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\_\_\_\_\_ BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL JUSTICE; ENACTING THE UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Collateral Consequences of Conviction Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Collateral Consequences of Conviction Act:

- A. "collateral consequence" means a collateral sanction or a disqualification;
- B. "collateral sanction" means a penalty, disability or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense that applies by operation of law, whether or not the

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1 penalty, disability or disadvantage is included in the judgment  
2 or sentence. "Collateral sanction" does not include  
3 imprisonment, probation, parole, supervised release,  
4 forfeiture, restitution, fine, assessment or costs of  
5 prosecution;

6 C. "convicted" and "conviction" include an  
7 adjudication as a youthful offender or serious youthful  
8 offender that results in an adult sentence;

9 D. "decision-maker" means the state acting through  
10 the following entities or their employees:

- 11 (1) a department;  
12 (2) an agency;  
13 (3) an officer; or  
14 (4) an instrumentality, including a political  
15 subdivision, an educational institution, a board or a  
16 commission or a government contractor, including a  
17 subcontractor, made subject to the Uniform Collateral  
18 Consequences of Conviction Act by contract, by law other than  
19 the Uniform Collateral Consequences of Conviction Act or by  
20 ordinance;

21 E. "disqualification" means a penalty, disability  
22 or disadvantage, however denominated, that an administrative  
23 agency, governmental official or court in a civil proceeding is  
24 authorized, but not required, to impose on an individual on  
25 grounds relating to the individual's conviction of an offense;

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1 F. "identification agency" means the New Mexico  
2 sentencing commission, acting in conjunction with the district  
3 attorneys of New Mexico and the attorney general;

4 G. "offense" means a felony pursuant to the law of  
5 New Mexico, another state or the United States;

6 H. "person" means an individual, corporation,  
7 business trust, estate, trust, partnership, limited liability  
8 company, association, joint venture, public corporation,  
9 government or governmental subdivision, agency or  
10 instrumentality or any other legal or commercial entity; and

11 I. "state" means a state of the United States, the  
12 District of Columbia, Puerto Rico, the United States Virgin  
13 Islands or any territory or insular possession subject to the  
14 jurisdiction of the United States.

15 SECTION 3. [NEW MATERIAL] LIMITATION ON SCOPE.--

16 A. The Uniform Collateral Consequences of  
17 Conviction Act does not provide a basis for:

- 18 (1) invalidating a plea, conviction or  
19 sentence;
- 20 (2) a cause of action for money damages; or
- 21 (3) a claim for relief from or defense to the  
22 application of a collateral consequence based on a failure to  
23 comply with the Uniform Collateral Consequences of Conviction  
24 Act.

25 B. The Uniform Collateral Consequences of

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1 Conviction Act does not affect:

2 (1) the duty an individual's attorney owes to  
3 the individual, except as provided in Section 5 of the Uniform  
4 Collateral Consequences of Conviction Act;

5 (2) a claim or right of a victim of an  
6 offense; or

7 (3) a right or remedy pursuant to law other  
8 than the Uniform Collateral Consequences of Conviction Act  
9 available to an individual convicted of an offense.

10 SECTION 4. [NEW MATERIAL] IDENTIFICATION, COLLECTION AND  
11 PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES.--

12 A. The identification agency:

13 (1) shall identify or cause to be identified:

14 (a) any provision in the constitution of  
15 New Mexico and New Mexico's statutes published in the New  
16 Mexico Statutes Annotated that imposes a collateral sanction or  
17 authorizes the imposition of a disqualification; and

18 (b) any provision of law that may afford  
19 relief from a collateral consequence;

20 (2) not later than six months after the  
21 effective date of the Uniform Collateral Consequences of  
22 Conviction Act, shall prepare or cause to be prepared a  
23 collection of citations to, and the text or short descriptions  
24 of, the provisions identified pursuant to Paragraph (1) of this  
25 subsection;

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1 (3) shall update or cause to be updated the  
2 collection provided for in Paragraph (2) of this subsection  
3 within three months after the laws enacted during each session  
4 of the legislature are published in the New Mexico Statutes  
5 Annotated; and

6 (4) in complying with Paragraphs (1) and (2)  
7 of this subsection, may rely on the study of New Mexico's  
8 collateral sanctions, disqualifications and relief provisions  
9 prepared by the national institute of justice described in  
10 Section 510 of the federal Court Security Improvement Act of  
11 2007, Pub. L. 110-177.

