THE BRONX DEFENDERS

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Comments of The Bronx Defenders and Reentry Net
National Conference of Commissioners on Uniform State Laws
Uniform Collateral Sanctions and Disqualifications Act
March 14, 2006

Members of the Uniform Collateral Sanctions and Disqualifications Act Drafting Committee:

My name is McGregor Smyth, and I am the Project Director of the Civil Action Project and Reentry Net at The Bronx Defenders. I offer these comments along with Kate Rubin, Coordinator for the Reentry Net project. Thank you for the opportunity to share our thoughts again on the collateral sanctions and hidden punishments of the criminal justice system.

As we noted in our November 2005 comments, The Bronx Defenders offers integrated holistic services to indigent criminal defendants and their families, including criminal defense, civil legal services, social services and treatment, investigation, and youth programs. The Civil Action Project of The Bronx Defenders provides comprehensive legal services to our clients and their families by fully integrating civil representation with our criminal defense practice, working to mitigate the collateral sanctions that are the subject of the Committee's work.

Reentry Net,[1] a project of the Bronx Defenders and Pro Bono Net, is a training and support center for individuals and organizations that advocate for people who have criminal records, those reentering the community after their incarceration, and their families. We work to improve advocacy and services from arrest through release, promoting continuity of care and increasing capacity through collaboration and access to resources. Among other things, Reentry Net's online resource center hosts extensive free resources, including a clearinghouse of materials for criminal defense, legal services, social services, courts, policymakers, probation, and parole on the consequences of criminal proceedings.

We are enthusiastic about the work of your Drafting Committee on the Uniform Collateral Sanctions and Disqualifications Act (UCSDA), and offer the following comments based on our experience working with thousands of clients and hundreds of organizations that make up the reentry community. Underpinning our comments and recommendations is our definition of "reentry" as a process that begins at arrest and continues through community reintegration. This shift in the paradigm of reentry and collateral consequences highlights the substantial role that criminal defense attorneys can play in the process and expands the focus beyond convictions, so that it encompasses the consequences of criminalization faced by individuals from the moment they come in contact with the criminal justice system.

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[1] Visit Reentry Net/NY at www.reentry.net/ny and our National Reentry Research & Policy Library, currently being developed with the Prisoner Reentry Institute at John Jay College of Criminal Justice, at www.reentry.net.

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RECOMMENDATIONS

The March 2006 draft of the UCSDA is an impressive array of provisions that would benefit many of our clients. We believe, however, that there are a number of areas that warrant further development.

OVERALL RECOMMENDATIONS

In general, we would urge the Drafting Committee to consider four important features of any legislation in this area.[2] First, legislation should require data collection and reporting requirements. We really have very little empirical information on the incidence of these sanctions, such as how many employment licenses are denied because of a criminal record, or even how many public housing applications are denied. Second, bills must have strong enforcement provisions - both administrative remedies and enforcement and private rights of action. Third, proposals should use guided discretion, or have lists of factors to guide decisionmaking.[3] Fourth, legislation should have financial incentives such as bonding, tax incentives, or bonuses built into the funding regime to encourage desired behaviors by decisionmakers. The following overall recommendations pertain to the statutory language used in the UCSDA, expanding the scope of the act to cover arrests, and limiting access to and use of arrest records that ended in favorable disposition.

A. Use Statutory Language that Reduces Collateral Damage and Promotes Reintegration.

Statutory language frames issues of public policy and establishes legal definitions. Model codes, in particular, have the power to change the way that lawmakers and policymakers approach significant problems. Given the Drafting Committee's recognition of the gravity of the consequences resulting from criminal justice involvement, we urge the Committee to make an explicit decision to use language that itself reduces the stigma of this involvement and promotes more effective reentry.

Model language should avoid the use of such labels as "offender," "ex-offender," or "felon" in favor of more neutral descriptors as "person with a criminal record" or "person with a felony conviction." This language is more precise and better corresponds to the statutes and policies that impose sanctions based on one's criminal record. Such specificity also helps to clarify the different points in the criminal process where a sanction is imposed. Continuing to use these pejorative labels is as counterproductive, in its own way, as the legal barriers themselves. To promote and plan for the reintegration of formerly incarcerated persons into society, a model statute must discuss them as real people, with family and community ties, not merely as "ex-offenders."

