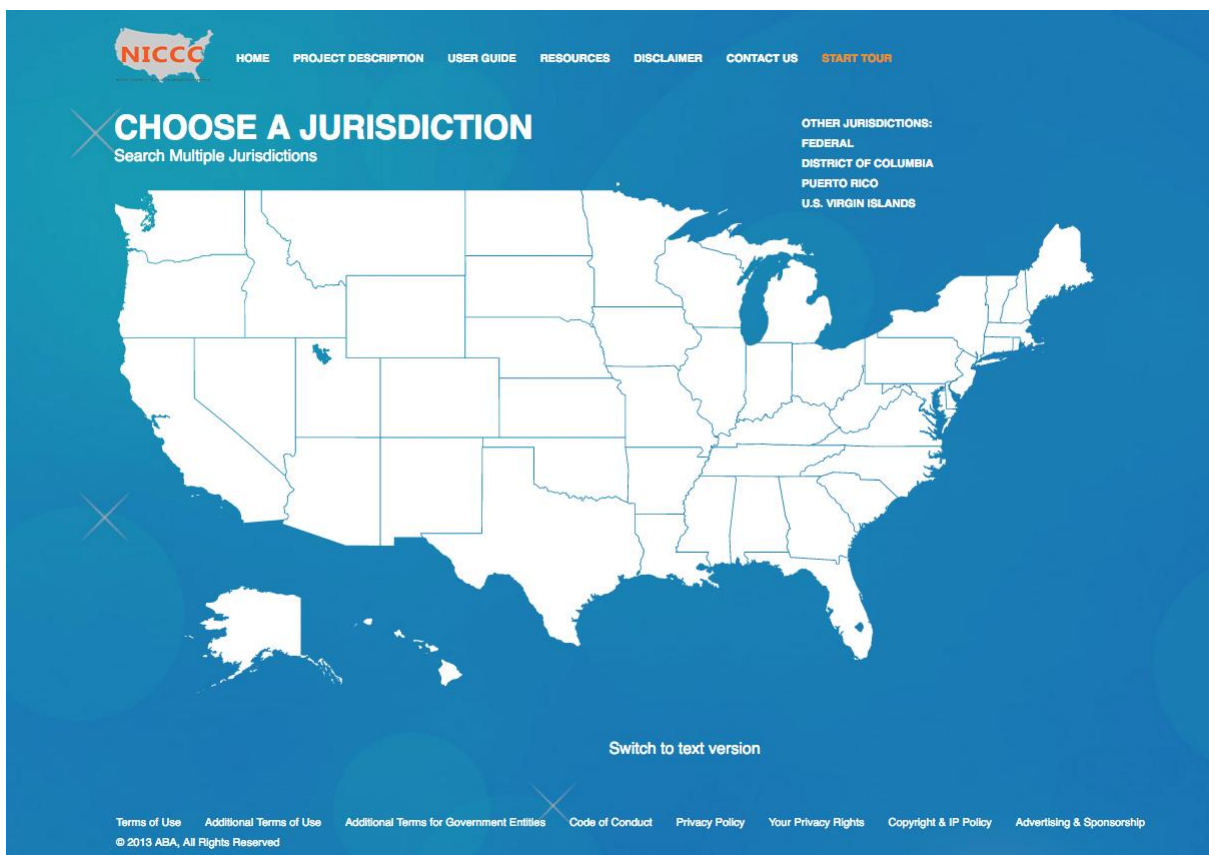
The National Inventory of Collateral Consequences of Conviction (NICCC) now makes accessible to judges, prosecutors, defense counsel, defendants, victims, and the general public the sanctions and disqualifications that flow from a criminal conviction and that are not part of the actual judgment that is filed in a criminal case. Under a generous grant from the U.S. Department of Justice National Institute of Justice (NIJ), the American Bar Association (ABA) has developed the National Inventory of Collateral Consequences of Conviction, a free, online database that attempts to identify each and every collateral consequences of conviction contained in every jurisdiction's laws and regulations, including the U.S. Code and Code of Federal Regulations. The website is accessible at www.abacollateralconsequences.org. The website identifies approximately 45,000 collateral consequences and is organized by category of right or benefit, manner of imposition, duration, and triggering offenses. The search features can assist any user to begin identifying relevant collateral consequences for a particular circumstance and situation.

