

COMMITTEE ON HOMELAND SECURITY, JUSTICE  
AND PUBLIC SAFETY

10/25/2013-HELD IN COMMITTEE

**BILL NO. 30-0064**

**Thirtieth Legislature of the Virgin Islands**

**April 5, 2013**

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An Act enacting the Uniform Collateral Consequences of Conviction Act

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**PROPOSED BY:** Senator Sammuel Sanes  
Co-Sponsor: Judi Buckley

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**1** *Be it enacted by the Legislature of the Virgin Islands:*

**2** SECTION 1. Title 14, Virgin Islands Code is amended by inserting a new Chapter 123 to read:

**3** "Chapter 123. Uniform Collateral Consequences of Conviction Act

**4** --Note. *Short title;* this act may be cited as the "Uniform Collateral Consequences of Conviction  
**5** Act".

**6** § 3055. Definitions

**7** --as used in the Uniform Collateral Consequences of Conviction Act:

**8** (1) "*collateral consequence*" means a collateral sanction or a disqualification;

**9** (2) "*collateral sanction*" means a penalty, disability or disadvantage, however denominated,  
**10** imposed on an individual as a result of the individual's conviction of an offense that applies by operation  
**11** of law, whether or not the penalty, disability or disadvantage is included in the judgment or sentence.

1 "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture,  
2 restitution, fine, assessment or costs of prosecution;

3 (3) "*convicted*" and "*conviction*" include an adjudication as a juvenile;

4 (4) "*decision-maker*" means the state acting through the following entities or their  
5 employees:

6 (a) a department;

7 (b) an agency;

8 (c) an officer; or

9 (d) an instrumentality, including a political subdivision, an educational institution, a  
10 board or a commission or a government contractor, including a subcontractor, made subject to  
11 the Uniform Collateral Consequences of Conviction Act by contract or by law other than the  
12 Uniform Collateral Consequences of Conviction Act;

13 (5) "*disqualification*" means a penalty, disability or disadvantage, however denominated, that  
14 an administrative agency, governmental official or court in a civil proceeding is authorized, but not  
15 required, to impose on an individual on grounds relating to the individual's conviction of an offense;

16 (6) "*identification agency*" means the Judicial Council, acting in conjunction with the offices  
17 of the Virgin Islands Attorney General and the Virgin Islands Public Defender;

18 (7) "*offense*" means a felony pursuant to the law of the Virgin Islands, another state or the  
19 United States;

20 (8) "*person*" means an individual, corporation, business trust, estate, trust, partnership,  
21 limited liability company, association, joint venture, public corporation, government or governmental  
22 subdivision, agency or instrumentality or any other legal or commercial entity;

1 (9) "state" means a state of the United States, the District of Columbia, Puerto Rico, the  
2 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
3 United States; and

4 (10) "UCCCA" means the Uniform Collateral Consequences of Conviction Act.

5 **§ 3056. Limitation on scope**

6 (a) The UCCCA does not provide a basis for:

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

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

9 (3) a claim for relief from or defense to the application of a collateral consequence  
10 based on a failure to comply with Section 3057, 3058 or 3059 of the Uniform Collateral  
11 Consequences of Conviction Act.

12 (b) The UCCCA does not affect:

13 (1) the duty an individual's attorney owes to the individual, except as provided in  
14 Section 3058 of the Uniform Collateral Consequences of Conviction Act;

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

16 (3) a right or remedy pursuant to law other than the UCCCA available to an  
17 individual convicted of an offense.

18 **§ 3057. Identification, collection and publication of laws regarding collateral consequences**

19 (a) The identification agency:

20 (1) shall identify or cause to be identified any provision in Virgin Islands' statutes  
21 published in the Virgin Islands Code Annotated that imposes a collateral sanction or authorizes  
22 the imposition of a disqualification, and any provision of law that may afford relief from a  
23 collateral consequence;

1           (2) not later than six months after the effective date of the Uniform Collateral  
2 Consequences of Conviction Act, shall prepare or cause to be prepared a collection of citations  
3 to, and the text or short descriptions of, the provisions identified pursuant to paragraph (1) of this  
4 subsection;

5           (3) shall update or cause to be updated the collection provided for in paragraph (2) of  
6 this subsection every three months thereafter; and

