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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. SHORT TITLE.--This act may be cited as the
"Uniform Collateral Consequences of Conviction Act".

SECTION 2. 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 penalty, disability or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment or costs of prosecution;
- C. "convicted" and "conviction" include an adjudication as a youthful offender or serious youthful offender that results in an adult sentence;
- D. "decision-maker" means the state acting through the following entities or their employees:

1 (1) a department;
2 (2) an agency;
3 (3) an officer; or
4 (4) an instrumentality, including a
5 political subdivision, an educational institution, a board or
6 a commission or a government contractor, including a
7 subcontractor, made subject to the Uniform Collateral
8 Consequences of Conviction Act by contract, by law other than
9 the Uniform Collateral Consequences of Conviction Act or by
10 ordinance;

11 E. "disqualification" means a penalty, disability
12 or disadvantage, however denominated, that an administrative
13 agency, governmental official or court in a civil proceeding
14 is authorized, but not required, to impose on an individual
15 on grounds relating to the individual's conviction of an
16 offense;

17 F. "identification agency" means the New Mexico
18 sentencing commission, acting in conjunction with the
19 district attorneys of New Mexico and the attorney general;

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

22 H. "person" means an individual, corporation,
23 business trust, estate, trust, partnership, limited liability
24 company, association, joint venture, public corporation,
25 government or governmental subdivision, agency or

1 instrumentality or any other legal or commercial entity; and

2 I. "state" means a state of the United States,
3 the District of Columbia, Puerto Rico, the United States
4 Virgin Islands or any territory or insular possession subject
5 to the jurisdiction of the United States.

6 SECTION 3. LIMITATION ON SCOPE.--

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

9 (1) invalidating a plea, conviction or
10 sentence;

11 (2) a cause of action for money damages; or

12 (3) a claim for relief from or defense to
13 the application of a collateral consequence based on a
14 failure to comply with the Uniform Collateral Consequences of
15 Conviction Act.

16 B. The Uniform Collateral Consequences of
17 Conviction Act does not affect:

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

21 (2) a claim or right of a victim of an
22 offense; or

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

1 SECTION 4. IDENTIFICATION, COLLECTION AND PUBLICATION
2 OF LAWS REGARDING COLLATERAL CONSEQUENCES.--

3 A. The identification agency:

4 (1) shall identify or cause to be
5 identified:

6 (a) any provision in the constitution
7 of New Mexico and New Mexico's statutes published in the
8 New Mexico Statutes Annotated that imposes a collateral
9 sanction or authorizes the imposition of a disqualification;
10 and

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

13 (2) not later than six months after the
14 effective date of the Uniform Collateral Consequences of
15 Conviction Act, shall prepare or cause to be prepared a
16 collection of citations to, and the text or short
17 descriptions of, the provisions identified pursuant to
18 Paragraph (1) of this subsection;

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

24 (4) in complying with Paragraphs (1) and (2)
25 of this subsection, may rely on the study of New Mexico's

1 collateral sanctions, disqualifications and relief provisions
2 prepared by the national institute of justice described in
3 Section 510 of the federal Court Security Improvement Act
4 of 2007, Pub. L. 110-177.

5 B. As required by Subsection A of this section,
6 the identification agency shall include or cause to be
7 included the following statements in a prominent manner at
8 the beginning of the collection:

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

11 (2) "An error or omission in this
12 collection, or in any reference work cited in this
13 collection, is not a reason for invalidating a plea,
14 conviction or sentence or for not imposing a collateral
15 sanction or authorizing a disqualification.";

16 (3) "The laws of other jurisdictions and
17 New Mexico counties and municipalities and the New Mexico
18 Administrative Code are not included in this collection and
19 may impose additional collateral sanctions and authorize
20 additional disqualifications."; and

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

1 C. The identification agency shall publish or
2 cause to be published in the manner provided in Subsection D
3 of this section the collection prepared and updated as
4 required by Subsection A of this section. If available, the
5 identification agency shall publish or cause to be published,
6 as part of the collection, the title and internet address of:

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

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

11 D. The collection provided for in Subsection C of
12 this section shall be published on the website of the
13 identification agency and shall be available to the public on
14 the internet without charge not later than three weeks after
15 it is created or updated.

