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HOUSE BILL 311

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Joseph Cervantes

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 delinquent;

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

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

3 G. "offense" means a felony, misdemeanor or  
4 delinquent act pursuant to the law of New Mexico, another state  
5 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. 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 Section 4, 5 or 6 of the Uniform Collateral  
24 Consequences of Conviction 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;

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 and administrative rules published in the New Mexico  
16 Administrative Code that imposes a collateral sanction or  
17 authorizes the imposition of a disqualification, and any  
18 provision of law that may afford relief from a collateral  
19 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 Court Security Improvement Act of 2007, Pub.  
11 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 are not included in this  
25 collection and impose additional collateral sanctions and

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1 authorize additional disqualifications."; and

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

7 C. The identification agency shall publish or cause  
8 to be published in the New Mexico register and the New Mexico  
9 Administrative Code the collection prepared and updated as  
10 required by Subsection A of this section. If available, the  
11 identification agency shall publish or cause to be published,  
12 as part of the collection, the title and internet address of:

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

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

17 D. The collection provided for in Subsection C of  
18 this section shall be available to the public on the internet  
19 without charge not later than three weeks after it is created  
20 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, when an individual receives formal notice that the  
25 individual is charged with an offense, the court shall cause

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1 information substantially similar to the following to be  
2 communicated to the individual:

3 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

4 If you plead guilty or are convicted of an  
5 offense, you may suffer additional legal  
6 consequences beyond jail or prison, probation,  
7 periods of parole and fines. These consequences may  
8 include:

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

17 If you are not a United States citizen, a guilty  
18 plea or conviction may also result in your deportation,  
19 removal or exclusion from admission to the United States  
20 or denial of citizenship.

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

23 Further information about the consequences of  
24 conviction is available on the internet at [insert  
25 internet address of the collection of laws published

1           pursuant to Subsection C of Section 4 of the Uniform  
2           Collateral Consequences of Conviction Act]."

3           B. Before a court accepts a plea of guilty or nolo  
4           contendere from an individual, the court shall confirm that the  
5           individual received and understands the notice required by  
6           Subsection A of this section and has had an opportunity to  
7           discuss the notice with counsel.

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

14           **SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT**  
15           **SENTENCING AND UPON RELEASE.--**

16          A. An individual convicted of an offense shall be  
17          given notice as provided in Subsections B and C of this  
18          section:

19                   (1) that collateral consequences may apply  
20                   because of the conviction;

21                   (2) of the internet address of the collection  
22                   of laws published pursuant to Subsection C of Section 4 of the  
23                   Uniform Collateral Consequences of Conviction Act;

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

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

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

7 B. Except as provided in Subsection D of this  
8 section, the court shall provide the notice set forth in  
9 Subsection A of this section as a part of sentencing.

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

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

22 SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL  
23 SANCTION--AMBIGUITY.--

24 A. A collateral sanction may be imposed only by  
25 statute or ordinance or by a rule authorized by law and adopted

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1 in accordance with applicable law.

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

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

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

22 A. For purposes of authorizing or imposing a  
23 collateral consequence in New Mexico, a conviction of an  
24 offense in a court of another state or the United States is  
25 deemed a conviction of the offense in New Mexico with the same

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

9 B. For purposes of authorizing or imposing a  
10 collateral consequence in New Mexico, a juvenile adjudication  
11 in another state or the United States shall not be deemed a  
12 conviction of a felony, misdemeanor or offense lesser than a  
13 misdemeanor in New Mexico but may be deemed a juvenile  
14 adjudication for the delinquent act in New Mexico with the same  
15 elements. If there is no delinquent act in New Mexico with the  
16 same elements, the juvenile adjudication is deemed an  
17 adjudication of the most serious delinquent act in New Mexico  
18 that is established by the elements of the offense.

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

25 D. A pardon issued by another state or the United

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1 States has the same effect for purposes of authorizing,  
2 imposing and relieving a collateral consequence in New Mexico  
3 as it has in the issuing jurisdiction.