7           (b) As required by subsection (a) of this section, the identification agency shall include or  
8 cause to be included the following statements in a prominent manner at the beginning of the collection:

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

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

14           (3) "The laws of other jurisdictions and any Virgin Islands Administrative laws are  
15 not included in this collection and may impose additional collateral sanctions and authorize  
16 additional disqualifications."; and

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

20           (c) The identification agency shall publish or cause to be published in the manner provided  
21 in subsection (d) of this section the collection prepared and updated as required by subsection (a) of this  
22 section. If available, the identification agency shall publish or cause to be published, as part of the  
23 collection, the title and internet address of:

24           (1) the most recent collection of collateral consequences imposed by federal law; and

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

2 (d) The collection provided for in subsection (c) of this section shall be published on the web  
3 site of the identification agency and shall be available to the public on the internet without charge not  
4 later than three weeks after it is created or updated.

5 **§ 3058. Notice of collateral consequences in pretrial proceeding and at guilty plea**

6 (a) Except as provided in subsection (c) of this section, counsel representing an individual  
7 charged with an offense shall cause information substantially similar to the following to be  
8 communicated to the individual during pretrial proceedings and shall discuss the information with the  
9 individual:

10 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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

- 14 1. being unable to get or keep some licenses, permits or jobs;  
15 2. being unable to get or keep benefits such as public housing or education;  
16 3. receiving a harsher sentence if you are convicted of another offense in the  
17 future;  
18 4. having the government take your property; and  
19 5. being unable to vote or possess a firearm.

20 If you are not a United States citizen, a guilty plea or nolo contendere plea or  
21 conviction may also result in your deportation, removal or exclusion from admission to  
22 the United States or denial of citizenship. The law may provide ways to obtain some  
23 relief from these consequences. Further information about the consequences of  
24 conviction is available on the internet at [*insert internet address of the collection of laws*

1 *published pursuant to subsections (c) and (d) of Section 3057 of the Uniform Collateral*  
2 *Consequences of Conviction Act]."*

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

6 (c) The notice required pursuant to subsection (a) of this section need not be given until six  
7 months have elapsed after the collection of laws required pursuant to Section 3057 of the UCCCA is  
8 first available on the internet pursuant to subsections (c) and (d) of Section 3057 of that act.

9 (d) This section does not limit the duty that an individual's counsel otherwise owes to the  
10 individual.

11 **§ 3059. Notice of collateral consequences at sentencing and upon release**

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

14 (1) that collateral consequences may apply because of the conviction;

15 (2) of the internet address of the collection of laws published pursuant to subsections  
16 (c) and (d) of Section 3057 of the Uniform Collateral Consequences of Conviction Act;

17 (3) that there may be ways to obtain relief from collateral consequences;

18 (4) of contact information for government or nonprofit agencies, groups or  
19 organizations, if any, offering assistance to individuals seeking relief from collateral  
20 consequences; and

21 (5) of when an individual convicted of an offense may vote pursuant to Virgin Islands  
22 law.

1 (b) Except as provided in subsection (d) of this section, the individual's counsel shall provide  
2 the notice set forth in subsection (a) of this section not more than thirty and, if practicable, at least five  
3 days before sentencing.

4 (c) Except as provided in subsection (d) of this section, if an individual is sentenced to  
5 imprisonment or other incarceration, the officer or agency releasing the individual shall provide the  
6 notice set forth in subsection (a) of this section not more than thirty and, if practicable, at least five days  
7 before release.

8 (d) The notice required pursuant to subsection (a) of this section need not be given until six  
9 months have elapsed after the collection of laws required pursuant to Section 3057 of the UCCCA is  
10 first available on the internet pursuant to subsections (c) and (d) of Section 3057 of that act.

11 **§ 3060. Authorization required for collateral sanction; ambiguity**

12 (a) A collateral sanction may be imposed only by statute or by a rule authorized by law and  
13 adopted in accordance with applicable law.

14 (b) A law creating a collateral consequence that is ambiguous as to whether it imposes a  
15 collateral sanction or authorizes a disqualification shall be construed as authorizing a disqualification.