B. Expand the Scope of the Act Beyond Convictions to Cover Arrests.

The discussion of collateral sanctions must address all of the legal barriers and invisible punishments faced by people with even the most minor criminal histories, including those who

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2 Adapted from comments by Kirsten Levingston of the Brennan Center.

3 The UCSDA artfully uses this technique.

were arrested but not convicted. The Drafting Committee has already recognized that hidden sanctions are not limited to felony convictions. Indeed, felony convictions are a substantial minority of cases. In 2002 in New York State, for example, more than two-thirds of adult arrests were for misdemeanors, while only 9% were for violent felonies.[4]

More important, these hidden punishments are not limited to convictions. The limitation of the UCSDA to convictions significantly reduces its impact and ignores the actual experiences of those suffering under invisible punishments. As Kent Markus notes, the public now has extraordinary access to a range of criminal history data to use in any number of standardless, discretionary decisions regarding employment, housing, licensing, and other sustaining life activities.[5] Because of the dearth of information on how well criminal history information works as a predictor of risk, decisionmakers concerned with liability and the appearance of impropriety tend to implement a zero-tolerance approach.[6] Private employers, landlords, and other decisionmakers are increasingly using any arrest or criminal justice involvement to deny access, regardless of the actual disposition or conviction.[7]

An arrest and criminal charge alone can have a devastating impact. For example, a person charged with a crime must appear regularly in court, and the resulting days of missed work frequently cause the loss of a hard-earned job. Poorer defendants are disproportionately affected by this phenomenon, as they are more likely to have jobs without vacation benefits, flexibility, or labor protections.

In addition, a significant number of jobs require public licensing, and these licenses are frequently suspended at the moment of arrest. New York alone has over 100 licensing regimes for a variety of occupations, from barber and security guard to cosmetologist and nurse. The increased automatic dissemination of arrest data from government agencies to these licensing regimes is making license suspensions the rule rather than the exception. In practice, this means the permanent loss of a job for many people, regardless of the outcome of the case.[8] Similarly,

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[4] New York State Division of Criminal Justice Services, *Criminal Justice Indicators New York State: 1998-2002, at* http://criminaljustice.state.ny.us/crimnet/ojsa/areastat/areast.htm (last visited Nov. 4, 2004). Numbers were similar for New York City: almost two-thirds of adult arrests were for misdemeanors and only 11% were for violent felonies. *Id.*

[5] Kent Markus, Legal and Policy Options for Dealing with Discretionary Criminal Background Checks, University of Toledo College of Law Symposium on the Legal Barriers to Reentry in Ohio: The ABA Collateral Sanctions in Theory and Practice (Sept. 24, 2004). Devah Pager studied the consequences of a criminal record for the employment outcomes of African American and white job seekers. Using matched pairs of individuals applying for entry-level jobs, she found that a criminal record presents a major barrier to employment. *See* Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIOLOGY 937 (2003). Moreover, a white person with a criminal record was more likely to get a call-back interview than an African American without one. *Id.* at 958.

[6] *See* Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIOLOGY at 958 (March 2003). *See also* Jennifer Leavitt, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281, 1301-06 (2002).

[7] Eighty percent of large corporations perform background checks on job applicants; 69% of small businesses do. Eight years ago, only 51% of large corporations did. *See* Susan Llewelyn Leach, *Bosses Peek into Job-Seekers' Pasts*, CHRISTIAN SCI. MONITOR, Oct. 13, 2004, at 15. Landlords increasingly run background checks as well, and criminal convictions appear more frequently on routine credit histories.

[8] *See* McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOL. L. REV. 479 (2005).

an arrest often triggers termination proceedings in publicly subsidized or private housing, without regard to the eventual criminal disposition.[9]

To provide some context, in New York State, more than one in three people arrested are never convicted of any crime or offense,[10] but they still suffer drastic consequences from their arrest alone. The UCSDA can protect this large population by expanding its provisions to prohibit or limit decisionmaking based on arrests without convictions.

C. Limit Access to and Use of Records of Arrests that Ended in a Favorable Disposition.

Seal Records of Arrests without Convictions.

