ARTICLE 6X. COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION

§ 6x.01. Definitions.

(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:

a. Collateral consequences, generally. When the Model Penal Code was adopted by the American Law Institute in 1962, the primary consequence of conviction was typically 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 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 offense, but also the conditions of supervision and/or institutional restrictions, such as security classification, imposed in connection with the service of the criminal sentence.)

Subsections (2) and (3) define two distinct categories of collateral consequences, distinguished by their legal modes of operation. Mandatory collateral consequences are those imposed automatically by force of law as a result of conviction. The non-individualized nature of mandatory consequences implicates the Code’s policies against mandatory punishments that allow no room for individualization by a sentencing
judge, see § 6.06 and Comment m. Discretionary collateral consequences are those consequences that may, but need not, be imposed on an individual as a result of criminal conviction. Although these consequences can be long-lasting, they allow room for consideration of individual circumstances by discretionary decisionmakers, and are therefore less problematic under the Code.

§ 6x.02. Sentencing Guidelines and Collateral Consequences.

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

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

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

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

Comment:

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

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

b. Information collected. Under subsection (1), the sentencing commission is required to “compile, maintain, and publish a compendium of all legislatively authorized collateral consequences of criminal conviction.” Section 6x.02(1)(a) requires the sentencing commission to set forth in a compendium “all collateral consequences authorized by [the relevant jurisdiction’s] statutes and regulations, and by federal law.” Excluded from the commission’s compendium are all non-federal, extra-jurisdictional collateral consequences, and all disqualifications and sanctions not contained in statutes or administrative code provisions, such as municipal ordinances.
c. Distribution. Subsection (1) requires the sentencing commission to “publish a compendium of all collateral consequences contained in . . . statutes and administrative regulations.” The provision does not mandate how publication should occur or to whom the compendium should be distributed; however, by mandating publication, it implies that the compendium should be widely available. Electronic methods of publications may prove most simple, accessible, and cost-effective.

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

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

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

Requiring commissions to provide guidance to courts exercising their discretion under § 6x.04(2) furthers the public interest in equitable decisions while preserving judicial discretion. Because such guidance is not currently available from most sentencing commissions, this subsection leaves room for commissions to experiment with offering guidance in forms that differ from traditional structured guidelines. Alternative formats might take the form of bulletins providing relevant data or supplemental information about the purposes and operation of certain mandatory collateral consequences in terms of their public-safety purposes, and collateral consequences most or least likely to advance public safety for certain categories of offenses or offenders. Thus, for example, a mandatory bar to certification as an operator of a commercial vehicle might have a substantial relationship to a crime involving a driving offense, a tenuous
relationship to a crime involving drugs or violence, and little or no relationship to a crime involving theft or false statements. A mandatory bar to public housing might have a substantial relationship to a crime involving serious violence and major drug trafficking, but little or no relationship to dated fraud offenses. A third example is a mandatory bar to a day-care operator’s license, which has a clear nexus to violence and sexual assault, but a less clear relationship to a minor drug crime or gambling offense.

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.

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.

§ 6x.03. Voting and Jury Service.

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

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

Comment:

a. Scope. This provision closely tracks § 306.3 of the Model Penal Code (First), with one primary difference. The original Code required that incarcerated voters be disqualified from voting, while § 6x.03(1) favors a prohibition on disenfranchisement altogether. The provision offers a bracketed alternative that permits disenfranchisement only during the period of incarceration for those convicted of felony offenses. The original Code required juror disqualification for the full duration of the sentence. Subsection (2) permits, but does not require, juror disqualification during the term of sentence. Subsection (2) does not permit disqualification from jury service after the full sentence has been served.

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

Even though there are few principled or practical arguments in favor of disenfranchising prisoners, a bracketed alternative is included in subsection (1) that would authorize disenfranchisement on the basis of conviction for individuals convicted of felony offenses during the period of imprisonment only. Under this alternative, individuals would regain the right to vote automatically upon release from prison.

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. To give meaning to the non-bracketed language of subsection (1), 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.

§ 6x.04. Notification of Collateral Consequences; Order of Relief

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

   (a) A list of all collateral consequences that apply under state or federal law as a result of the current conviction;

   (b) a warning that the collateral consequences applicable to the offender may change over time;

   (c) a warning that jurisdictions to which the defendant may travel or relocate may impose additional collateral consequences; and
(d) notice of the defendant’s right to petition for relief from mandatory collateral consequences pursuant to subsection (2) during the period of the sentence, and thereafter pursuant to §§ 6x.05 and 6x.06.

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

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

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

(c) The court may grant relief from a mandatory collateral consequence if, after considering the guidance provided by the sentencing commission under § 6x.02(2), it finds that the individual has demonstrated by clear and convincing evidence that the consequence imposes a substantial burden on the individual’s ability to reintegrate into law-abiding society, and that public safety considerations do not require mandatory imposition of the consequence.

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

(3) An order of relief granted under this Section does not prevent an authorized decisionmaker from later considering the conduct underlying the conviction when making an individualized determination whether to confer a discretionary benefit or opportunity, such as an occupational or professional license. 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 substantially related to the benefit or opportunity the individual seeks to obtain. If the decisionmaker determines that the benefit or opportunity should be denied based upon the conduct underlying the conviction, the decisionmaker shall explain the reasons for the denial in writing.

Comment:

a. Scope. This provision, new to the Code, provides assurance that convicted individuals are made aware of the collateral consequences to which they will be subject, and provides courts with a mechanism for alleviating some types of mandatory collateral consequences on a case-by-case basis. This provision recognizes that although collateral consequences can serve important regulatory goals, there are instances in which the application of a particular collateral consequence will unnecessarily impede a convicted individual’s successful reintegration into the law-abiding community without advancing public safety. This is likely to be most true when the consequence bears little connection to the individual’s risk of criminal re-offending.

