STATE OF NEW YORK

4911

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

Introduced by Sens. DIAZ, HAMILTON, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to collateral consequences of convictions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "uniform collateral consequences of conviction act".

§ 2. The criminal procedure law is amended by adding a new article 435 to read as follows:

ARTICLE 435

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

Section 435.00 Definitions.

435.05 Limitation on scope.

435.10 Identification, collection and publication of laws regarding collateral consequences.

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435.50 Collateral sanctions not subject to order of limited relief or certificate of restoration of rights.

435.55 Issuance, modification and revocation of order of limited relief and certificate of restoration of rights.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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435.60 Reliance on order or certificate as evidence of due care.
435.65 Victim's rights.
435.70 Savings and transitional provisions.

§ 435.00 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

1. "Collateral consequence" means a collateral sanction or a disqualification.

2. "Collateral sanction" means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, presumptive release, conditional release, post release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.

3. "Conviction" shall have the meaning ascribed to it in subdivision thirteen of section 1.20 of this chapter and shall include any adjudication as a juvenile delinquent. "Convicted" has a corresponding meaning.

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

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

6. "Offense" means a felony, misdemeanor, and lesser included offenses, under the laws of this state, another state, or the United States.

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

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

§ 435.05 Limitation on scope.

1. This article shall not provide a basis for:

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

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

(c) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with section 435.10, 435.15 or 435.20 of this article.

2. This article shall not affect:

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

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

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

§ 435.10 Identification, collection and publication of laws regarding collateral consequences.

1. The division of criminal justice services:

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

(b) not later than ninety days after the effective date of this article, shall prepare or cause to be prepared a collection of citations to, and the text or short descriptions of, the provisions identified under paragraph (a) of this subdivision;

(c) shall update or cause to be updated the collection within sixty days after each regular session of the legislature; and

(d) in complying with paragraphs (a) and (b) of this subdivision, may rely on the study of this state's collateral sanctions, disqualifications, and relief provisions prepared by the national institute of justice described in section 510 of the court security improvement act of 2007, Pub. L. 110-177.

2. The division of criminal justice services shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subdivision one of this section:

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

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

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

(d) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after the previous time the collection was prepared or updated.

3. The division of criminal justice services shall publish or cause to be published the collection prepared and updated as required by subdivision one of this section. If available, it shall publish or cause to be published, as part of the collection, the title and internet address of the most recent collection of:

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

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

4. The collection described in subdivision three of this section must be available to the public on the internet without charge not later than thirty days after it is created or updated.

§ 435.15 Notice of collateral consequences in pretrial proceeding and at guilty plea.

1. When an individual receives formal notice that the individual is charged with an offense, the court shall cause information substantially similar to the following to be communicated to the individual:

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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

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

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

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

(d) having the government take your property; and

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

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

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

Further information about the consequences of conviction is available on the internet at the New York state division of criminal justice services website.

2. Before the court accepts a plea of guilty or nolo contendere from an individual, the court shall confirm that the individual received and understands the notice required by subdivision one of this section and had an opportunity to discuss the notice with counsel.

§ 435.20 Notice of collateral consequences at sentencing and upon release.

1. An individual convicted of an offense shall be given notice as provided in subdivisions two and three of this section:

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

(b) of the internet address of the collection of laws published under subdivision three of section 435.10 of this article;

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

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

(e) of when an individual convicted of an offense may vote under this state's law.

2. The court shall provide the notice in subdivision one of this section as a part of sentencing.

3. If an individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the individual shall provide the notice in subdivision one of this section not more than thirty, and, if practicable, at least ten, days before release.

§ 435.25 Authorization required for collateral sanction; ambiguity.

1. A collateral sanction may be imposed only by statute or ordinance, or by a rule or regulation authorized by law and adopted in accordance with the state administrative procedure act or any other applicable law.

2. A law creating a collateral consequence that is ambiguous as to whether it imposes a collateral sanction or authorizes a disqualification shall be construed as authorizing a disqualification.