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

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1           F. A charge or prosecution in any jurisdiction that  
2 has been finally terminated without a conviction and imposition  
3 of sentence based on participation in a deferred adjudication  
4 or diversion program shall not serve as the basis for  
5 authorizing or imposing a collateral consequence in New Mexico.  
6 This subsection does not affect the validity of any restriction  
7 or condition imposed by law as part of participation in the  
8 deferred adjudication or diversion program, before or after the  
9 termination of the charge or prosecution.

10           **SECTION 10. ORDER OF LIMITED RELIEF.--**

11           A. An individual convicted of an offense may  
12 petition for an order of limited relief from one or more  
13 collateral sanctions related to employment, education, housing,  
14 public benefits or occupational licensing. The petition may be  
15 presented to the sentencing court at or before sentencing or to  
16 the parole board at any time after sentencing.

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

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1 preponderance of the evidence that:

2 (1) granting the petition will materially  
3 assist the individual in obtaining or maintaining employment,  
4 education, housing, public benefits or occupational licensing;

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

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

10 C. An order of limited relief shall specify:

11 (1) the collateral sanction from which relief  
12 is granted; and

13 (2) any restriction imposed pursuant to  
14 Subsection A of Section 13 of the Uniform Collateral  
15 Consequences of Conviction Act.

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

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

22 **SECTION 11. CERTIFICATE OF RESTORATION OF RIGHTS.--**

23 A. An individual convicted of an offense may  
24 petition the parole board for a certificate of restoration of  
25 rights relieving collateral sanctions not sooner than five

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1 years after the individual's most recent conviction of a felony  
2 or misdemeanor in any jurisdiction, or not sooner than five  
3 years after the individual's release from confinement pursuant  
4 to a criminal sentence in any jurisdiction, whichever is later.

5 B. Except as otherwise provided in Section 12 of  
6 the Uniform Collateral Consequences of Conviction Act, the  
7 parole board may issue a certificate of restoration of rights  
8 if, after reviewing the petition, the individual's criminal  
9 history, any filing by a victim pursuant to Section 15 of the  
10 Uniform Collateral Consequences of Conviction Act or by a  
11 prosecutor and any other relevant evidence, it finds the  
12 individual has established by a preponderance of the evidence  
13 that:

14 (1) the individual is engaged in or seeking to  
15 engage in a lawful occupation or activity, including  
16 employment, training, education or rehabilitative programs, or  
17 the individual otherwise has a lawful source of support;

18 (2) the individual is not in violation of the  
19 terms of any criminal sentence, or that any failure to comply  
20 is justified, excused, involuntary or insubstantial;

21 (3) a criminal charge is not pending against  
22 the individual; and

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

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1           C. A certificate of restoration of rights shall  
2 specify any restriction imposed and collateral sanction from  
3 which relief has not been granted pursuant to Subsection A of  
4 Section 13 of the Uniform Collateral Consequences of Conviction  
5 Act.

6           D. A certificate of restoration of rights relieves  
7 all collateral sanctions except those collateral sanctions  
8 listed in Section 12 of the Uniform Collateral Consequences of  
9 Conviction Act and any others specifically excluded in the  
10 certificate.

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

15           **SECTION 12. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF**  
16 **LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS.--An**  
17 order of limited relief or certificate of restoration of rights  
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

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 13. ISSUANCE, MODIFICATION AND REVOCATION OF  
9 ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF  
10 RIGHTS.--

11 A. When a petition is filed pursuant to Section 10  
12 or 11 of the Uniform Collateral Consequences of Conviction Act,  
13 including a petition for enlargement of an existing order of  
14 limited relief or certificate of restoration of rights, the  
15 parole board shall notify the office that prosecuted the  
16 offense giving rise to the collateral consequence from which  
17 relief is sought and, if the conviction was not obtained in a  
18 New Mexico court, the attorney general. The court may issue an  
19 order and the parole board may issue an order or certificate  
20 subject to restriction, condition or additional requirement.  
21 When issuing, denying, modifying or revoking an order or  
22 certificate, the parole board may impose conditions for  
23 reapplication.