12 B. As required by Subsection A of this section, the  
13 identification agency shall include or cause to be included the  
14 following statements in a prominent manner at the beginning of  
15 the collection:

16 (1) "This collection has not been enacted into  
17 law and does not have the force of law.";

18 (2) "An error or omission in this collection,  
19 or in any reference work cited in this collection, is not a  
20 reason for invalidating a plea, conviction or sentence or for  
21 not imposing a collateral sanction or authorizing a  
22 disqualification.";

23 (3) "The laws of other jurisdictions and New  
24 Mexico counties and municipalities and the New Mexico  
25 Administrative Code are not included in this collection and may

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1 impose additional collateral sanctions and authorize additional  
2 disqualifications."; and

3 (4) "This collection does not include any law  
4 or other provision regarding the imposition of or relief from a  
5 collateral sanction or a disqualification enacted or adopted  
6 after [*insert date the collection was prepared or last*  
7 *updated*].".

8 C. The identification agency shall publish or cause  
9 to be published in the manner provided in Subsection D of this  
10 section the collection prepared and updated as required by  
11 Subsection A of this section. If available, the identification  
12 agency shall publish or cause to be published, as part of the  
13 collection, the title and internet address of:

14 (1) the most recent collection of collateral  
15 consequences imposed by federal law; and

16 (2) any provision of federal law that may  
17 afford relief from a collateral consequence.

18 D. The collection provided for in Subsection C of  
19 this section shall be published on the website of the  
20 identification agency and shall be available to the public on  
21 the internet without charge not later than three weeks after it  
22 is created or updated.

23 SECTION 5. [NEW MATERIAL] NOTICE OF COLLATERAL  
24 CONSEQUENCES IN PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

25 A. Except as provided in Subsection C of this

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1 section, counsel representing an individual charged with an  
2 offense shall cause written notice substantially similar to the  
3 following to be communicated to the individual:

4 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

5 If you plead guilty or no contest to an  
6 offense, or are convicted of an offense, you may  
7 suffer additional legal consequences beyond jail or  
8 prison, probation, periods of parole and fines.

9 These consequences may include:

- 10 1. being unable to get or keep some licenses,  
11 permits or jobs;
- 12 2. being unable to get or keep benefits such as  
13 public housing or education;
- 14 3. receiving a harsher sentence if you are  
15 convicted of another offense in the future;
- 16 4. having the government take your property; and
- 17 5. being unable to vote or possess a firearm.

18 If you are not a United States citizen, a guilty  
19 plea or no contest plea or conviction may also result in  
20 your deportation, removal or exclusion from admission to  
21 the United States or denial of citizenship.

22 The law may provide ways to obtain some relief from  
23 these consequences.

24 Further information about the consequences of  
25 conviction is available on the internet at [insert

1           *internet address of the collection of laws published*  
2           *pursuant to Subsections C and D of Section 4 of the*  
3           *Uniform Collateral Consequences of Conviction Act]."*

4           B. Before a court accepts a plea of guilty or no  
5 contest from an individual, the court shall confirm that the  
6 individual received and understands the notice required by  
7 Subsection A of this section and has had an opportunity to  
8 discuss the notice with counsel.

9           C. The notice required pursuant to Subsection A of  
10 this section need not be given until six months have elapsed  
11 after the collection of laws required pursuant to Section 4 of  
12 the Uniform Collateral Consequences of Conviction Act is first  
13 available on the internet pursuant to Subsections C and D of  
14 Section 4 of that act.