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The opening page of the website looks like this:



The user clicks on the orange V, clicks a box on a disclaimer page and discovers the map of the United States and an invitation to pick a state that is relevant:



Judges who are familiar with the NICCC are now able to ask a defense lawyer whose client is prepared to plead guilty whether the lawyer has consulted the NICCC and reviewed likely or certain collateral consequences with the defendant. Judges are also able to examine the NICCC for themselves if they are

uncertain whether a defendant is fully aware of the impact of a plea. Judges may also encourage prosecutors and defense counsel to discuss collateral consequences during the course of plea bargaining. Examples of how one can use the NICCC are found below.

The Seriousness of Collateral Consequences

Collateral consequences are legal disabilities imposed by law as a result of a criminal conviction regardless of whether a convicted individual serves any time incarcerated.¹ These consequences create social and economic barriers for individuals reentering into society by denying or restricting benefits otherwise available to all Americans. Collateral consequences are known to adversely affect adoptions, housing, welfare, immigration, employment, professional licensure, property rights, mobility, and other opportunities—the collective effect of which increases recidivism and undermines meaningful reentry of the convicted for a lifetime.² Moreover, collateral consequences disproportionately affect minority and economically disadvantaged populations.³ Despite the sweeping adverse consequences flowing from collateral consequences, defendants are generally not entitled, as a matter of due process, to be warned of these consequences, either before accepting a plea or upon conviction. Although the U.S. Supreme Court has required consideration of certain immigration effects of a criminal conviction, the Court left open what other disenfranchisements might rise to the level requiring constitutional protection.

The negative impact of collateral consequences on a returning citizen's chances of successful re-entry into his or her community are clear and well documented:

Consider barriers to employment: 87% of employers conduct background checks, and recent surveys indicate that most employers are unwilling to hire applicants who have served time in prison. Many states per se bar returning citizens from public employment. No wonder, then, that approximately 60% of formerly incarcerated individuals remain unemployed one year

¹ See *Description*, NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES, <http://www.abacollateralconsequences.org/description/> (last accessed Apr. 7th, 2016).

² See Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, 100 J.L. & CRIMINOLOGY 1213 (2010); CIVIL PENALTIES, SOCIAL CONSEQUENCES (Christopher Mele & Teresa Miller eds., 2005); Marlaina Freisthler & Mark A. Godsey, *Going home to Stay: A Review of Collateral Consequences of Conviction, Post-Incarceration Employment, and Recidivism in Ohio*, 36 U. TOL. L. REV. 532 (2005); Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585 (2005).

³ See generally Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457 (2010); Margaret E. Finzen, *Systems of Oppression: The Collateral Consequences of Incarceration and Their Effects on Black Communities*, 12 GEO. J. ON POVERTY L. & POL'Y 299 (2005); Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253 (2002).

after their release. We want released inmates to earn sufficient income to support themselves and to assist their families. If they do not get work, their likelihood of recidivism increases.

For those who do find work, the resultant pay cuts are staggering: formerly incarcerated men take home 40% less pay annually, resulting in an average earnings loss of nearly \$179,000 by age 48.¹⁵ The nation as a whole suffers from this unfortunate reality. In 2008, the Center for Economic Policy Research estimated that the loss in GDP due to employment barriers for people with criminal records was as much as \$65 billion annually¹⁶—higher than the GDPs of more than half the world’s nations—and employers are losing qualified and motivated workers as a result of the stigma associated with prior incarceration.

What about housing? For many returning citizens, collateral-consequence laws put public housing out of reach. Federal law includes a mandatory ban on access to public housing for people with certain types of convictions and grants discretion to local housing authorities to deny housing based on any criminal activity. Entire households may be evicted based on the arrest or pending criminal charge of one household member. This one-strike provision has a profound impact on family structure. Many families residing in public housing have to sign agreements that returning citizens’ family members cannot live with or even visit them at their public housing unit. Private housing is not easy to come by either. Most landlords use background and credit checks to screen out prospective tenants with criminal records. It is no wonder, then, that nearly one-third of individuals released from incarceration expect to go to homeless shelters, which are more often than not unsafe. Obviously, lack of stable housing undoubtedly contributes to increased recidivism.

