

# COLLATERAL CONSEQUENCES OF CONVICTIONS



Utah Sentencing Commission

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# Uniform Collateral Consequences of Conviction Act

## Senator Hillyard

- ❑ National Institute of Justice was directed to carry out a national survey of the various collateral consequences throughout U.S. under the Court Security Improvement Act of 2007.
- ❑ In 2012 the American Bar Association launched the National Inventory of the Collateral Consequences of Conviction, an interactive database of sanctions and restrictions across the nation, located at <http://www.abacollateralconsequences.org>.
- ❑ Utah is listed, but there is some question regarding whether it will be updated, whether it is comprehensive, whether it categorizes Utah crimes appropriately, whether reference to an interactive website is sufficient, whether it creates an appellate issue, practical impact upon court calendars, etc.

# Search by Consequence and Offense Category

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## Consequences (15 listed):

- Employment
- Occupational and professional licensing
- Business licensing and property rights
- Government programs
- Government loans and grants
- Judicial rights
- Government benefits
- Education
- Political/civic participation
- Housing
- Family/domestic rights
- Recreational license/firearms
- Registration and residency restrictions
- Motor vehicle licensure
- General relief provision

## Offense Categories (Any + 15 separate categories listed)

- Any
- Felony
- Misdemeanor
- Moral turpitude
- Fraud/dishonesty
- Violence
- Weapons
- Controlled substance
- Sex offense
- Public corruption
- Election-related
- Recreational license
- Motor vehicle offense
- Child support
- Other
- General



# Number of Utah consequences cited by searching each consequence and “Any”:

□ Employment	435	□ Housing	22
□ Occupational	273	□ Family/Domestic	35
□ Business	234	□ Recr License/Firearms	20
□ Government Prog	14	□ Registration/Residency	63
□ Government Loan	3	□ Motor Vehicle	41
□ Judicial Rights	21	□ General Relief	20
□ Govt Benefits	7		
□ Education	18		
□ Political	68		
		<b>Total</b>	<b>1,274</b>

Several bills in recent years have addressed collateral consequences of convictions:

- ▣ HB 33 (2013)
- ▣ HB 75 (2014)
- ▣ SB 201 (2014)



# HB 33 (2013) Expungement Process Amendments (Rep Hutchings)

- ❑ Adds felony drug possession to the list of offenses that may be expunged.
- ❑ Ex-offender must wait 5 years and remain free of all illegal drug use.
- ❑ Excludes drug possession convictions from a person's criminal record when eligibility for expunging other crimes is under consideration.
- ❑ Third felony possession or fifth possession conviction cannot be expunged.

# HB 75 (2014) Restoration of Civil Rights for Non-Violent Felons (Rep Oda)

- Exempts persons convicted of certain nonviolent felonies and who have had felonies expunged from the categories of restricted persons prohibited from possessing a dangerous weapon.



# SB 201 Expungement Modifications (Senator Jenkins)

- ❑ Includes Department of Insurance, Department of Commerce, and CCJJ in the list of agencies allowed to access expunged files.
- ❑ Prohibits agencies authorized to access expunged records in certain circumstances from revealing or releasing any information related to the expunged record.
- ❑ Provides for the Board of Pardons and Parole to issue an order of expungement when granting a pardon.

## Additional Potential Areas to Address

- Should be in coordination with an Evidence Based Approach
- Evidence Based Approach = Risk and Needs Assessment
- Top 8 Criminogenic Needs:
  - History of Anti-Social Behavior
  - Anti-social personality or temperament
  - Anti-social attitudes, values, or beliefs
  - Anti-social peers or companions
  - Family and/or marital stressors
  - Lack of pro-social leisure and recreation
  - Lack of employment and/or education
  - Substance abuse

# Address those consequences which we know increase Criminogenic Need

- ❑ Remove barriers to obtaining employment
- ❑ Remove barriers to obtaining education
- ❑ Remove barriers to transportation
- ❑ Promote pro-social behavior vs further isolation



## *State v. Trotter*

Utah Supreme Court

No. 20111056 (May 20, 2014)

### □ Historical context:

- The Sixth Amendment's right to counsel compels defense attorneys to ensure a defendant is aware of the direct consequences of his or her plea. *Brady v. U.S.* 397 U.S. 742, 755 (1970)
- Rule 11 of the Utah Rules of Criminal Procedure reflects the trial court's responsibility to do the same. *State v. Alexander*, 2012 UT 27, 16-17, 279 P.3d 371.
- However, Rule 11(e)(8) distinguishes between direct and collateral consequences, stating: "a court is not required to inquire into or advise concerning any collateral consequences of a plea."
- A direct consequence "is one that will have a definite, immediate and largely automatic effect on the range of the defendant's punishment such as lack of eligibility for parole." *State w Smit*, 2004 UT App 222, 29 95 P.3d 1203.
- A collateral consequence, on the other hand, is one that is unrelated to the length and nature of the sentence imposed on the basis of the plea. *U.S. v. Hurlich*, 293 F.3d 1223,1231 (10<sup>th</sup> Cir. 2002). It is a consequence that is based more on the individual's personal circumstances and is "beyond the control and responsibility of the district court in which the conviction was entered." *U.S. v. Gonzalez*, 202 F.3d 20, 27 (1<sup>st</sup> Cir. 2000).

□ *Padilla v Kentucky* (U.S. S.Ct. 2010)

- Held that defendants have a Sixth Amendment right to be informed of the deportation risks of a guilty plea.
- Did not eliminate the direct-collateral distinction, but carved out a special exception due to the “unique nature” of deportation.

□ *State v. Trotter* (Utah S.Ct. 2014)

- Held “the requirement to register on the state’s sex offender registry is properly classified as a collateral consequence of a defendant’s guilty plea. Therefore, neither defense counsel nor the trial court is constitutionally compelled to inform a defendant of the registration requirement before a guilty plea may be accepted as knowing and voluntary.”
- Also stated, “unlike parole, probation, or the length of imprisonment, the requirement to register as a sex offender is beyond the control of the trial court. The judge has no discretion whatsoever in determining whether the defendant will have to comply with registration statutes; instead it is a legal obligation, predetermined by the legislature, placed on those convicted of particular crimes and is an automatic operation of statute. Similar to the consequence of losing one’s driver’s license or the right to possess a firearm, the registration requirement is intended to act not as a criminal punishment but as a prophylactic civil remedy.”

