



COLLATERAL CONSEQUENCES: A LIFE SENTENCE FOR FAMILIES

WHAT ARE COLLATERAL CONSEQUENCE

Collateral consequences are the negative effects of a felony conviction that persist after an individual has completed his incarceration as well as his period of parole or probation.

Fines, imprisonment, probation, parole, or supervised release, classification and assignment of prisoners, conditions of probation or parole **are NOT collateral consequences**

Employment

Driving privileges

Public benefits

Housing

Education

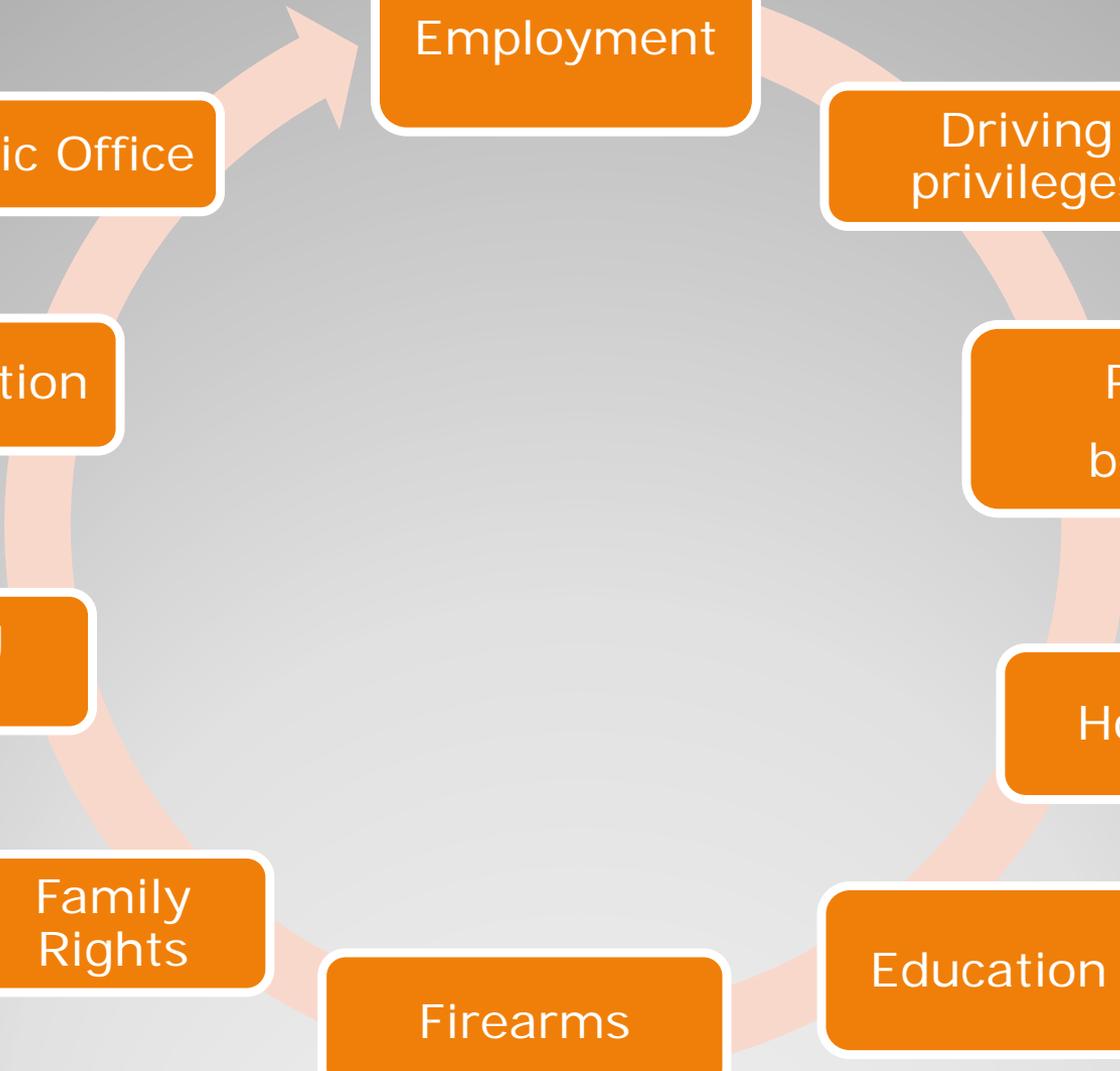
Firearms

Family Rights

Voting rights

Immigration

Public Office



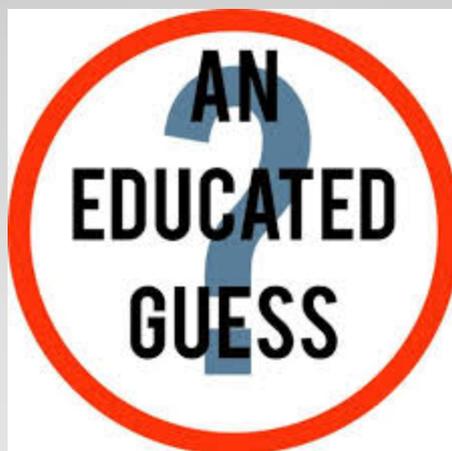
NEW MEXICO SENTENCING COMMISSION REPORT 2008

71 instances of collateral consequences in New Mexico state statutes.

19 instances of general civil consequences in the statutes or court rule.

47 statutes effecting specific occupations.

In 2017, how many laws and regulations imposing a collateral consequence are in place in New Mexico ?



680

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THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

How big is the problem ?

90 percent of all companies use criminal background checks in making hiring decisions

a felony conviction reduces the likelihood of a job callback or offer by nearly 50 percent

1 in 4 adults in the United States has an arrest or conviction record

A life sentence should be reserved for the most serious crime

We need to reintegrate ex offenders if we want them to succeed

Everyone deserves a second chance

Make the punishment fit the crime

When you leave prison, you've paid your debt to society

But
Collateral consequences last
a life time

NM Stat. 28-2-2 Purpose of the Criminal Offender Employment Act

*"The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that **barriers to such employment should be removed to make rehabilitation feasible.**"*

BAN THE BOX § 28-2-3.

A conviction cannot operate as an automatic bar to obtaining public employment

Public employers may not make ask about conviction on an application and **may only take into consideration a conviction after the applicant has been selected as a finalist for the position.**

Public employers may not use records of arrest not followed by a valid conviction or misdemeanor convictions not involving moral turpitude

