



June 8, 2006

Drafting Committee on a Uniform Collateral Sanctions
and Disqualifications Act
National Conference of Commissioners on Uniform State Laws
211 E. Ontario Street, Suite 1300
Chicago, IL 60611
nccusl@nccusl.org

To the Committee:

In March of this year, the Brennan Center for Justice wrote to the Drafting Committee to urge it to include a limitation on felony disenfranchisement in its draft Uniform Act on Collateral Sanctions and Disqualifications. After the Committee's meeting this spring, it was our understanding that two questions arose with respect to our suggestion: how felony disenfranchisement has been treated by other major model acts, and in particular whether voting has been treated differently from other civil disabilities following felony conviction.

The Brennan Center has now reviewed six major policy statements that discuss the appropriate effects of a criminal conviction on civil rights. Specifically, we reviewed: the Model Penal Code (1962); the NCCUSL's Uniform Act on Status of Convicted Persons (1964); the NCCUSL's Model Sentencing and Corrections Act (1978); the American Bar Association's (ABA) Legal Status of Prisoners Standards: Part VIII. Civil Disabilities of Convicted Persons (2d ed. 1983); ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d ed. 2003); and the National Council on Crime and Delinquency's Criminal Justice Sentencing Policy Statement (2005).

These model acts consistently treat the right to vote as uniquely important, recommending its restoration prior to the restoration of other civil rights, such as serving on a jury or holding public office. Four of these policy statements limit felony disenfranchisement to the period of confinement; two do not recommend any suspension of the franchise. By way of contrast, three of these acts recommend restoration of the right to serve on a jury after completion of sentence, including parole or probation, and two do not address restoration of the jury right at all. Similarly, two of the statements condition the right to hold public office on completion of full sentence, while another does not provide for restoration.

Table 1 provides a chronological summary of the six policy statements, highlighting their recommendations concerning how and whether a criminal conviction should affect the right to vote, the right to serve on a jury, and the right to hold public office.

Table 1. Timeline of Policy Statements on Effects of a Criminal Conviction on Selected Rights

Policy Statements on Effects of a Criminal Conviction on Selected Rights					
Year	Title	Effect on Right to Vote	Effect on Right to Serve on a Jury	Effect on Right to Hold Public Office	Additional Notes
1962	<i>Model Penal Code</i>	Restored after incarceration. ¹	Restored upon completion of sentence ²	Forfeited upon conviction of a felony and public corruption offenses and where otherwise provided for by the Code. ³	Restricts collateral sanctions and disqualifications to those reasonably related to a person's competency to exercise the right or privilege denied. ⁴
1964	<i>NCCUSL Uniform Act on Status of Convicted Persons</i>	Restored after incarceration. ⁵	Left to jurisdiction. ⁶	Forfeited upon conviction of a felony. ⁷ Eligible for public office after completion of sentence. ⁸	Eliminates or limits the punitive effects of collateral sanctions. ⁹ Generally provides for the retention of civil, property, and political rights. ¹⁰

¹ MODEL PENAL CODE § 306.3.

² *Id.*

³ MODEL PENAL CODE § 306.2.

⁴ MODEL PENAL CODE § 306.1 (prohibiting collateral sanctions and disqualifications unless such a sanction is: "(a) necessarily incident to execution of the sentence of the Court; or (b) provided by the Constitution or the Code; or (c) provided by a statute other than the Code, when the conviction is of a crime defined by such statute; or (d) provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, *when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived*") (emphasis added).

⁵ UNIFORM ACT ON STATUS OF CONVICTED PERSONS § 2(a) (1964).

⁶ *Id.* at § 4(c).

⁷ *Id.*

⁸ *Id.* at § 2(a)(2).

⁹ UNIFORM ACT ON STATUS OF CONVICTED PERSONS 3 (1964).

¹⁰ *Id.* at § 3 (1964).

