

**To:** New Jersey Law Revision Commission  
**From:** Alex Fineberg  
**Date:** April 9, 2012  
**Re:** Collateral consequences of criminal convictions

## MEMORANDUM

At the Commission's direction, Staff has been engaged in a thorough review of the collateral consequences attendant criminal convictions that are imposed by state law. This comprehensive survey has been aided by the Criminal Justice Section of the American Bar Association, which, in fulfilling the terms of a Congressional grant, compiled 1,051 New Jersey statutes or regulations pertaining to such ancillary sanctions<sup>1</sup>—statutorily imposed or authorized legal disabilities that are not a part of a criminal sentence. Court Security Improvement Act of 2007, *Pub. L. No. 110-177*, 110th Cong. § 510(d) (2008).

To date, Staff has reviewed roughly one quarter of the statutes identified by the ABA and, proceeding in numerical order, is now midway through Title 17. Although it is unlikely that patterns will be entirely consistent across all titles, notable trends have begun to emerge. For instance, of the disqualifications reviewed thus far, 63% pertain to bars imposed on certain types of employment.

Staff identified some prevalent trends as problematic. Only 38% of the statutes reviewed enumerate a limited number of specific, relevant offenses that trigger a disqualification. *See, e.g., N.J.S. 9:3-40.5* (listing convictions that disqualify an applicant from employment at an adoption agency). And, even among statutes that, without mandating, merely authorize the imposition of a collateral sanction (as when vesting an administrative agency with the discretion to refuse to issue a license), only a few contain any limitation on the remoteness of an offense. *See, e.g., N.J.S. 17:15A-36* and *48* (providing no such guidance for offenses that disqualify an applicant from receiving a check cashing license). *Cf. N.J.S. 17:15C-7a(2)* (limiting the applicable criminal history of an applicant for a money transmission license to the previous five years).

Rather, collateral consequences are often imposed or authorized on the basis of “moral turpitude” or a lack of “good moral character”—undefined phrases that appear in 42% of the statutes reviewed. *See, e.g., N.J.S. 5:5-134* (allowing the New Jersey Racing Commission to compel the termination of any off-track betting licensee's employee if convicted of a crime “involving fraud, dishonesty, or moral turpitude” or if unable to establish, in the commission's opinion, “good character, honesty, competency, and integrity” by clear and convincing evidence).

As Staff continues its statutory survey, it will be better equipped to advise the Commission on possible courses of action. Although Staff has identified several statutory schemes that may be suitable for individual treatment, either because they are

---

<sup>1</sup> <http://isrweb.isr.temple.edu/projects/accproject/pages/GetStateRecords.cfm?State=NJ>

overly broad, *see, e.g., N.J.S. 33:1-25 and 26* (requiring the director of the Division of Alcoholic Beverage Control to affirmatively approve any licensee's decision to hire a person convicted of a "crime involving moral turpitude"), or potentially anachronistic, *see, e.g., N.J.S. 4:12-41.4* (requiring an applicant for a license to test butter fat to "satisfy the director [of the Department of Agriculture] as to his moral character"), the Commission may wish to pursue a broader solution.

The Commission may wish to explore the possibility of crafting uniform definitions for the phrases "good moral character" and "moral turpitude", delineating specific disqualifying offenses. It may find, however, that due to the prevalence of this legislative shorthand, employing entirely consistent definitions across all statutes produces unexpected results. The requisite "good moral character" and "reputable standing" to adopt a child should not necessarily be equivalent to the "reputation for good character, honesty, integrity and responsibility" necessary to obtain a boxing license. *See N.J.S. 2A:22-2 and N.J.S. 5:2A-15*. One statute appears to contemplate "the advantage and benefit of the person to be adopted", while the other is concerned that the applicant "has not engaged in activities with or associated with members of organized crime". *See Id.*

For the class of statutes that merely authorize, but do not require, a licensing agency to impose a collateral consequence, the Commission may wish to take steps to ensure that such sanctions are applied only after considering whether past offenses are relevant to the employment or benefit at issue. The Commission could develop statutory guidelines for all licensing procedures akin to those used in the State's civil service laws, adopting a model that limits the licensing authority to considering crimes which "adversely relate[ ] to the employment sought" and allowing the applicant to introduce evidence of rehabilitation. *See N.J.S. 11A:4-11*.

The Commission may also wish to examine the contents of the Uniform Collateral Consequences of Conviction Act, which includes a process for obtaining an order of limited relief. Under the act, an offender can either petition the court at the time of sentencing or, at a later date, apply to a designated board or agency, requesting the removal of legal disabilities that impede the individual from "obtaining or maintaining employment, education, housing, public benefits, or occupational licensing". *Unif. Collateral Consequences of Conviction Act* § 10 (amended 2010). The court, board, or agency then must ensure that "granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual." *Id.*