15           D. This section does not limit the duty that an  
16 individual's counsel otherwise owes to the individual.

17           **SECTION 6. [NEW MATERIAL] NOTICE OF COLLATERAL**  
18 **CONSEQUENCES AT SENTENCING AND UPON RELEASE.--**

19           A. An individual convicted of an offense shall be  
20 given notice as provided in Subsections B and C of this  
21 section:

22                   (1) that collateral consequences may apply  
23 because of the conviction;

24                   (2) of the internet address of the collection  
25 of laws published pursuant to Subsections C and D of Section 4

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1 of the Uniform Collateral Consequences of Conviction Act;

2 (3) that there may be ways to obtain relief  
3 from collateral consequences;

4 (4) of contact information for government or  
5 nonprofit agencies, groups or organizations, if any, offering  
6 assistance to individuals seeking relief from collateral  
7 consequences; and

8 (5) of when an individual convicted of an  
9 offense may vote pursuant to New Mexico law.

10 B. Except as provided in Subsection D of this  
11 section, the court shall provide the notice set forth in  
12 Subsection A of this section as a part of sentencing.

13 C. Except as provided in Subsection D of this  
14 section, if an individual is sentenced to imprisonment or other  
15 incarceration, the officer or agency releasing the individual  
16 shall provide the notice set forth in Subsection A of this  
17 section not more than thirty and, if practicable, at least five  
18 days before release.

19 D. The notice required pursuant to Subsection A of  
20 this section need not be given until six months have elapsed  
21 after the collection of laws required pursuant to Section 4 of  
22 the Uniform Collateral Consequences of Conviction Act is first  
23 available on the internet pursuant to Subsections C and D of  
24 Section 4 of that act.

25 SECTION 7. [NEW MATERIAL] AUTHORIZATION REQUIRED FOR

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1 COLLATERAL SANCTION--AMBIGUITY.--

2 A. A collateral sanction may be imposed only by  
3 statute or ordinance or by a rule authorized by law and adopted  
4 in accordance with applicable law.

5 B. A law creating a collateral consequence that is  
6 ambiguous as to whether it imposes a collateral sanction or  
7 authorizes a disqualification shall be construed as authorizing  
8 a disqualification.

9 SECTION 8. [NEW MATERIAL] DECISION TO DISQUALIFY.--In  
10 deciding whether to impose a disqualification, a decision-maker  
11 shall undertake an individualized assessment to determine  
12 whether the benefit or opportunity at issue should be denied  
13 the individual. In making that decision, the decision-maker  
14 may consider, if substantially related to the benefit or  
15 opportunity at issue, the particular facts and circumstances  
16 involved in the offense and the essential elements of the  
17 offense. A conviction itself shall not be considered except as  
18 having established the elements of the offense. The decision-  
19 maker shall also consider other relevant information, including  
20 the effect on third parties of granting the benefit or  
21 opportunity and whether the individual has been granted relief  
22 such as an order of limited relief.

23 SECTION 9. [NEW MATERIAL] EFFECT OF CONVICTION BY ANOTHER  
24 STATE OR THE UNITED STATES--RELIEVED OR PARDONED CONVICTION.--

25 A. For purposes of authorizing or imposing a

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1 collateral consequence in New Mexico, a conviction of an  
2 offense in a court of another state or the United States is  
3 deemed a conviction of the offense in New Mexico with the same  
4 elements. If there is no offense in New Mexico with the same  
5 elements, the conviction is deemed a conviction of the most  
6 serious offense in New Mexico that is established by the  
7 elements of the offense. A misdemeanor in the jurisdiction of  
8 conviction shall not be deemed a felony in New Mexico, and an  
9 offense lesser than a misdemeanor in the jurisdiction of  
10 conviction shall not be deemed a conviction of a felony or  
11 misdemeanor in New Mexico.