16 SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN
17 PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

18 A. Except as provided in Subsection C of this
19 section, counsel representing an individual charged with an
20 offense shall cause written notice substantially similar to
21 the following to be communicated to the individual:

22 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

23 If you plead guilty or no contest to an
24 offense, or are convicted of an offense, you may
25 suffer additional legal consequences beyond jail or

1 prison, probation, periods of parole and fines.

2 These consequences may include:

3 1. being unable to get or keep some licenses,
4 permits or jobs;

5 2. being unable to get or keep benefits such as
6 public housing or education;

7 3. receiving a harsher sentence if you are
8 convicted of another offense in the future;

9 4. having the government take your property; and

10 5. being unable to vote or possess a firearm.

11 If you are not a United States citizen, a guilty
12 plea or no contest plea or conviction may also result in
13 your deportation, removal or exclusion from admission to
14 the United States or denial of citizenship.

15 The law may provide ways to obtain some relief from
16 these consequences.

17 Further information about the consequences of
18 conviction is available on the internet at [*insert*
19 *internet address of the collection of laws published*
20 *pursuant to Subsections C and D of Section 4 of the*
21 *Uniform Collateral Consequences of Conviction Act*].".

22 B. Before a court accepts a plea of guilty or no
23 contest from an individual, the court shall confirm that the
24 individual received and understands the notice required by
25 Subsection A of this section and has had an opportunity to

1 discuss the notice with counsel.

2 C. The notice required pursuant to Subsection A of
3 this section need not be given until six months have elapsed
4 after the collection of laws required pursuant to Section 4
5 of the Uniform Collateral Consequences of Conviction Act is
6 first available on the internet pursuant to Subsections C and
7 D of Section 4 of that act.

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

10 SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT
11 SENTENCING AND UPON RELEASE.--

12 A. An individual convicted of an offense shall be
13 given notice as provided in Subsections B and C of this
14 section:

15 (1) that collateral consequences may apply
16 because of the conviction;

17 (2) of the internet address of the
18 collection of laws published pursuant to Subsections C and D
19 of Section 4 of the Uniform Collateral Consequences of
20 Conviction Act;

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

23 (4) of contact information for government or
24 nonprofit agencies, groups or organizations, if any, offering
25 assistance to individuals seeking relief from collateral

1 consequences; and

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

4 B. Except as provided in Subsection D of this
5 section, the court shall provide the notice set forth in
6 Subsection A of this section as a part of sentencing.

7 C. Except as provided in Subsection D of this
8 section, if an individual is sentenced to imprisonment or
9 other incarceration, the officer or agency releasing the
10 individual shall provide the notice set forth in Subsection A
11 of this section not more than thirty and, if practicable, at
12 least five days before release.

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

19 SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL
20 SANCTION--AMBIGUITY.--

21 A. A collateral sanction may be imposed only by
22 statute or ordinance or by a rule authorized by law and
23 adopted in accordance with applicable law.

24 B. A law creating a collateral consequence that is
25 ambiguous as to whether it imposes a collateral sanction or

1 authorizes a disqualification shall be construed as
2 authorizing a disqualification.

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

18 SECTION 9. EFFECT OF CONVICTION BY ANOTHER STATE OR THE
19 UNITED STATES--RELIEVED OR PARDONED CONVICTION.--

20 A. For purposes of authorizing or imposing a
21 collateral consequence in New Mexico, a conviction of an
22 offense in a court of another state or the United States is
23 deemed a conviction of the offense in New Mexico with the
24 same elements. If there is no offense in New Mexico with the
25 same elements, the conviction is deemed a conviction of the

1 most serious offense in New Mexico that is established by the
2 elements of the offense. A misdemeanor in the jurisdiction
3 of conviction shall not be deemed a felony in New Mexico, and
4 an offense lesser than a misdemeanor in the jurisdiction of
5 conviction shall not be deemed a conviction of a felony or
6 misdemeanor in New Mexico.