Similarly, the UCSDA cannot adequately guard against these sanctions without limiting access to certain information about criminal records.[11] Among the most damaging types of records are arrest records where the person charged has received a favorable disposition such as a dismissal or acquittal. This category also includes arrests voided at the police precinct or cases that the District Attorney declined to prosecute. Records are made at each point in the criminal justice process after the moment of arrest, and the vicious combination of the computer age and the explosion of background investigation companies makes these records readily available without strict protections.

In New York, for example, Section 160.50 of the Criminal Procedure Law requires the automatic sealing of all official records and papers of an arrest and prosecution after a favorable disposition. Police, prosecutor, court, and state rap sheet records are all sealed and cannot be shown to any person or agency. A number of safety valve exceptions are built in, including access by law enforcement during a subsequent criminal investigation.

Many states, however, have no such protections. Many do not protect this arrest information and make it publicly available.[12] The same public policy that protects the rights of people with criminal convictions should also protect those subjected to failed prosecutions.

As discussed above, the proscriptive provisions of the UCSDA should cover these situations. For this subpopulation, we would also argue that a further protection is warranted. When an arrest and prosecution terminate favorably for the person charged, the UCSDA should affirmatively restore him or her to the legal status enjoyed prior to the arrest. New York, for

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9 *See, e.g.*, 24 C.F.R. § 966.4(l)5(iii)(A) (2004) (stating that in conventional public housing, a PHA may terminate assistance "regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction"); 24 C.F.R. § 982.553(c) (2004) (analogous provision for Section 8 voucher).

10 *See* DCJS, *supra* note 7. In New York State and New York City, only 62% and 57.4%, respectively, of arrests resulted in convictions.

11 For an excellent discussion of the need to restrict access to criminal records, including extensive background statistics, see Maurice Ensellem, *Employment Screening for Criminal Records: Attorney General's Recommendations to Congress* (Comments of NELP to the US Attorney General, Aug. 5, 2005), available at www.nelp.org.

12 *See* Legal Action Center, *Roadblocks to Reentry*, available at www.lac.org.

example, automatically restores the rights of those in this situation, returning them to the legal position that they held before the arrest.[13] Fundamental to restoring this status is preventing the flow of information to parties, such as employers and landlords, who should not be making decisions based on it.

Limit the Use of these Sealed Records.

Simple sealing provisions such as NY Crim. Proc. L. § 160.50, while strong and motivated by an impressive public policy, lack teeth. Once a sealed record is obtained, there are no clear limits to its adverse use in imposing sanctions in employment, housing, or other areas. The UCSDA should explicitly limit the use of sealed records by ensuring that sealing statutes include a use restriction. The goal is to prevent the use of sealed records in court proceedings, administrative proceedings, and private decisionmaking (such as private employment and housing). It could be drafted as both an evidentiary rule and a use restriction.

Limit Access to and Maintenance of Other Sources of Criminal History Data.

The proliferation of private databases of criminal history data, such as entries on routine credit reports, highlights the need to address the maintenance of these records. Sharon Dietrich of Community Legal Services in Philadelphia recently submitted testimony to the ABA Commission on Effective Criminal Sanctions on this expanded use of criminal records. She collects startling new studies on the widespread availability and inaccuracy of criminal history information and the collateral damage that results.[14]

Consider adding a Fair Credit Reporting Act provision to provide stronger protections for any background check agency providing reports within the state. The accuracy of these reports is notoriously unreliable and incomplete.[15] Some recommendations include time-limiting the reporting of arrests without convictions (none older than a year); increasing enforcement powers; ensuring that all background check companies are covered by the definition of covered entities; requiring that a copy of the report be given to each subject (to promote corrections of errors); and requiring that a copy of the report be given to each subject for comment before any adverse decision is made.[16] In addition, any agency or corporation covered by the state FCRA should abide by the sealing statutes and delete or remove any records that qualify for sealing.

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13 *See* NY Crim. Proc. L. § 160.60.