12 B. For purposes of authorizing or imposing a  
13 collateral consequence in New Mexico, a juvenile adjudication  
14 in another state or the United States shall not be deemed a  
15 conviction of a felony, misdemeanor or offense lesser than a  
16 misdemeanor in New Mexico.

17 C. A conviction that is reversed, overturned or  
18 otherwise vacated by a court of competent jurisdiction of New  
19 Mexico, another state or the United States on grounds other  
20 than rehabilitation or good behavior shall not serve as the  
21 basis for authorizing or imposing a collateral consequence in  
22 New Mexico.

23 D. A pardon issued by another state or the United  
24 States has the same effect for purposes of authorizing,  
25 imposing and relieving a collateral consequence in New Mexico

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1 as it has in the issuing jurisdiction.

2 E. A conviction that has been relieved by  
3 expungement, sealing, annulment, set-aside or vacation by a  
4 court of competent jurisdiction of another state or the United  
5 States on grounds of rehabilitation or good behavior, or for  
6 which civil rights are restored pursuant to statute, has the  
7 same effect for purposes of authorizing or imposing collateral  
8 consequences in New Mexico as it has in the jurisdiction of  
9 conviction; provided, however, that such relief or restoration  
10 of civil rights does not relieve collateral consequences  
11 applicable pursuant to the law of New Mexico for which relief  
12 could not be granted pursuant to Section 11 of the Uniform  
13 Collateral Consequences of Conviction Act or for which relief  
14 was expressly withheld by the court order or by the law of the  
15 jurisdiction that relieved the conviction. An individual  
16 convicted in another jurisdiction may seek relief pursuant to  
17 Section 10 of the Uniform Collateral Consequences of Conviction  
18 Act from any collateral consequence for which relief was not  
19 granted in the issuing jurisdiction except those consequences  
20 listed in Section 11 of that act.

21 F. A charge or prosecution in any jurisdiction that  
22 has been finally terminated without a conviction and imposition  
23 of sentence based on participation in a deferred adjudication  
24 or diversion program shall not serve as the basis for  
25 authorizing or imposing a collateral consequence in New Mexico.

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1 This subsection does not affect the validity of any restriction  
2 or condition imposed by law as part of participation in the  
3 deferred adjudication or diversion program before or after the  
4 termination of the charge or prosecution.

5 SECTION 10. [NEW MATERIAL] ORDER OF LIMITED RELIEF.--

6 A. An individual convicted of an offense may  
7 petition for an order of limited relief from one or more  
8 collateral sanctions related to employment, education, housing,  
9 public benefits or occupational licensing. The petition may be  
10 presented to the sentencing court at or before sentencing.

11 B. Except as otherwise provided in Section 12 of  
12 the Uniform Collateral Consequences of Conviction Act, the  
13 court may issue an order of limited relief relieving one or  
14 more of the collateral sanctions described in Subsection A of  
15 this section if, after reviewing the petition, the individual's  
16 criminal history, any filing by a victim pursuant to Section 14  
17 of the Uniform Collateral Consequences of Conviction Act or a  
18 prosecutor and any other relevant evidence, it finds the  
19 individual has established by a preponderance of the evidence  
20 that:

21 (1) granting the petition will materially  
22 assist the individual in obtaining or maintaining employment,  
23 education, housing, public benefits or occupational licensing;

24 (2) the individual has substantial need for  
25 the relief requested in order to live a law-abiding life; and

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1 (3) granting the petition would not pose an  
2 unreasonable risk to the safety or welfare of the public or any  
3 individual.

4 C. An order of limited relief shall specify:

5 (1) the collateral sanction from which relief  
6 is granted; and

7 (2) any restriction imposed pursuant to  
8 Subsection A of Section 12 of the Uniform Collateral  
9 Consequences of Conviction Act.