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

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

b. Notification of collateral consequences. Under subsection (1), the court must confirm on the record that the defendant has been given written notice of the existence of all mandatory collateral consequences that apply under federal law and the law of the relevant jurisdiction at the time of sentencing. (This information is made available by the sentencing commission, which is charged under § 6x.02(1) with “compil[ing], maintain[ing], and publish[ing] a compendium of all collateral consequences contained in [the jurisdiction’s] statutes and administrative regulations.”) The court must also confirm that the defendant has been informed that discretionary collateral consequences may attend conviction, though it need not specify what those may be. The court must also confirm that the defendant has been given notice of his right to seek relief from any mandatory collateral consequences that are not relieved at the time of sentencing. This notice should include information regarding the offender’s right to petition for relief from specific sanctions under § 6x.05 should a need arise after the time of sentencing, and right to petition for a certificate of relief from disabilities under § 6x.06 when the proscribed amount of time has passed.
This provision addresses the obligation of courts to provide information about collateral consequences at the time of sentencing. It is not meant to limit or in any way discourage the practice of providing such information at a much earlier stage of the proceedings. The information about collateral consequences discussed by the court at sentencing should already be familiar to the defendant. Defense counsel should routinely provide and discuss such information with the client at early stages of the prosecution, and before entry of a guilty plea. Even so, ensuring on the record at the time of sentencing that the defendant has been provided with this information in writing guarantees that the individual being sentenced has been given as complete notice as possible of the consequences that attend conviction.

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

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

e. Notice. Subsection 6x.04(2)(b) requires that the defendant provide the prosecuting attorney with notice of the mandatory collateral consequences from which relief is being sought in order to ensure that the prosecutor is given adequate opportunity to object to or support the petition.

f. Standard for relief. The strategy of the Model Penal Code is to make the law of collateral consequences consistent with overriding goals of public safety and recidivism prevention. With these objectives in mind, collateral consequences are seen as a negative force whenever they impede the successful reintegration of offenders into law-abiding society without offering a commensurate public-safety benefit. Consequently, § 6x.04(2)(b) allows a court to grant relief from mandatory collateral consequences related to “employment, education, housing, public benefits, registration, occupational licensing, or the conduct of a business” when it finds that the defendant has shown by clear and convincing evidence that “the consequence imposes a substantial burden on the individual’s ability to reintegrate into law-abiding society, and that public-safety considerations do not require mandatory imposition of the consequence.”
Applying this standard, courts are most likely to grant relief when a collateral sanction bears little connection to a petitioner’s crime of conviction or the facts underlying the criminal case, and when the burden imposed by the consequence also impedes the individual’s rehabilitative efforts. Conversely, courts are likely to deny relief in cases where there is a clear or close connection between the collateral consequences and a public-safety risk posed by the offender’s criminal conduct. Examples of the latter include the loss of a motor-vehicle license by a person convicted of operating a motor vehicle while intoxicated and prohibiting receipt of a daycare operator’s license by a person convicted of the sexual assault of a minor. The defendant bears the burden of proving both the burden and the lack of an adequate public-safety consideration.

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

h. Effect of relief. When a court grants relief from a mandatory collateral consequence pursuant to subsection (2), the defendant is excused from complying with any requirements imposed by the sanction and may not be automatically barred from receiving specified opportunities and benefits from which he or she would otherwise be barred by virtue of conviction. As subsection (3) makes clear, however, an order of relief does not prevent authorized decisionmakers from later considering the conduct underlying the conviction when deciding whether to confer a discretionary benefit or opportunity, such as occupational licensure. In making this determination, the decisionmaker shall 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.

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

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

(a) The individual is not the subject of pending charges in any jurisdiction;
(b) The individual resides, is employed or seeking employment, or regularly conducts business in this jurisdiction; and

(c) The individual demonstrates that the application of one or more mandatory collateral consequences in this jurisdiction will have an adverse effect on the individual’s ability to seek or maintain employment, conduct business, or secure housing or public benefits.

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

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

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

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

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

Comment:

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

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

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

§ 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] should issue the certificate whenever the individual has avoided reconviction during the period following completion of his or her past criminal sentences, unless the prosecution makes a clear showing why the application of one or more collateral consequences should remain in effect.

   (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 the cultural, educational, or economic limitations affecting petitioners.
(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 specify that the certificate should issue with additional 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 employee or former employee.

Comment:

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 (First) § 306.6, Explanatory Note. 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 community. As a result, the standard for relief under this section requires proof of law-abiding behavior over a sustained period of time. To qualify, an individual must have served his or her full sentence (including any period of supervised release) and have gone four or more years without reconviction. See § 6x.06(4). The effect of a certificate is to remove most, if not all, collateral consequences and to assist the recipient in obtaining employment by shielding employers from introduction of the petitioner’s criminal history “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).

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

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

c. Standard for relief. The standard for obtaining relief from collateral consequences varies depending on the severity of the crime or crimes for which the petitioner has been convicted. For individuals convicted of less serious crimes, it is enough for the petitioner to demonstrate that he or she has avoided reconviction for a prolonged period of time—unless, that is, the state comes forward with clear evidence that one or more collateral consequences should remain in effect. Section 6x.06(3)(a). For those convicted of more serious offenses, a more searching inquiry is required. In cases where a petitioner has been convicted of a third- or higher-degree felony, the [court or designated agency] has 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).