14 *See* Sharon Dietrich, *Expanded Use of Criminal Records and Its Impact on Re-entry*, presented to the ABA Commission on Effective Criminal Sanctions (March 3, 2006) (available at http://www.abanet.org/dch/committee.cfm?com=CR209800 and www.reentry.net/ny).

15 *See* Maurice Emsellem, *Employment Screening for Criminal Records: Attorney General's Recommendations to Congress* (Comments of NELP to the US Attorney General, Aug. 5, 2005), available at www.nelp.org.

16 See NELP's commentary to the AG for more extensive recommendations.

SPECIFIC RECOMMENDATIONS

Section 2. Definitions

We recommend that Section 2 be amended to reflect the comments above about expanding coverage of the Act. Because of the wide range of consequences that arise from any involvement with the criminal justice system, we recommend that the definition of "disqualification" be expanded to include all penalties or disadvantages related to a person's *arrest or conviction.*[17]

Section 3. Collection of Collateral Sanctions and Disqualifications.

This provision is an excellent procedural recommendation, and noteworthy for its inclusion of discretionary disqualifications in its codification requirement. We suggest that the UCSDA expand its protection beyond convictions as described above. We also urge the Drafting Committee to take another step towards fulfilling the public policy of promoting successful reentry by removing all stigmatizing labels such as "offender" or "felon." In addition to recommending new terms that would reflect rehabilitative goals, we suggest that the Commentary mention the legion of hidden punishments resulting from misdemeanor and minor offenses and even arrest alone.

Another interesting procedural limitation on collateral sanctions, suggested by Alan Rosenthal at the Center for Community Alternatives, is to require the filing of a "reentry impact statement" for any new legislation imposing a collateral penalty. Such a process, taken from lessons in environmental law, would ensure a fuller discussion of penalties before passage.

Section 5. Limitation of Collateral Sanctions and Disqualification Related to Employment, Education, and Licensing.

Section 5 contains many powerful provisions that limit hidden punishments in certain areas. The UCSDA, however, severely limits its efficacy by restricting its application to public actions within employment, education, and licensing.

Time-Limit all Sanctions.

As suggested by Maurice Ensellem at NELP,[18] all collateral sanctions and discretionary disqualifications should be time-limited from the date of the offense or conviction. In addition, lifetime disqualifications should be eliminated.

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[17] Countless practical barriers arise as well, including the tremendous weight of child support arrears accrued while in prison or the adverse effect of a criminal history on a credit report. *See, e.g.*, Ann Cammett, *Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents* (NJ Inst. For Social Justice February 2005), available at http://www.njisj.org/reports/makingworkpay.pdf; Amy E. Hirsch, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsberg, Judith Bernstein-Baker, & Joseph Hohenstein, EVERY DOOR CLOSED: FACTS ABOUT PARENTS WITH CRIMINAL RECORDS (CLASP and Community Legal Services 2002), available at http://www.clasp.org/publications/every_door_closed.pdf.

[18] Maurice Ensellem, *Employment Screening for Criminal Records: Attorney General's Recommendations to Congress* (Comments of NELP to the US Attorney General, Aug. 5, 2005), available at www.nelp.org.

Expand Protections to Private Decisionmaking.

In our experience representing thousands of individuals and providing technical assistance to hundreds of advocates, private discrimination against people with criminal records has the most significant and widespread impact. No solution is sufficient unless it addresses this problem. If the policy of the UCSDA is to reduce barriers to reintegration, promote employment and stability, and increase ties to lawful society, then this policy must also cabin the discretion of private actors. This policy, and the standards set forth in Section 6, must be used to define the "rationality" of private decisionmaking in the same way that other anti-discrimination laws have shaped the world around us.

Strengthen Factors Relevant to Case-by-Case Analysis of Conviction

The Commentary to Section 5 states that blanket collateral sanctions should be "sharply limited" to the situations where they are genuinely necessary. It also notes that while the "direct relationship" test for applying sanctions is deep in the law, it is often only honored in the breach. We believe, however, that the "presently unfit" test as set forth in Section 5 could make the exception swallow the rule.

We recommend that the Committee adopt stronger language setting forth a direct relationship test. For example, the Legal Action Center has proposed amendments to the New York employment protections, N.Y. Corr. L. Art. 23-A, to make this relationship clearer:

> No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought.

