



Colorado Commission on Criminal & Juvenile Justice

FY2017 RECOMMENDATION/FY17-RE01 Allow Orders of Collateral Relief after the Time of Sentencing

Status: No Implementation

Actions/Updates

2017 ACTION TO DATE

This recommendation requires statutory change.

Description

Update orders of collateral relief in statute to: 1) Allow eligible individuals to request an order of collateral relief after the time of sentencing; 2) Eliminate duplicative statutory language regarding orders of collateral relief; and 3) Create an order of collateral relief in the Children's Code. Encourage the judiciary to develop a mechanism that will allow the identification of instances when orders of collateral relief are requested, granted, or denied.

Agencies Responsible

General Assembly

Discussion

The impact of a criminal conviction or adjudication can be far greater than the sentence imposed by the judge. Hundreds of federal, state, and local laws impose additional sanctions and disqualifications affecting employment, housing, public benefits, and other civil rights and privileges.(1) These collateral consequences can be detrimental to individuals' ability to lead a productive crime-free life,(2) and can have a negative impact on society as a whole.(3)

Similar to many other states,(4) Colorado allows judges to issue orders of collateral relief. The orders can relieve eligible individuals from most collateral consequences, when doing so will improve the individual's likelihood of successful reintegration and is in the public's interest.(5) This mechanism should serve as a valuable tool for allowing society to punish and deter crime, while simultaneously allowing its members to remain productive citizens.(6)

The current statutory mechanism for orders of collateral relief was enacted in 2013 and has since remained unchanged.(7) Although well-intentioned, it has several shortfalls that limit the use and effectiveness of the orders.

First, courts currently can issue orders of collateral relief only at the time an individual is sentenced.(8) This can facilitate success for people who are required to serve their sentence in

the community. The orders can provide no assistance, however, for people who are attempting to better their lives and move beyond the collateral consequences of a conviction after their sentence has been completed.

Second, the current statutory scheme excludes a successfully completed deferred judgment and sentence (DJS) from the definition of "conviction."⁽⁹⁾ Hence, an individual who has successfully completed a DJS is ineligible for an order of collateral relief. A successfully completed DJS can, however, have long lasting collateral consequences in licensure, employment, and other areas.⁽¹⁰⁾

Third, orders of collateral relief are currently unavailable for juvenile adjudications. Adjudications can, however, still result in the imposition of collateral consequences.⁽¹¹⁾

Finally, the judiciary does not consistently track when orders of collateral relief are requested or granted.⁽¹²⁾ This lack of data renders it virtually impossible to determine whether the orders are serving their intended purpose.

This recommendation includes one non-statutory element:

1. Track orders of collateral relief.

There is currently sparse data on when orders of collateral relief are requested, granted, or denied. While a code currently exists in the judiciary's case management system to capture when orders are granted (COLR), this code is not reliably used for its intended purpose. Additionally, applications for collateral relief are captured using the generic motion or petition codes. If no relief is granted, this is captured only in a minute order. It is thus difficult to measure how often orders of collateral relief are being used and the scope of their effectiveness. CCJJ recommends that the judiciary develop a mechanism that will allow it to easily identify when orders of collateral relief are requested, granted, or denied.

This recommendation includes three statutory elements:

1. Amend section 18-1.3-107.
2. Eliminate duplicative statutes.
3. Establish an equivalent mechanism as section 19-2-927 of the Children's Code.

[The Proposed Statutory Language may be found in the related "Recommendation Text."]

Footnotes

(1) See Mark Evans, Colo. State Public Defender's Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law* (2014 ed.) (at coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/).

(2) Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also J.H. Laub & R.J. Sampson (2001). Understanding desistance from crime, *Crime and Justice*, 28(1), 1-69 (doi: 10.1086/652208); National Research Council (2008), *Parole, Desistance from Crime, and Community Integration*, Committee on

Community Supervision and Desistance from Crime, (see pp. 23-24 at cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf); and J. Radice (2012), Administering justice: Removing statutory barriers to reentry, *University of Colorado Law Review*, 83(3), 715-779 (see p. 719 at colorado.edu/law/sites/default/files/Vol.83.3.pdf).

(3) A. Christman & M.N. Rodriguez (2016, August). *Fact Sheet: Research Supports Fair-Chance Policies*. The Nat'l Emp't Law Project (at nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf); J. Roberts (2011), Why misdemeanors matter: Defining effective advocacy in the lower criminal courts, *U.C. Davis Law Review*, 45(2), 277-372 (see pp. 300-301 at lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2_Jenny_Roberts.pdf); J. Schmitt & K. Warner (2010), *Ex-Offenders and the Labor Market*, Center for Econ. & Policy Research (at cepr.net/documents/publications/ex-offenders-2010-11.pdf).

(4) Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.Y. Correct. Law §§ 700 to 706; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

(5) §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016.

(6) M. C. Love (2011, Spring), Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act, *Howard Law Journal*, 54(3), 753-793 (see p. 760-764, at law.howard.edu/sites/default/files/related-downloads/how_54_3.pdf#page=261); Radice, *supra* note 2, at pp. 727-732.

(7) Ch. 289, sec. 11, § 18-1.3-107, 2013 Colo. Sess. Laws 1548; Ch. 289, sec. 12, § 18-1.3-213, 2013 Colo. Sess. Laws 1550; Ch. 289, sec. 13, § 18-1.3-303, 2013 Colo. Sess. Laws 1553.

(8) §§ 18-1.3-107(1), 18-1.3-213(1), 18-1.3-303(1), C.R.S. 2016.

(9) §§ 18-1.3-107(8)(c), 18-1.3-213(8)(c), 18-1.3-303(8)(c), C.R.S. 2016.

(10) See, e.g., § 24-5-101(3)(d), C.R.S. 2016.

(11) See Mark Evans, Colo. State Public Defender's Office, *The Consequences of Adjudication: Sanctions Beyond the Sentence for Juveniles Under Colorado Law* (2014), available at coloradodefenders.us/consequences-of-conviction-2/consequences-of-juvenile-adjudication/.

(12) Sherri Hufford, Colorado Division of Probation Services, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).