So what about public assistance—can returning citizens struggling to find jobs after their release from incarceration rely on this important safety net? Not always. In a majority of states, persons with felony drug convictions face a lifetime ban on receiving public assistance. In 2013, approximately 180,000 women were subject to the ban on such assistance in the twelve states with the most punitive policies. A recent study of persons recently released from incarceration in Texas, California, and Connecticut likened their level of food insecurity to that in developing countries. This barrier to accessing critical public assistance not only contributes to hunger and malnutrition, but also restricts access to mental health and substance abuse treatment programs.

Mass incarceration also reduces access to education. Many inmates are illiterate and roughly 40% of inmates lack a high school diploma or GED. The combination of little formal education and low literacy levels diminish returning citizens' ability to compete for employment. To that end, if returning citizens pursue educational opportunities, people with a criminal conviction may be ineligible for governmental assistance.⁴

Defining Collateral Consequences

For purposes of the ABA database resource, the operative definition of a collateral consequence is the one identified in the Court Security Act of 2007.⁵

(d) DEFINITIONS.—In this section:

(1) COLLATERAL CONSEQUENCE.—The term “collateral consequence” means a collateral sanction or a disqualification.

(2) COLLATERAL SANCTION.—The term “collateral sanction”—

(A) means a penalty, disability, or disadvantage, however denominated, that is imposed by law as a result of an individual's conviction for a felony, misdemeanor, or other offense, but not as part of the judgment of the court; and

(B) does not include a term of imprisonment, probation, parole, supervised release, fine, assessment, forfeiture, restitution, or the costs of prosecution.

(3) DISQUALIFICATION.—The term “disqualification” means a penalty, disability, or disadvantage, however denominated, that an administrative agency, official, or a court in a civil proceeding is authorized, but not required, to impose on an individual convicted of a felony, misdemeanor, or other offense on grounds relating to the conviction.

Commonly recognizable collateral consequences include the prohibition on gun possession after conviction of a felony; the revocation a driver's license after a DUI conviction; or required registration with local

⁴ William Hubbard, Remarks on Collateral Consequences on Mass Incarceration, Vol 2, Issue 2, Criminal Law Practitioner 11-12 (Summer 2015)(footnotes omitted).

⁵ Broader definitions have been used in other scholarly endeavors that include any consequences that result from an encounter with the criminal justice system, including the social stigma of an arrest.

governments after conviction of a sex crime.⁶ Lesser-known collateral consequences include ineligibility for public benefits, such as food stamps; ineligibility for government-sponsored student loans and grants; restrictions on certain types of employment or occupational licenses; and ineligibility to provide foster care to minor family members.⁷ While some consequences are limited to a certain type of offense, such as prohibitions on working with children -- often based on sex offenses or violent offenses -- others apply to anyone convicted of any criminal offense.⁸ Collateral consequences may be automatic upon conviction⁹, discretionary based on the decision of a third party¹⁰, or may operate through a background check, allowing examination into person's entire criminal record¹¹.

Examples of Collateral Consequences Currently in Effect

The following are examples of current laws across the United States that impose a wide range of different collateral consequences on those convicted of crimes.

- New Mexico: Deny, Suspend, or Revoke Barber's or Cosmetology License¹²
A. The board shall, in accordance with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:
 (1) the commission of any offense described in the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978]
 ...
 (13) conviction of a crime involving moral turpitude . . .
- Washington: Relative Child May Not be Placed with Relative or Member of Convicted Individual's Household¹³
The department may exclude relatives who have criminal histories as included in the Adoption and Safe Families Act (ASFA) regulations.

⁶ See e.g., 18 PA. CONS. STAT. § 6105 (2016) (enumerating felony offenses which disqualify those convicted from possessing, selling, or using a firearm); GA. CODE ANN. § 40-5-58 (2016) (revoking driver's license for habitual violators of the Section, including DUI offenses); KY. REV. STAT. ANN. § 17.510 (2016) (requiring registration of anyone convicted in any jurisdiction of a sex crime or criminal offense against a minor).