Further, "'Direct relationship' requires a substantial and immediate connection between the crime or offense and the functions and responsibilities pertaining to the right, opportunity, or job in question."[19]

Restore Provision Converting Collateral Sanctions to Disqualifications

The November 2005 draft contained a provision stating, "All statutes now in force imposing collateral sanctions related to employment, education or licensing shall be deemed to impose discretionary disqualifications to be evaluated in accordance with Section 6(D), except [firearms, contact with vulnerable groups, law enforcement positions]." The wholesale conversion of all existing collateral sanctions into discretionary disqualifications, combined with

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[19] The Legal Action Center's recommendations are available at www.reentry.net.

the statutory presumption against the creation of new collateral sanctions, was an elegant solution, and we encourage the Committee to restore this provision.

Expand Protections to Other Areas such as Housing, Voting, and Family Law.

Moreover, other substantive areas beg for the protection of the UCSDA. Housing, in particular, is fundamental to the reentry process in the same way that employment is. Research indicates that homelessness is directly linked to re-incarceration of people who have served jail or prison sentences. For instance, homeless individuals on parole have been shown to be seven times more likely to abscond after the first month of release than those located in more permanent housing.[20] Access to affordable housing has also been linked to decreased crime rates in low-income communities where people with criminal records often reside.[21] Furthermore, reconnecting with family members and establishing of community connections can help reduce re-incarceration; legal bars to allowing a family member back into the home after a conviction often make this impossible.[22] In New York City, for example, over thirty percent of single adults in the shelter system were recently released from local jails (substantially more if prisons are included), and many cycle between shelters and incarceration.[23]

As criminal records are widely available over the internet, through cheap background checks, and on credit reports, landlords increasingly use them to discriminate against people who have been through the criminal justice system. The Reentry Net hotline receives multiple queries per week from employment and other advocates who are simply unable to help their clients with criminal records secure stable housing. A typical example is this recently-received request:

> I am writing on behalf of [a community-based organization] in search of information on housing [people with criminal records]. We run a drop-in center for single homeless adults, a significant number of whom [have criminal records]. We are having difficulty providing housing placements for those with criminal records as many private building owners do background checks which make our clients ineligible. I found your information on-line and was wondering if you know of any programs or organizations that we could refer our clients to for this service. Thank you for your assistance.

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[20] Likewise, 32.8% of people released from New York State prisons who resided in shelters were imprisoned again within two years. *See* RPC Report, Stephen Metraux and Dennis P. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release," 3 Criminology & Public Policy 2, 137 (2004), Marta Nelson, Perry Deess, and Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City* (New York: Vera Institute of Justice, 1999) (available at http://www.vera.org/publications/publications_5.asp?publication_id=208).

[21] *See* www.housingfirst.net/housing_safety.html.

[22] Jeremy Travis et al., Urban Inst., "From Prison to Home: Dimensions and Consequences of Prisoner Reentry," at 35-36 (June 2001) available at http://www.urban.org/pdfs/from_prison_to_home.pdf. Marta Nelson, et al, "The First Month Out: Post Incarceration Experiences in New York City," Vera Institute of Justice (Sept. 1999) at 8-12, available at http://www.vera.org/section3/section3_4.asp.

[23] Chapter D, Policy Statement 19, Housing, Report of the Re-Entry Policy Council, authored by the Council of State Governments and ten research partners, viewed at www.reentrypolicy.org/ps19-housing.html. (Hereinafter RPC Report)

Other areas besides housing warrant protection as well, including drivers' licenses (critical to employment), family law, child support arrears,[24] voting, and public benefits and subsidies. Specific provisions could include:

- requiring that the state opt out of the drug felony ban on receipt of benefits funded by Temporary Assistance for Needy Families (TANF);[25]
- requiring that the Department of Corrections and the state welfare office facilitate Medicaid and general assistance applications for eligible jail and prison inmates 45 days before release;
- suspending rather than terminating Medicaid for jail and prison inmates (as recommended by the federal government);[26] and
- allowing courts to consider retroactive reduction or annulment of child support arrears for people whose incarceration has made it impossible for them to pay.

Add a List of Prohibited Collateral Sanctions.