7 B. For purposes of authorizing or imposing a
8 collateral consequence in New Mexico, a juvenile adjudication
9 in another state or the United States shall not be deemed a
10 conviction of a felony, misdemeanor or offense lesser than a
11 misdemeanor in New Mexico.

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

18 D. A pardon issued by another state or the
19 United States has the same effect for purposes of
20 authorizing, imposing and relieving a collateral consequence
21 in New Mexico as it has in the issuing jurisdiction.

22 E. A conviction that has been relieved by
23 expungement, sealing, annulment, set-aside or vacation by a
24 court of competent jurisdiction of another state or the
25 United States on grounds of rehabilitation or good behavior,

1 or for which civil rights are restored pursuant to statute,
2 has the same effect for purposes of authorizing or imposing
3 collateral consequences in New Mexico as it has in the
4 jurisdiction of conviction; provided, however, that such
5 relief or restoration of civil rights does not relieve
6 collateral consequences applicable pursuant to the law of
7 New Mexico for which relief could not be granted pursuant to
8 Section 11 of the Uniform Collateral Consequences of
9 Conviction Act or for which relief was expressly withheld by
10 the court order or by the law of the jurisdiction that
11 relieved the conviction. An individual convicted in another
12 jurisdiction may seek relief pursuant to Section 10 of the
13 Uniform Collateral Consequences of Conviction Act from any
14 collateral consequence for which relief was not granted in
15 the issuing jurisdiction except those consequences listed in
16 Section 11 of that act.

17 F. A charge or prosecution in any jurisdiction
18 that has been finally terminated without a conviction and
19 imposition of sentence based on participation in a deferred
20 adjudication or diversion program shall not serve as the
21 basis for authorizing or imposing a collateral consequence in
22 New Mexico. This subsection does not affect the validity of
23 any restriction or condition imposed by law as part of
24 participation in the deferred adjudication or diversion
25 program before or after the termination of the charge or

1 prosecution.

2 SECTION 10. ORDER OF LIMITED RELIEF.--

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

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

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

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

25 (3) granting the petition would not pose an

1 unreasonable risk to the safety or welfare of the public or
2 any individual.

3 C. An order of limited relief may be issued as a
4 part of sentencing. The order of limited relief shall
5 specify:

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

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

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

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

17 SECTION 11. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER
18 OF LIMITED RELIEF.--An order of limited relief shall not be
19 issued to relieve the following collateral 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
24 Code, for which restoration or relief is available pursuant
25 to law other than the Uniform Collateral Consequences of

1 Conviction 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
5 the Corrections Act; or

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

10 SECTION 12. ISSUANCE OF ORDER OF LIMITED 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
18 limited relief. If there are disputed issues of material
19 fact or law, the individual and any prosecutor notified
20 pursuant to Subsection A of this section or another
21 prosecutorial agency designated by a prosecutor notified
22 pursuant to Subsection A of this section may submit evidence
23 and be heard on those issues.

24 SECTION 13. RELIANCE ON ORDER AS EVIDENCE OF DUE

25 CARE.--In a judicial or administrative proceeding alleging

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

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

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

18 SECTION 16. SAVING AND TRANSITIONAL PROVISIONS.--

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

25 B. The Uniform Collateral Consequences of

1 Conviction Act does not apply to the imposition of a
2 collateral sanction on an individual until the date that is
3 six months after the collection of laws required pursuant
4 to Section 4 of the Uniform Collateral Consequences of
5 Conviction Act is first available on the internet pursuant
6 to Subsections C and D of Section 4 of that act, but a
7 collateral sanction validly imposed before that date may be
8 the subject of relief pursuant to that act.

9 SECTION 17. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is January 1, 2022. _____

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