

BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

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. 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

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1 or sentence. "Collateral sanction" does not include
2 imprisonment, probation, parole, supervised release,
3 forfeiture, restitution, fine, assessment or costs of
4 prosecution;

5 C. "convicted" and "conviction" include an
6 adjudication as a juvenile;

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

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

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

24 F. "identification agency" means the New Mexico
25 sentencing commission, acting in conjunction with the district

1 attorneys of New Mexico, the attorney general and the public
2 defender department;

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

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

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

14 SECTION 3. LIMITATION ON SCOPE.--

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

17 (1) invalidating a plea, conviction or
18 sentence;

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

20 (3) a claim for relief from or defense to the
21 application of a collateral consequence based on a failure to
22 comply with Section 4, 5 or 6 of the Uniform Collateral
23 Consequences of Conviction Act.

24 B. The Uniform Collateral Consequences of
25 Conviction Act does not affect:

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

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

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

9 SECTION 4. IDENTIFICATION, COLLECTION AND PUBLICATION OF
10 LAWS REGARDING COLLATERAL CONSEQUENCES.--

11 A. The identification agency:

12 (1) shall identify or cause to be identified
13 any provision in the constitution of New Mexico and New
14 Mexico's statutes published in the New Mexico Statutes
15 Annotated that imposes a collateral sanction or authorizes the
16 imposition of a disqualification, and any provision of law that
17 may afford relief from a collateral consequence;

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

24 (3) shall update or cause to be updated the
25 collection provided for in Paragraph (2) of this subsection

1 within three months after the laws enacted during each session
2 of the legislature are published in the New Mexico Statutes
3 Annotated; and

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

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

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

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

21 (3) "The laws of other jurisdictions and New
22 Mexico counties and municipalities and the New Mexico
23 Administrative Code are not included in this collection and may
24 impose additional collateral sanctions and authorize additional
25 disqualifications."; and

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

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

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

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

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

21 **SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL**
22 **PROCEEDING AND AT GUILTY PLEA.--**

23 A. Except as provided in Subsection C of this
24 section, counsel representing an individual charged with an
25 offense shall cause information substantially similar to the

1 following to be communicated to the individual during pretrial
2 proceedings and shall discuss the information with the
3 individual:

4 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

5 If you plead guilty or nolo contendere 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 nolo contendere plea or conviction may also result
20 in your deportation, removal or exclusion from admission
21 to 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 nolo
5 contendere 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. NOTICE OF COLLATERAL CONSEQUENCES AT**
18 **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 individual's counsel shall provide the notice set
12 forth in Subsection A of this section not more than thirty and,
13 if practicable, at least five days before sentencing.

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

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

1 SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL
2 SANCTION--AMBIGUITY.--

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

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

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

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

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

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

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

24 D. A pardon issued by another state or the United
25 States has the same effect for purposes of authorizing,

1 imposing and relieving a collateral consequence in New Mexico
2 as it has in the issuing jurisdiction.

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

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

1 authorizing or imposing a collateral consequence in New Mexico.
2 This subsection does not affect the validity of any restriction
3 or condition imposed by law as part of participation in the
4 deferred adjudication or diversion program, before or after the
5 termination of the charge or prosecution.

6 SECTION 10. ORDER OF LIMITED RELIEF.--

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

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

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

25 (2) the individual has substantial need for

1 the relief requested in order to live a law-abiding life; and

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

5 C. An order of limited relief shall specify:

6 (1) the collateral sanction from which relief
7 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 collateral
12 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 the
16 Uniform Collateral Consequences of Conviction Act.

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

1 Act;

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

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

8 **SECTION 12. ISSUANCE OF ORDER OF LIMITED RELIEF.--**

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

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

21 **SECTION 13. RELIANCE ON ORDER AS EVIDENCE OF DUE CARE.--**

22 In a judicial or administrative proceeding alleging negligence
23 or other fault, an order of limited relief may be introduced as
24 evidence of a person's due care in hiring, retaining,
25 licensing, leasing to, admitting to a school or program or

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1 otherwise transacting business or engaging in activity with the
2 individual to whom the order was issued if the person knew of
3 the order at the time of the alleged negligence or other fault.

4 **SECTION 14. VICTIM'S RIGHTS.--**A victim of an offense may
5 participate in a proceeding for issuance of an order of limited
6 relief in the same manner as at a sentencing proceeding
7 pursuant to the Victims of Crime Act.

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

13 **SECTION 16. SAVING AND TRANSITIONAL PROVISIONS.--**

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

20 B. The Uniform Collateral Consequences of
21 Conviction Act does not apply to the imposition of a collateral
22 sanction on an individual until the date that is six months
23 after the collection of laws required pursuant to Section 4 of
24 the Uniform Collateral Consequences of Conviction Act is first
25 available on the internet pursuant to Subsections C and D of

1 Section 4 of that act, but a collateral sanction validly
2 imposed before that date may be the subject of relief pursuant
3 to that act.

4 SECTION 17. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is January 1, 2014.

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