CRIMINAL OFFENDER EMPLOYMENT ACT §28-2-2

An agency may refuse to grant or renew or may suspend or revoke any public employment **only when the criminal conviction directly relates to the particular employment**, trade, business or profession; or if the applicant has not been sufficiently rehabilitated to warrant the public trust

CRIMINAL OFFENDER EMPLOYMENT ACT §28-2-2

A conviction for controlled substances, criminal sexual penetration or related sexual offenses or child abuse **is a bar to employment involving children.**

EX OFFENDER VOTING RIGHTS.

§ 31-13-1.

All ex-felons (including those with out-of-state and federal convictions) can register to vote in New Mexico **after they have completed their entire sentence including probation and parole.**

Our courts recognize the impact of collateral consequences

New Mexico's courts have held that defense counsels' failure to inform clients prior to a guilty plea about the collateral consequences on immigration rights and sex offender registration requirements, constitutes *per se* ineffective assistance of counsel. *See, State v. Paredes*, 2004-NMSC-036; *State v. Edwards*, 2007-NMCA-43

What would help reintegrate ex-offenders as productive workers, good family members and engaged citizens?

Provide Id's

- Have MVD issue identification cards to inmates prior to release so that they can immediately begin applying for jobs
- Waive the fee for an identification card and for a birth certificate for a period of six months following release

Help build a good record

Implement a policy at DOC that allows case managers, security staff, probation officers, teachers and other staff members to serve as references for released offenders

Create certificates of employability that a recently released offender can show to a potential employer

Control information

- Limit access to and use of criminal records for non-law enforcement purposes and ensure that records are complete and accurate

Enact the Uniform Collateral Consequences Act

Ensures that defendants are told about consequences, both before and at sentencing

Legislates procedures for obtaining relief from certain collateral consequences

Resolves any conflict between the states regarding the effect of relief from a conviction in a sister state.