16 **§ 3061. Decision to disqualify**

17 In deciding whether to impose a disqualification, a decision-maker shall undertake an  
18 individualized assessment to determine whether the benefit or opportunity at issue should be denied the  
19 individual. In making that decision, the decision-maker may consider, if substantially related to the  
20 benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the  
21 essential elements of the offense. A conviction itself shall not be considered except as having  
22 established the elements of the offense. The decision-maker shall also consider other relevant  
23 information, including the effect on third parties of granting the benefit or opportunity and whether the  
24 individual has been granted relief such as an order of limited relief.

**1 § 3062. Effect of conviction by another state or the United States; relieved or pardoned conviction**

**2** (a) For purposes of authorizing or imposing a collateral consequence in the Virgin Islands, a  
**3** conviction of an offense in a court of another state or the United States is deemed a conviction of the  
**4** offense in the Virgin Islands with the same elements. If there is no offense in the Virgin Islands with the  
**5** same elements, the conviction is deemed a conviction of the most serious offense in the Virgin Islands  
**6** that is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction shall  
**7** not be deemed a felony in the Virgin Islands, and an offense lesser than a misdemeanor in the  
**8** jurisdiction of conviction shall not be deemed a conviction of a felony or misdemeanor in the Virgin  
**9** Islands.

**10** (b) For purposes of authorizing or imposing a collateral consequence in the Virgin Islands, a  
**11** juvenile adjudication in another state or the United States shall not be deemed a conviction of a felony,  
**12** misdemeanor or offense lesser than a misdemeanor in Virgin Islands.

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

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

**20** (e) A conviction that has been relieved by expungement, sealing, annulment, set-aside or  
**21** vacation by a court of competent jurisdiction of another state or the United States on grounds of  
**22** rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same  
**23** effect for purposes of authorizing or imposing collateral consequences in the Virgin Islands as it has in  
**24** the jurisdiction of conviction; provided, however, that such relief or restoration of civil rights does not



1 relieve collateral consequences applicable pursuant to the law of the Virgin Islands for which relief  
2 could not be granted pursuant to Section 3064 of the UCCCA or for which relief was expressly withheld  
3 by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted  
4 in another jurisdiction may seek relief pursuant to Section 3063 of the UCCCA from any collateral  
5 consequence for which relief was not granted in the issuing jurisdiction except those consequences listed  
6 in Section 3064 of that act.

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

13 **§ 3063. Order of limited relief**

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

17 (b) Except as otherwise provided in Section 3065 of the Uniform Collateral Consequences of  
18 Conviction Act, the court may issue an order of limited relief relieving one or more of the collateral  
19 sanctions described in subsection (a) of this section if, after reviewing the petition, the individual's  
20 criminal history, any filing by a victim pursuant to Section 3067 of the UCCCA or a prosecutor and any  
21 other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

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

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

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

5           (c)     An order of limited relief shall specify:

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

7                 (2)     any restriction imposed pursuant to subsection (a) of Section 30652 of the  
8 Uniform Collateral Consequences of Conviction Act.

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

10           (e)     If a collateral sanction has been relieved pursuant to this section, a decision-maker may  
11 consider the conduct underlying a conviction as provided in Section 3061 of the Uniform Collateral  
12 Consequences of Conviction Act.

13 **§ 3064. Collateral sanctions not subject to order of limited relief**

14           An order of limited relief shall not be issued to relieve the following collateral sanctions:

15                 (1)     requirements imposed by the Virgin Islands Sex Offender Registration statutes, codified  
16 in title 14 Virgin Islands Code, Chapter 86;

17                 (2)     a motor vehicle license suspension, revocation, limitation or ineligibility pursuant to Title  
18 20 Virgin Islands Code, for which restoration or relief is available pursuant to law other than the  
19 Uniform Collateral Consequences of Conviction Act;

20                 (3)     ineligibility for certification as a peace officer pursuant to the peace officer qualification  
21 standards set by the Peace Officer Standards and Training Council in Title 23 Virgin Islands Code; or

22                 (4)     prohibitions imposed pursuant to Title 23 Virgin Islands Code, §456a making it unlawful  
23 for felons possess or carry firearms or firearm ammunition while in the Virgin Islands.