§ 435.30 Decision to disqualify.

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

§ 435.35 Effect of conviction by another state or the United States; relieved or pardoned conviction.

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

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

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

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

5. A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this state as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this state for which relief could not be granted under section 435.50 of this article or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 435.40 or 435.45 of this article from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 435.50 of this article, and the court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

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

§ 435.40 Order of limited relief.

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

(a) sentencing court at or before sentencing; or

(b) the division of criminal justice services at any time after sentencing.

2. Except as otherwise provided in section 435.50 of this article, the court or the division of criminal justice services may issue an order of limited relief relieving one or more of the collateral sanctions described in subdivision one of this section if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 435.65 of this article or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

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

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

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

3. The order of limited relief must specify:

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

(b) any restriction imposed pursuant to subdivision one of section 435.55 of this article.

4. An order of limited relief relieves a collateral sanction to the extent provided in the order.

5. If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 435.30 of this article.

§ 435.45 Certificate of restoration of rights.

1. An individual convicted of an offense may petition the division of criminal justice services for a certificate of restoration of rights relieving collateral sanctions not sooner than three years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than three years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

2. Except as otherwise provided in section 435.50 of this article, the division of criminal justice services may issue a certificate of restoration of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 435.65 of this article or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(a) the individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;

(b) the individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial;

(c) a criminal charge is not pending against the individual; and

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

3. A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under subdivision one of section 435.55 of this article.

4. A certificate of restoration of rights relieves all collateral sanctions, except those listed in section 435.50 of this article and any others specifically excluded in the certificate.

5. If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 435.30 of this article.

§ 435.50 Collateral sanctions not subject to order of limited relief or certificate of restoration of rights.

An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

1. requirements imposed by article six-C of the correction law, the sex offender registration act;

2. a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to article twenty or thirty-one of the vehicle and traffic law, for which restoration or relief is otherwise available; or

3. ineligibility for employment pursuant to any law, rule or regulation of this state.

§ 435.55 Issuance, modification and revocation of order of limited relief and certificate of restoration of rights.

1. When a petition is filed under section 435.40 or 435.45 of this article, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the division of criminal justice services shall notify the prosecuting office of the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this state, the office of the New York state attorney general. The court may issue an order and the division of criminal justice services may issue an order or certificate subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking an order or certificate, the division of criminal justice services may impose conditions for reapplication.

2. The division of criminal justice services may restrict or revoke an order of limited relief or certificate of restoration of rights it issued or an order of limited relief issued by a court in this state if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony in this state or of an offense in another jurisdiction that is deemed a felony in this state under subdivision one of section 435.35 of this article. An order of restriction or revocation may be issued:

(a) on motion of the division of criminal justice services, the office of the prosecutor that obtained the conviction, or a government agency designated by that prosecutor;

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

(c) after a hearing pursuant to article seventy-eight of the civil practice law and rules if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(d) The court or the division of criminal justice services shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue, modify, or revoke an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the indi-

vidual and any prosecutor notified under subdivision one of this section or another prosecutorial agency designated by a prosecutor notified under subdivision one of this section may submit evidence and be heard on those issues.

(e) The division of criminal justice services shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. The criminal history record system of the division of criminal justice services must include issuance, modification, and revocation of orders and certificates.

(f) The division of criminal justice services may promulgate rules and regulations for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights, in accordance with article seventy-eight of the civil practice law and rules.

§ 435.60 Reliance on order or certificate as evidence of due care.

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

§ 435.65 Victim's rights.

A victim of an offense may participate in a proceeding for issuance, modification or revocation of an order of limited relief or a certificate of restoration of rights to the extent permitted by the rules or regulations promulgated by the division of criminal justice services.

§ 435.70 Savings and transitional provisions.

1. This article applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this article does not apply.

2. This article does not invalidate the imposition of a collateral sanction on an individual before the effective date of this article, but a collateral sanction validly imposed before the effective date of this article may be the subject of relief under this article.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.