Provide notice

Educate judges, prosecutors, defense attorneys and the public about specific collateral consequences

Make relief from certain consequences part of plea negotiations

Make full use of the ABA website on collateral consequences

<http://www.abacollateralconsequences.org/>

Apply "Ban the Box" to private employers

- Make the law apply to both private and public employers, as was done in Hawaii, Ill. Mass, Minn. Rhode Island
- Ensure that a denied applicant receives a copy of his or her record the way that the Fair Credit Reporting Act applies to commercially-prepared background checks.

If a private employer uses a written employment application, the employer shall not make an inquiry regarding an applicant's conviction on the employment application

but may take into consideration an applicant's conviction after review of the applicant's written application and upon discussion of employment with the applicant.

Nothing in this section shall prohibit an employer from notifying an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer."

Apply "Ban the Box" to housing

Virtually all low cost housing projects require at least five years without a criminal conviction to qualify

A person without stable housing is seven times more likely to re-offend after returning from prison.

Encourage civil engagement

Restore voting rights to individuals upon release from incarceration.

Teach inmates about their voting rights.

Register new voters in the jails and prisons

Redefine a deferred sentence

31-20-9. COMPLETION OF TOTAL TERM OF DEFERMENT Whenever the period of deferment expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, **the court shall enter a dismissal of the criminal charges.**

But a deferred sentence . . .

Can be used for habitual offender purposes under case law

Can be used for DWI enhancement because it is included in the motor vehicle code

Can be found by an employer, landlord, educational institution

Can be the basis of a fraud charge on an application if applicant checks "no felony convictions"

Redefine a conditional discharge

31-20-13 CONDITIONAL DISCHARGE

. . . a court may, **without entering an adjudication of guilt** enter a conditional discharge order and place the person on probation.

If the person violates any of the conditions of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

But a conditional discharge

Can be used for habitual offender purposes

Can be found by an employer, landlord,
educational institution

Redefine low level felonies

Begin to reduce the number of people with felony convictions by reclassifying low level felonies as misdemeanors



Recap of action steps

Change some policies at DOC and MVD

Redraft Conditional Discharge and
Deferred Sentence" statutes

Amend the "ban the box" laws to apply to
all employers and to affordable housing
programs

Include information about the ABA collateral consequences website on the court web site

Enact the Uniform Collateral Consequences Act

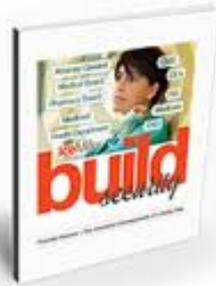
Enact an expungement law





NATIONAL INVENTORY OF THE COLLATERAL CONSEQUENCES OF CONVICTION

The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand. Now it will be easier to do both. Congress directed the National Institute of Justice to collect and study collateral consequences in all U.S. jurisdictions, and NIJ selected the ABA Criminal Justice Section to perform the necessary research and analysis. The results are now being made available through this interactive tool.



Provider Beware - The Collateral Consequences of a Guilty Plea



Download the Guide

BREAKING BARRIERS
An Economic Development Conversation on Collateral Consequences of Felony Convictions

Monday **SEPT 11, 2017** 10am-12pm
Ethel M. Harris State Office Building
300 City Center Square • Newark
Lunch will be provided
PLEASE RSVP: www.cccrc.org/breakingbarriers

Moderator: Susan Carr, Director, Newark Office
Panelists: Jerome Jordan, High School Counselor at Newark Public Schools; Jason Cho-Park, Director, Newark Office

Who Should Attend?

- System Leaders: District Offices, COP, Juvenile, Department Heads
- System Impacted: Clerks, Probation, all parole or pre-trial
- Employees: IT/IS, Employees, Human Resources, Hiring Managers, etc.
- Community Based Providers: Business Providers, Faith Leaders
- Community Advocates: CCRJ, Mentors, Thought Leaders, etc.

A Call to Action: Meet Justice Strategists, Workforce Program, Innovation & Entrepreneurship in Public Safety

THE BOSS
Newark Office of Business Services

COLLATERAL CONSEQUENCES RESOURCE CENTER

COMPILATION OF FEDERAL COLLATERAL CONSEQUENCES

CCRC COLLATERAL CONSEQUENCES RESOURCE CENTER

CCRC COLLATERAL CONSEQUENCES RESOURCE CENTER

Clean Slate
CLEARINGHOUSE

WE CANNOT AFFORD TO WAIT



Change the picture