24 B. The parole board may restrict or revoke an order  
25 of limited relief or certificate of restoration of rights it

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1 issued or an order of limited relief issued by a court in New  
2 Mexico if it finds just cause by a preponderance of the  
3 evidence. Just cause includes subsequent conviction of a  
4 felony in New Mexico or of an offense in another jurisdiction  
5 that is deemed to be a felony in New Mexico pursuant to  
6 Subsection A of Section 9 of the Uniform Collateral  
7 Consequences of Conviction Act. An order of restriction or  
8 revocation may be issued:

9 (1) on motion of the parole board, the office  
10 of the prosecutor that obtained the conviction or a government  
11 agency designated by that prosecutor;

12 (2) after notice to the individual and any  
13 prosecutor that has appeared in the matter; and

14 (3) after a hearing pursuant to the Parole  
15 Board Act if requested by the individual or the prosecutor that  
16 made the motion or any prosecutor that has appeared in the  
17 matter.

18 C. The court or parole board shall order any test,  
19 report, investigation or disclosure by the individual it  
20 reasonably believes necessary to its decision to issue, modify  
21 or revoke an order of limited relief or certificate of  
22 restoration of rights. If there are disputed issues of  
23 material fact or law, the individual and any prosecutor  
24 notified pursuant to Subsection A of this section or another  
25 prosecutorial agency designated by a prosecutor notified

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1 pursuant to Subsection A of this section may submit evidence  
2 and be heard on those issues.

3 D. The parole board shall maintain a public record  
4 of the issuance, modification and revocation of orders of  
5 limited relief and certificates of restoration of rights.

6 E. The parole board may adopt rules for  
7 application, determination, modification and revocation of  
8 orders of limited relief and certificates of restoration of  
9 rights, in accordance with the Parole Board Act.

10 SECTION 14. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE  
11 OF DUE CARE.--In a judicial or administrative proceeding  
12 alleging negligence or other fault, an order of limited relief  
13 or a certificate of restoration of rights may be introduced as  
14 evidence of a person's due care in hiring, retaining,  
15 licensing, leasing to, admitting to a school or program or  
16 otherwise transacting business or engaging in activity with the  
17 individual to whom the order was issued if the person knew of  
18 the order or certificate at the time of the alleged negligence  
19 or other fault.

20 SECTION 15. VICTIM'S RIGHTS.--A victim of an offense may  
21 participate in a proceeding for issuance, modification or  
22 revocation of an order of limited relief or a certificate of  
23 restoration of rights in the same manner as at a sentencing  
24 proceeding pursuant to the Victims of Crime Act to the extent  
25 permitted by rules adopted by the parole board.

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1           **SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--**

2           In applying and construing the Uniform Collateral Consequences  
3           of Conviction Act, consideration shall be given to the need to  
4           promote uniformity of the law with respect to its subject  
5           matter among states that enact it.

6           **SECTION 17. SAVING AND TRANSITIONAL PROVISIONS.--**

7           A. Except as provided in Subsection B of this  
8           section, the Uniform Collateral Consequences of Conviction Act  
9           applies to collateral consequences whenever enacted or imposed  
10          unless the law creating the collateral consequence expressly  
11          states that the Uniform Collateral Consequences of Conviction  
12          Act does not apply.

13          B. The Uniform Collateral Consequences of  
14          Conviction Act does not apply to the imposition of a collateral  
15          sanction on an individual after six months have elapsed after  
16          the collection of laws required pursuant to Section 4 of the  
17          Uniform Collateral Consequences of Conviction Act is first  
18          available on the internet pursuant to Subsection D of Section 4  
19          of the Uniform Collateral Consequences of Conviction Act, but a  
20          collateral sanction validly imposed before that date may be the  
21          subject of relief pursuant to that act.

22          **SECTION 18. EFFECTIVE DATE.--**The effective date of the  
23          provisions of this act is January 1, 2012.

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