The ABA Standards provided an excellent list of sanctions that should never be imposed. The Commentary to the UCSDA notes the ABA provision, but provides no explanation for its exclusion. We believe that such a list is critical for a model statute, and we fully endorse the Comments of the Brennan Center for Justice at NYU prohibiting disenfranchisement after a felony conviction for those not presently incarcerated for the offense.

Add Enforcement Mechanisms.

Despite its strong proscriptive language, the UCSDA is notably devoid of any enforcement mechanisms. New York's long experience with various protections against collateral sanctions has proven the importance of strong enforcement tools – because New York lacks them, the paper protections are largely ignored. A recent study of employment discrimination in New York City proved this point.[27]

We recommend that the Drafting Committee add a set of enforcement provisions, including administrative remedies and enforcement, private rights of action, and attorneys' fees. It may be more helpful to reframe the protections as anti-discrimination laws, using the Model Sentencing and Corrections Act and NY Exec. L. § 296(16) as examples. As a reasonable corollary to the private right of action, a model code should also provide an affirmative defense to employers, landlords, and other decisionmakers who follow the decisionmaking factors set out in Section 5. For example, an employer that can prove it complied with that process would have

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[24] For example, states have the authority to suspend child support obligations automatically during terms of incarceration. *See* Ann Cammett, *Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents* (NJISJ, Feb. 2005); Jessica Pearson, *Building Debt While Doing Time: Child Support and Incarceration*, ABA JUDGES' JOURNAL, Vol. 43, No. 1, at 6 (Winter 2004).

[25] *See* N.Y. Soc. Serv. L. § 95.

[26] *See* Letter of Glenn Stanton to State Medicaid Directors (May 25, 2004).

[27] *See* Devah Pager & Bruce Western, *Barriers to Employment facing Young Black and White Men with Criminal Records* (Draft, 2005).

a defense against a negligent hiring lawsuit. Such a provision would complement the defense set out in Section 6 concerning Certificates of Rehabilitation.

Section 7. Advisement at Guilty Plea.

The Drafting Committee's Commentary reflects a sensitivity to the realities of the treadmill of the criminal justice system, including the pressures to plead guilty. We fear, however, that the lack of any enforcement authority for this provision vitiates its power. By omitting any sanction for failure to advise, the UCSDA replicates the most damaging legal fiction underlying the false distinction between "collateral" and "direct" consequences. By carving out a large exception to its most important criminal process mandate, Section 7 threatens to doom itself to irrelevance.

While we recognize the importance of finality of judgments, there should be some provision for vacating or withdrawing pleas that were not adequately advised, with some proof of prejudice. Otherwise, defense counsel and judges actually have perverse incentives: it's better to give no advice or notice because there can be no finding of ineffectiveness. For example, under current New York law, vacatur for ineffective assistance can only be granted if there was affirmatively incorrect advice. The Bronx Defenders has been approached by dozens of non-citizens who unknowingly plead guilty to offenses that would lead to their deportation.[28] Because their defense attorneys simply failed to give any advice on the immigration consequences of the pleas, the clients were not eligible for any relief, even though they would not have plead guilty had they known the immigration consequences. The remedy for non-compliance with proper advisement is therefore of immense practical importance, in contrast to the suggestion of the Commentary.

Add Section Requiring Consideration of Collateral Sanctions and Discretionary Disqualifications at Sentencing.

The UCSDA should add a provision requiring the sentencing court to take into account all applicable collateral sanctions and discretionary disqualifications in making a sentencing determination. The ABA Standards recommend a similar approach. Such a consideration is fundamental to an expanded conception of truth in sentencing and to determining the true equities of a sentence. It would also complement and strengthen the advisement requirement, even in the absence of any sanctions for failure to advise.

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[28] These individuals had been represented by other defense counsel in their criminal cases. The Bronx Defenders has a full time immigration attorney who specializes in the immigration consequences of criminal proceedings and advises our non-citizen clients and staff attorneys prior to pleas.

On behalf of the Bronx Defenders and Reentry Net, we thank you again for your leadership on this important issue, and urge you to contact us if we can offer any further information or materials on the topics we have addressed in these comments. Our contact information is as follows:

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