⁷ See e.g., ARK. ADMIN. CODE § 016.20.2-1622.20 (2016); 20 U.S.C.A. § 1091(r) (2016) (any student convicted of possession or sale of a controlled substance ineligible for federal grants or loans for certain periods); OKLA. ADMIN. CODE § 55:10-15-2 (board may deny, suspend, or revoke architect or interior designer license based on felony convictions); MD. CODE ANN., LAB. & EMPL. § 7-308 (Agriculture Commissioner may deny, suspend, or revoke farm labor contracting license based on felony convictions or misdemeanor convictions involving alcohol, drug use, or gambling); OR. ADMIN. R. § 411-346-0160 (2016) (requiring criminal background check before approval of foster parent); WASH. ANN. CODE § 388-25-0450 (2016) (denying relative placement in household with relative who has been convicted of drug offenses, battery, or assault within 5 years of placement).

⁸ See e.g., IOWA CODE § 25.3 (2016) (denying education or teacher license to those convicted of child endangerment, assault, murder, kidnapping, or sexual offenses).

⁹ See e.g., 12 C.F.R. 336.4(a)(1) (2016) (restricting employment with FDIC for any felony conviction).

¹⁰ See e.g., Regs., Conn. State Agencies § 13b-96-7 (2016) (allowing waiver by commissioner).

¹¹ See e.g., K.A.R. § 117-20-2 (2016) (imposing background check without specific direction regarding the use of that information).

¹² N.M. STAT. ANN. § 61-17A-21 (2016) (repealed effective Jul. 1, 2010).

¹³ WASH. ANN. CODE § 388-25-0450 (2016).

...

(2) The department may not approve a relative placement if the department finds the relative, or a member of the household, has, within the last five years, been convicted of a felony involving:

- (a) Physical assault;
- (b) Battery; or
- (c) A drug related offense.

- Arkansas: Ineligible for SNAP Benefits (Food Stamps)¹⁴

No individual who has been found guilty or plead guilty or no contest to any felony offense, which has as an element of the offense, the distribution or manufacture or the intent to manufacture or distribute a controlled substance, as defined in section 102(6) of the Controlled Substances Act, will be eligible to receive SNAP benefits. This is a permanent disqualification unless the individual's record is expunged of the charges. If the individual's record is expunged of these charges, the individual may once again receive SNAP benefits if he or she is otherwise eligible to participate in the Program.

Judicial Consideration of Collateral Consequences

Although collateral consequences can have a profound impact on the lives of those convicted, until recently, judges, prosecutors, or defense counsel seldom discussed or considered collateral consequences.¹⁵ Relevant laws and regulations are very difficult to monitor, and as a result, attorneys and judges are not familiar with all of the collateral consequences triggered by certain crimes.¹⁶ Consequently, people charged with criminal offenses often plead guilty without fully understanding the ramifications of their decisions.¹⁷ Defendants often are never notified that their guilty plea can affect social services, employment, professional licensure, immigration status, volunteer opportunities, and more.¹⁸

¹⁴ ARK. ADMIN. CODE 016.20.2-1622.20 (2016).

¹⁵ See Sarah B. Benson, Beyond the Sentence-Understanding Collateral Consequences, NATIONAL INSTITUTE OF JUSTICE, *available at* <http://www.nij.gov/journals/272/pages/collateral-consequences.aspx>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Therefore, an inquiry or an advisement of potential collateral consequences can be critical at each stage of the criminal justice process. Defense lawyers who are aware of collateral consequences might persuade a prosecutor who has charging options to pursue those that minimize collateral consequences. Plea negotiations provide opportunities for consideration of collateral consequences as do sentencing proceedings when judges might consider whether options are available to minimize unnecessarily harsh collateral effects. From the outset of a criminal proceeding, a criminal defendant should be focused not only the charges he or she might face or sentencing possibilities but also on the collateral consequences that may result from the acceptance of a plea bargain or the determination of guilt following a duly constituted judicial proceeding.

The most important thing that prosecutors, defense lawyers and their clients, and judges need to recognize is that the commonly held belief that defendants “pay their dues” in the form of serving time, paying a fine and/or restitution, or both and then are able to resume their prior place in their communities is mistaken. The existence of collateral consequences is the reason. Unlike most periods of incarceration and financial penalties, collateral consequences might have lifetime effect – i.e., they may remain in force after time served and monies paid. They can in many cases be more punitive than the sentence imposed by a court.