Policy Statements on Effects of a Criminal Conviction on Selected Rights					
Year	Title	Effect on Right to Vote	Effect on Right to Serve on a Jury	Effect on Right to Hold Public Office	Additional Notes
1978	<i>NCCUSL Model Sentencing and Corrections Act</i>	Retained even during incarceration. ¹¹ Incarcerated persons were to be allowed to vote via absentee ballot ¹² and to receive assistance in voting. ¹³	Lost upon conviction of a felony. ¹⁴	Forfeited upon conviction of enumerated felonies. ¹⁵ Eligible for public office after completion of sentence. ¹⁶	Prohibits employment, licensing, or education discrimination based on a criminal conviction unless the offense is tied to the sanction. ¹⁷
1983	<i>ABA Legal Status of Prisoners Standards: Part VIII. Civil Disabilities of Convicted Persons</i>	Takes no position on suspension of franchise during actual incarceration, but recommends restoration after actual incarceration if rights are suspended. ¹⁸	Restored after incarceration and completion of probation or parole. ¹⁹	Forfeiture of public offices held at time of conviction but no bar post-incarceration. ²⁰	Generally, places a heavy burden on the State before imposition of a collateral sanction, requiring proof “in each individual case that the disability or penalty is necessary to advance an important governmental or public interest.” ²¹

¹¹ MODEL SENTENCING AND CORRECTIONS ACT § 4-1001(b)(2) (1978).

¹² *Id.* at § 4-1003.

¹³ *Id.* at § 4-1112.

¹⁴ *Id.* at § 4-1002.

¹⁵ *Id.* at § 4-1004.

¹⁶ *Id.* at § 4-1001(b)(1).

¹⁷ *Id.* at § 4-1005.

¹⁸ ABA LEGAL STATUS OF PRISONERS STANDARDS: PART VIII. CIVIL DISABILITIES OF CONVICTED PERSONS, § 23-8.4 & cmt. (2d ed. 1983).

¹⁹ *Id.* at § 23-8.5(b).

²⁰ *Id.* at § 23-8.8(c).

²¹ *Id.* at § 23-8.3.

Policy Statements on Effects of a Criminal Conviction on Selected Rights					
Year	Title	Effect on Right to Vote	Effect on Right to Serve on a Jury	Effect on Right to Hold Public Office	Additional Notes
2003	<i>ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons</i>	Takes no position on suspension of franchise during actual incarceration. ²² Restoration after actual incarceration in all cases. ²³	Restored upon completion of sentence. ²⁴	[not addressed]	Prohibits collateral sanctions unless “the conduct constituting that particular offense provides so substantial a basis for imposing the sanction that the legislature cannot reasonably contemplate any circumstances in which imposing the sanction would not be justified.” ²⁵
2005	<i>National Council on Crime and Delinquency’s Criminal Justice Sentencing Policy Statement</i>	Restored after incarceration. ²⁶	Restored after incarceration. ²⁷	Restored after incarceration. ²⁸	Argues for the restoration of all legal rights. ²⁹ Specifically mentions the right to vote. ³⁰

As Table 1 shows, these policy statements have consistently treated voting separately from other civil rights and accorded it special significance, restoring the franchise early. These institutions have recognized the primacy of voting, “a fundamental political right, because preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). We urge the Committee to do the same, and include in the model Act now under consideration the substantive limitations on felony disenfranchisement we recommended in our earlier letter.

²² ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (3d ed. 2003) § 19-2.6(a) & cmt.

²³ *Id.* at § 19.26(a).

²⁴ *Id.* at § 19-2.6(b)(ii).

²⁵ *Id.* at § 19-2.2.

²⁶ CRIMINAL JUSTICE SENTENCING POLICY STATEMENT, Position 8 (November 2005) (“There are currently many structural barriers to successful reintegration such as prohibitions against student loans and public housing. These barriers should be removed. Returning inmates, having done their time, should have their legal rights restored. *This must include the right to vote.*”) (emphasis added).

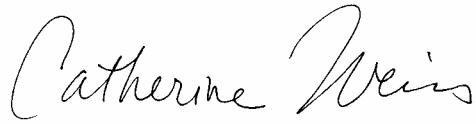
²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

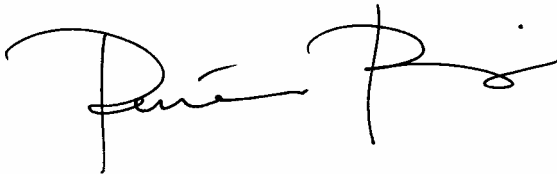
Sincerely,



Catherine Weiss
Deputy Director, Democracy Program
catherine.weiss@nyu.edu
(212) 992-8161



Kirsten Levingston
Director, Criminal Justice Program
kirsten.levingston@nyu.edu
(212) 998-6186



Renée Paradis
Associate Counsel,* Democracy Program
renee.paradis@nyu.edu
(212) 992-8162

Brennan Center for Justice at NYU School of Law

* not yet licensed to practice law; awaiting admission in California and New York