24 **§ 3065. Issuance of order of limited relief**

1 (a) The prosecutor shall be notified of a request for an order of limited relief. The court may  
2 issue an order of limited relief subject to restriction, condition or additional requirement.

3 (b) The court shall order any test, report, investigation or disclosure by the individual it  
4 reasonably believes necessary to its decision to issue an order of limited relief. If there are disputed  
5 issues of material fact or law, the individual and any prosecutor notified pursuant to subsection (a) of  
6 this section or another prosecutorial agency designated by a prosecutor notified pursuant to subsection  
7 (a) of this section may submit evidence and be heard on those issues.

8 **§ 3066. Reliance on order as evidence of due care**

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

14 **§ 3067. Victim's rights**

15 A victim of an offense may participate in a proceeding for issuance of an order of limited relief  
16 in the same manner as at a sentencing proceeding pursuant to the Victim's and Witness' Bill of Rights,  
17 Title34 Virgin Islands Code, Chapter 8.

18 **§ 3068. Uniformity of application and construction**

19 In applying and construing the Uniform Collateral Consequences of Conviction Act,  
20 consideration shall be given to the need to promote uniformity of the law with respect to its subject  
21 matter among states that enact it.

22 **§ 3069. Saving and transitional provisions**

1 (a) Except as provided in subsection (b) of this section, the UCCCA applies to collateral  
2 consequences whenever enacted or imposed unless the law creating the collateral consequence expressly  
3 states that the UCCCA does not apply.

4 (b) The UCCCA does not apply to the imposition of a collateral sanction on an individual  
5 until the date that is six months after the collection of laws required pursuant to Section 3057 of the  
6 UCCCA is first available on the internet pursuant to subsections (c) and (d) of Section 3057 of that act,  
7 but a collateral sanction validly imposed before that date may be the subject of relief pursuant to that act.

8 **SECTION 2.** The effective date of the provisions of Section 1 is January 1, 2014.

9 **BILL SUMMARY**

10 Section 1 is a Uniform Act from the Uniform Law Commission addressing the penalties and  
11 disqualifications that individuals face incidental to criminal sentencing. The provisions in the Act are  
12 largely procedural, and designed to rationalize and clarify widely accepted policies and provisions.

13 According to the Uniform Law Commission, the key provisions of the Uniform Collateral  
14 Consequences of Conviction Act (also contained in this Act) are collection (§3057), notification  
15 (§§3058, 3059), authorization (§3060), standards for disqualification (§3061), overturned or pardoned  
16 convictions/relief granted by other jurisdictions (§3062), and relief from collateral consequences  
17 (§3063).

18 Internal §3055, is comprised of the relevant definitions;

19 Internal §3056, limits the scope of the legislation;

20 Internal §3057, provides for the identification, collection and dissemination of the laws regarding  
21 collateral consequences;

22 Internal §3058, requires a defendant to be notified of the possible collateral consequences in  
23 pretrial proceedings and at a guilty plea;

1 Internal §3059, requires a defendant to be notified of the possible collateral consequences at  
2 sentencing and upon release;

3 Internal §3060, authorizing certain collateral sanctions;

4 Internal §3061, directs the decision-maker to assess each case individually to determine whether  
5 a disqualification is warranted;

6 Internal §3062, outlines what effects conviction in other states, reliefs or pardons may have on  
7 the imposition of collateral consequences;

8 Internal §3063, gives a defendant a right to petition court for limited relief from one or more  
9 enumerated collateral sanctions;

10 Internal §3064, lists certain collateral sanctions that are not eligible for an order of limited relief;

11 Internal §3065, allows the decision maker to order tests and other documents deemed necessary  
12 for an informed decision prior to the issuance of an order of limited relief;

13 Internal §3066, provides that in a judicial or administrative proceeding that alleges negligence or  
14 other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, etc.;

15 Internal §3067, retains rights given to victims and witnesses in the Virgin Islands Victim's and  
16 Witness Bill of Rights;

17 Internal §3068, promotes uniformity in application of act by the territory; and

18 Internal §3069, provides dates of enforcement of act.

19 Section 2 of this bill sets the enactment date of January 1, 2014.

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21 **BR13-0372/ March 22, 2013 / reviewed by MMH**

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