The NICCC was developed to enable everyone involved in the criminal justice process readily to obtain information about collateral consequences. Judges who understand how significant such consequences can be in a person’s life might decide to take additional responsibility for assuring that defendants understand that they should be concerned not only with a possible sentence but with disabilities and disqualifications that might be imposed by force of law or by authorities other than a sentencing court. With this in mind, judges might want to consider taking action at important stages of the criminal justice process.

At Arraignment

Judges can increase the likelihood that defendants will not be surprised by debilitating collateral consequences in deciding whether to plead guilty to one or more charges by asking questions regarding collateral consequences before accepting a defendant’s plea. Some possible questions, which judges might consider in light of what they know about a defendant, include:

- Has your attorney discussed potential collateral consequences with you?
- Do you receive public housing or food stamps? Are you aware that by pleading guilty to this offense you could become ineligible for those benefits?
- Do you currently have a professional license?
 - Yes: Are you aware that by pleading guilty your license could be suspended or revoked?

- No: Are you aware that by pleading guilty to this offense you may become ineligible for certain professional licenses?
- Are you aware that by pleading guilty you may be unable to receive certain government benefits?
- Are you aware that by pleading guilty you may become ineligible for federal student loans or grants to pursue higher education?

Judges might point out to defendants and their counsel the existence of the NICCC and inform them that it is open to all without charge to anyone. Judges can inquire of prosecutors as to whether they have considered collateral consequences in making charging decisions and remind them also of the ready availability of the NICCC.

If available, judges may also consider offering defendants a deferred adjudication which allows defendants to admit their guilt and pay their debts to society (and receive rehabilitative services) without a formal conviction. Such a process may prevent many collateral consequences from being imposed.

Sentencing

Sentencing is another crucial stage at which collateral consequences should be considered. While collateral consequences are not formerly factored into a judge's sentence, the American Law Institute has proposed holistic changes to U.S. Sentencing Guidelines that give judges greater discretion to deny or grant imposition of a collateral consequence. Until these changes are approved, judges can still play an active role in ensuring that defendants are fully informed of the consequences that they may face. Judges can also provide useful information of any forms of relief that may be available to the defendant. In this regard, the NICCC database can be a first stop for to identify any relevant collateral consequences and relief.

Standardizing Attention to Collateral Consequences

Collateral consequences can be even more destructive of an individual's opportunities for work, housing and employment than the criminal conviction itself, judges might want to become proactive in assuring that prosecutors and defense counsel consider collateral consequences and their impact in handling criminal cases. Judges could adopt standing orders requiring discussion collateral consequences in plea negotiations. They could likewise provide that defense counsel must be prepared to represent to the court that they have discussed collateral consequences with their clients.

Assisting Judges in Using the NICCC

The American Bar Association Criminal Justice Section built the NICCC and has invested resources in keeping it current. As long as CJS is actively involved with the NICCC, it is happy to answer questions of judges about the best ways to access the data in the NICCC and do research.

Some Examples of Using the NICCC

A prosecutor and a defense lawyer in Virginia are negotiating a plea after the defendant was in a bar fight. The prosecutor wants a plea to misdemeanor assault. The defendant has been working for an enrolled Medicare provider for eight years and has a great employment record. His number one concern -- other than the sentence he might receive if convicted -- is keeping his job. Other defendants in other cases might be concerned about losing housing, becoming ineligible for certain benefits such as educational grants, or child custody.

The prosecutor and the defense lawyer, fully aware of the defendant's concern, go to the NICCC to examine the collateral consequences of such a conviction. They begin with the following screen:

By checking the “Crimes of violence, including ‘person offenses,’” the searchers discover this opening screen:

Citation	Title	Triggering Offense Category	Consequence Type	Duration Category
11 VAC 10-60-10	Ineligible for horse racing permit (gaming)	Crimes involving fraud, dishonesty, misrepresentation or money-laundering; Crimes of violence, including "person offenses"; Sex offenses	Discretionary; Discretionary (waiver)	Permanent/Unspecified
12 VAC 30-10-690	Ineligible to serve as owner/manager of health maintenance organization (HMO) participating in Medicaid program (health care)	Crimes involving fraud, dishonesty, misrepresentation or money-laundering; Crimes of violence, including "person offenses"; Controlled substances offenses; Public corruption offenses	Discretionary	Permanent/Unspecified
12 VAC 30-120-1040	Ineligible for employment with a Department of Medical Assistance Services enrolled Medicaid provider (health care)	Any felony; Crimes of violence, including "person offenses"; Controlled substances offenses; Sex offenses	Mandatory/Automatic	Permanent/Unspecified
12 VAC 30-120-1730	Ineligible for employment with home/community-based elderly/disabled care medicaid technology assisted waiver providers (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses; Other	Mandatory/Automatic	Permanent/Unspecified
12 VAC 30-120-776	Ineligible for employment as companion services facilitator (mandatory/permanent for certain specified crimes involving violence, drugs, and children) (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses; Other	Mandatory/Automatic	Permanent/Unspecified
12 VAC 30-120-776	Ineligible for employment as companion services facilitator (discretionary/permanent for certain misdemeanors/controlled substances felonies) (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses	Discretionary; Discretionary (waiver)	Permanent/Unspecified
12 VAC 30-120-330	Ineligible for employment with home/community-based elderly/disabled care providers (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses; Other	Mandatory/Automatic	Permanent/Unspecified
12 VAC 30-135-220	Ineligible for employment as companion/respite care aide/services facilitator with companion/respite services provider (mandatory/permanent for certain specified crimes involving violence, drugs, and children) (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses; Other	Mandatory/Automatic	Permanent/Unspecified
12 VAC 30-135-220	Ineligible for employment as companion/respite care aide/services facilitator with companion/respite services provider (permanent/discretionary for certain misdemeanors/controlled substances felonies) (health care)	Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses	Discretionary; Discretionary (waiver)	Permanent/Unspecified

This is only the beginning. There are a total of 171 collateral consequences arising from a conviction for a “crime of violence.” Some of these consequences are mandatory and automatic; others are discretionary.

Some are permanent, and others do not indicate whether or not they are permanent. But, it is the third collateral consequence on the screen that immediately gets their attention. . The defendant will be disqualified forever to keep his job or ever work for a Medicare provider in Virginia.

It is possible that both the prosecutor and defense counsel will agree that a plea to misdemeanor assault will result in collateral consequences that are overly harsh. They decide to consider the misdemeanor of disturbing the peace, they run another search and this time they click on “Any misdemeanor” and discover there are 141 collateral consequences. The key question for the defendant is whether any of these will mandate that he lose his job. The lawyers narrow their search by adding a search term “mandatory/automatic” as reflected in the following screen:

The screenshot shows a search interface with the following elements:

- Search Bar:** Contains the text "Ex.: child or employ" and an orange "Search" button.
- Search federal:** A checkbox that is currently unchecked.
- Categories:** A dropdown menu showing "Any -".
- Types:** A section with a "1 selected -" indicator. Below it is a search bar with a magnifying glass icon and the word "Search". Underneath is a list titled "Select consequence types" with the following options:
 - ☒ Mandatory/Automatic
 - ☐ Discretionary
 - ☐ Discretionary (waiver)
 - ☐ Background Check
 - ☐ N/A - General Relief
- Duration:** A dropdown menu showing "Any".
- Supplemental Record Check:** A checkbox that is currently unchecked.
- "Specific" Relief:** A checkbox that is currently unchecked.
- Exclude words:** A text input field.

This is the first screen of the new search:

Show 10 entries

Citation	Title	Triggering Offense Category	Consequence Type	Duration Category
14 VAC 5-390-10	Notify State Corporations Commission of convictions of insurance premium finance company licensee/partner/officer/director/owner	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
18 VAC 10-20-20	Deny architect/professional engineer/land surveyor/interior designer/landscape architect certification application	Any felony; Any misdemeanor; Crimes involving fraud, dishonesty, misrepresentation or money-laundering	Mandatory/Automatic	Permanent/Unspecified
21 VAC 5-110-60	Ineligible to amend/renew retail franchise registration (conviction of franchisor)	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
24 VAC 20-121-180	Notify Department of Motor Vehicles of conviction (class A driver training school instructors) (education/driving)	Any offense (including felony, misdemeanor, and lesser offense); Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
24 VAC 35-60-40	Ineligible for employment by ignition interlock service provider (mandatory/5 years for misdemeanor conviction punishable by confinement of installation/calibration/inspection personnel)	Any misdemeanor	Mandatory/Automatic	Specific Term
6 VAC 20-120-40	Notify Central Criminal Records Exchange of conviction	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
6 VAC 20-171-220	Notify Department of Criminal Justice Services of convictions of private security services licensees/principals/partners/officers/agents/employees	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
6 VAC 20-260-30	Deny bail bondsmen license (felony and certain misdemeanor convictions)	Any felony; Any misdemeanor	Mandatory/Automatic	Specific Term
Va. Code Ann. § 16.1-271	Ineligible for juvenile court adjudication	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
Va. Code Ann. § 18.2-308.013	Suspend/revoke concealed handgun permit (weapons)	Any felony; Any misdemeanor; Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Motor vehicle offenses	Mandatory/Automatic	Permanent/Unspecified