10 D. An order of limited relief relieves a collateral  
11 sanction to the extent provided in the order.

12 E. If a collateral sanction has been relieved  
13 pursuant to this section, a decision-maker may consider the  
14 conduct underlying a conviction as provided in Section 8 of the  
15 Uniform Collateral Consequences of Conviction Act.

16 SECTION 11. [NEW MATERIAL] COLLATERAL SANCTIONS NOT  
17 SUBJECT TO ORDER OF LIMITED RELIEF.--An order of limited relief  
18 shall not be issued to relieve the following collateral  
19 sanctions:

20 A. requirements imposed by the Sex Offender  
21 Registration and Notification Act;

22 B. a motor vehicle license suspension, revocation,  
23 limitation or ineligibility pursuant to the Motor Vehicle Code,  
24 for which restoration or relief is available pursuant to law  
25 other than the Uniform Collateral Consequences of Conviction

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1 Act;

2 C. ineligibility for certification as a law  
3 enforcement officer pursuant to the Law Enforcement Training  
4 Act or for employment as a correctional officer pursuant to the  
5 Corrections Act; or

6 D. prohibitions imposed pursuant to Section 30-7-16  
7 NMSA 1978 making it unlawful for felons to receive, transport  
8 or possess a firearm or destructive device while in this state.

9 SECTION 12. [NEW MATERIAL] ISSUANCE OF ORDER OF LIMITED  
10 RELIEF.--

11 A. The prosecutor shall be notified of a request  
12 for an order of limited relief. The court may issue an order  
13 of limited relief subject to restriction, condition or  
14 additional requirement.

15 B. The court shall order any test, report,  
16 investigation or disclosure by the individual it reasonably  
17 believes necessary to its decision to issue an order of limited  
18 relief. If there are disputed issues of material fact or law,  
19 the individual and any prosecutor notified pursuant to  
20 Subsection A of this section or another prosecutorial agency  
21 designated by a prosecutor notified pursuant to Subsection A of  
22 this section may submit evidence and be heard on those issues.

23 SECTION 13. [NEW MATERIAL] RELIANCE ON ORDER AS EVIDENCE  
24 OF DUE CARE.--In a judicial or administrative proceeding  
25 alleging negligence or other fault, an order of limited relief

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1 may be introduced as evidence of a person's due care in hiring,  
2 retaining, licensing, leasing to, admitting to a school or  
3 program or otherwise transacting business or engaging in  
4 activity with the individual to whom the order was issued if  
5 the person knew of the order at the time of the alleged  
6 negligence or other fault.

7 SECTION 14. [NEW MATERIAL] VICTIM'S RIGHTS.--A victim of  
8 an offense may participate in a proceeding for issuance of an  
9 order of limited relief in the same manner as at a sentencing  
10 proceeding pursuant to the Victims of Crime Act.

11 SECTION 15. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND  
12 CONSTRUCTION.--In applying and construing the Uniform  
13 Collateral Consequences of Conviction Act, consideration shall  
14 be given to the need to promote uniformity of the law with  
15 respect to its subject matter among states that enact it.

16 SECTION 16. [NEW MATERIAL] SAVING AND TRANSITIONAL  
17 PROVISIONS.--

18 A. Except as provided in Subsection B of this  
19 section, the Uniform Collateral Consequences of Conviction Act  
20 applies to collateral consequences whenever enacted or imposed  
21 unless the law creating the collateral consequence expressly  
22 states that the Uniform Collateral Consequences of Conviction  
23 Act does not apply.

24 B. The Uniform Collateral Consequences of  
25 Conviction Act does not apply to the imposition of a collateral



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1 sanction on an individual until the date that is six months  
2 after the collection of laws required pursuant to Section 4 of  
3 the Uniform Collateral Consequences of Conviction Act is first  
4 available on the internet pursuant to Subsections C and D of  
5 Section 4 of that act, but a collateral sanction validly  
6 imposed before that date may be the subject of relief pursuant  
7 to that act.

8 SECTION 17. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2020.

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