Showing 1 to 10 of 23 entries (filtered from 48,026 total entries)

Previous 1 2 3 Next

There are a total of 23 mandatory/automatic collateral consequences, none of which would cause the defendant to lose his job.

Notice that the searches done above looked at Virginia law. There is also an option to check federal collateral consequences. That wasn't necessary for a defendant charged with a crime of violence who wants to remain in Virginia and, regardless of federal law, is disqualified by state law from the job he holds. But it would be important for a defendant charged with disturbing the peace. The prosecutor and defense lawyer could check the box to include federal consequences and write "Medicare" in the search terms, as indicated below.

The screenshot shows a legal research interface with the following elements:

- Search Bar:** Contains the text "Medicare" and a blue "Search" button.
- Search federal:** A checked checkbox.
- Categories:** A dropdown menu currently showing "Any -".
- Types:** A dropdown menu currently showing "Any -".
- Offenses:** A dropdown menu currently showing "1 selected -".
- Results Table:** A table with two columns: "Citation" and "Title". It displays three entries:

Citation	Title
42 CFR 455.106	Ineligible to own/operate he funded agency)(convictions employee of offenses relate Medicare/Medicaid or Title :
42 CFR 460.68	Ineligible for employment w Care for the Elderly (Medica
42 CFR 483.13	Report convictions of long-t employee (Medicare/Medica
- Showing 1 to 3 of 3 entries (filtered)**
- Offense Category Selection:** A dropdown menu is open, showing a list of categories with checkboxes:
 - ☐ Any offense (including felony, misdemeanor, and lesser offense)
 - ☐ Any felony
 - ☒ Any misdemeanor
 - ☐ Crime of moral turpitude
 - ☐ Crimes involving fraud, dishonesty, misrepresentation or money-laundering
 - ☐ Crimes of violence, including "person offenses"
 - ☐ Weapons offenses
 - ☐ Controlled substances offenses
 - ☐ Sex offenses
 - ☐ Public corruption offenses
 - ☐ Election-related offenses
 - ☐ Recreational license offenses
 - ☐ Motor vehicle offenses
 - ☐ Child Support offenses
 - ☐ Other
 - ☐ N/A (background check, general relief)

The resulting search produces the following:

Show 10 entries				
Citation	Title	Triggering Offense Category	Consequence Type	Duration Category
42 CFR 455.106	Ineligible to own/operate health provider (Medicaid-funded agency)/(convictions of owner/agent/managing employee of offenses related to involvement with Medicare/Medicaid or Title XX services) (health care)	Any felony; Any misdemeanor; Crimes involving fraud, dishonesty, misrepresentation or money-laundering	Discretionary	Permanent/Unspecified
42 CFR 460.68	Ineligible for employment with Program of All-Inclusive Care for the Elderly (Medicare/Medicaid) (health care)	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
42 CFR 483.13	Report convictions of long-term nursing care facility employee (Medicare/Medicaid) (health care)	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified

They discover that there are only three relevant federal collateral consequences and none of them would prevent the defendant from keeping his job.

Suppose now that the prosecutor is unwilling to back off of a charge of misdemeanor assault, and the defense lawyer brings the litany of collateral consequences to the court and asks the court to weigh in on the harshness of the collateral consequences and the utility of the defendant's keeping his job. If the court is convinced that a loss of job would be an unduly harsh collateral consequence, it might be able to persuade the prosecutor to change her mind about the charge.

The Uniform Law

One of the goals of the NICCC is to call to the attention of legislatures and regulators as well as judges and lawyers the extensive web of collateral consequences that has been built over time. The hope is that some might be eliminated and others more carefully tailored. The Uniform Law Commission has adopted the Uniform Collateral Consequences of Conviction Act, which can be found at <http://www.uniformlaws.org/Act.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act>

The key provisions of the Act are the following:

Section 4 requires collection of collateral sanctions and disqualifications contained in state law, and provisions for avoiding or mitigating them, in a single document. The purpose is to make the law accessible to judges, lawyers, legislators and defendants who need to make decisions based on it. The NICCC does this task for states, but states might choose to expand upon the NICCC.

Sections 5 and 6 propose to make the existence of collateral consequences known to defendants at important moments in a criminal case: At or before formal notification of charges, so a defendant can make an informed decision about how to proceed (Section 5(a)), when pleading guilty (Section 5(b)), and at sentencing and when leaving incarceration, so they can conform their conduct to the law (Section 6). Given that collateral sanctions and disqualifications will have been identified, it should not be difficult to make this information available. We discuss above the various stages of a criminal case. Notice is fundamental to informed decision-making by all participants in the criminal justice system.

Section 7 is designed to ensure that automatic, blanket collateral sanctions leaving no room for discretion are adopted formally, providing that they can be created only by statute, ordinance or formal rule. Section 8 offers guidance for imposing discretionary disqualifications based on criminal conviction on a case-by-case basis. The goal is to minimize automatic, blanket sanctions so that they address only convictions that inevitably require imposition of a sanction or disqualification.

Sections 10 and 11 create new mechanisms for relieving collateral sanctions imposed by law. By definition, collateral consequences can only be imposed by state actors, so relieving them would not impose requirements on private persons or businesses, whose dealing with persons with convictions would be regulated, if at all, by law other than this act. Indeed, some states do provide for certificates of relief, though with limited effect in the state of conviction and almost no effect in extra-territorial jurisdictions.

Judges, prosecutors and defense counsel who become increasingly familiar with collateral consequences might well find that they support the concept of looking closely at collateral consequences and developing procedures for limiting the reach of disqualifications and disabilities to those essential to protecting the public and developing mechanisms to relieve individuals from such consequences upon a showing that they are no longer necessary. Judges and lawyers who encounter collateral consequences on a daily basis are in a position to educate policy makers about the unfairness or harshness of some consequences by offering specific examples of individuals whose collateral consequences are certain or highly likely to interfere with their efforts to become law-abiding, contributing members of their communities.

States that want to build upon the NICCC should consider three steps: (1) Appoint a committee comprised of at least 1 judge, 1 prosecutor, and 1 defense lawyer to determine whether there are collateral consequences that were missed and should be added to the NICCC, and the committee should notify those responsible for the NICCC of any missing collateral consequences. (2) Have the committee recommend to the legislature or appropriate administrative agency whether some collateral consequences should be deleted, modified, or clarified. (3) Have the committee review both the Uniform Collateral Consequence of Conviction Act and the article, Stephen A. Saltzburg, *Amending the Uniform Collateral Consequence of Conviction Act*, 11 Criminal Law Practitioner 30-41 (Summer 2015), and recommend to the legislature and/or administrative agencies mechanisms for relieving individuals of particular collateral consequences of criminal convictions.

The NICCC is a tool. It enables responsible prosecutors, defense counsel, and judges to be aware of the collateral consequences of criminal convictions and to consider whether convictions for particular offenses result in unfair or unintended consequences and whether there are dispositions that would avoid such consequences. It also enables every state and the federal government to take a new look at the mass of collateral consequences that have been piled one upon another over decades and to determine whether some should be eliminated, modified, or clarified. The unfortunate reality is that individuals who are convicted of crime, serve any jail or prison sentence imposed upon them, and satisfy all fine and restitution obligations nonetheless face lifetime collateral consequences as returning citizens -- consequences that might well be more onerous in the long run than the sentence imposed by a court. This reality is not the result of careful analysis; it is explained by the fact that before the NICCC no one could readily know the extent to which these consequences deny returning citizens opportunities for education, housing, and employment. Justice cries out for fairness not only in judicial sentencing, but also for fairness to those individuals who seek a second chance. The existence of the NICCC should enable every jurisdiction to provide that second chance and to limit collateral consequences of criminal convictions to those that are necessary to protect public safety.