

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 311

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

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

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:

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1 (1) the duty an individual's attorney owes to
2 the individual;

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

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

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

10 A. The identification agency:

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

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

23 (3) shall update or cause to be updated the
24 collection provided for in Paragraph (2) of this subsection
25 within three months after the laws enacted during each session

1 of the legislature are published in the New Mexico Statutes
2 Annotated; and

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

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

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

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

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

25 (4) "This collection does not include any law

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1 or other provision regarding the imposition of or relief from a
2 collateral sanction or a disqualification enacted or adopted
3 after [*insert date the collection was prepared or last*
4 *updated*].".

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

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

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

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

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

22 A. Except as provided in Subsection C of this
23 section, when an individual receives formal notice that the
24 individual is charged with an offense, the court shall cause
25 information substantially similar to the following to be

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underscoring material = new
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1 communicated to the individual:

2 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

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

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

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

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

22 Further information about the consequences of
23 conviction is available on the internet at [*insert*
24 *internet address of the collection of laws published*
25 *pursuant to Subsections C and D of Section 4 of the*

1 *Uniform Collateral Consequences of Conviction Act*].".

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

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

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

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

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

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

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

25 (4) of contact information for government or

1 nonprofit agencies, groups or organizations, if any, offering
2 assistance to individuals seeking relief from collateral
3 consequences; and

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

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

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

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

21 **SECTION 7. AUTHORIZATION REQUIRED FOR COLLATERAL**
22 **SANCTION--AMBIGUITY.--**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 C. An order of limited relief shall specify:

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

3 (2) any restriction imposed pursuant to
4 Subsection A of Section 12 of the Uniform Collateral
5 Consequences of Conviction Act.

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

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

12 SECTION 11. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF
13 LIMITED RELIEF.--An order of limited relief shall not be issued
14 to relieve the following collateral sanctions:

15 A. requirements imposed by the Sex Offender
16 Registration and Notification Act;

17 B. a motor vehicle license suspension, revocation,
18 limitation or ineligibility pursuant to the Motor Vehicle Code,
19 for which restoration or relief is available pursuant to law
20 other than the Uniform Collateral Consequences of Conviction
21 Act;

22 C. ineligibility for certification as a law
23 enforcement officer pursuant to the Law Enforcement Training
24 Act; or

25 D. prohibitions imposed pursuant to Section 30-7-16

1 NMSA 1978 making it unlawful for felons to receive, transport
2 or possess a firearm or destructive device while in this state.

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

4 A. The prosecutor shall be notified of a request
5 for an order of limited relief. The court may issue an order
6 of limited relief subject to restriction, condition or
7 additional requirement.

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

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

17 In a judicial or administrative proceeding alleging negligence
18 or other fault, an order of limited relief may be introduced as
19 evidence of a person's due care in hiring, retaining,
20 licensing, leasing to, admitting to a school or program or
21 otherwise transacting business or engaging in activity with the
22 individual to whom the order was issued if the person knew of
23 the order at the time of the alleged negligence or other fault.

24 **SECTION 14. VICTIM'S RIGHTS.--**A victim of an offense may
25 participate in a proceeding for issuance of an order of limited

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1 relief in the same manner as at a sentencing proceeding
2 pursuant to the Victims of Crime Act.

3 SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--

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

8 SECTION 16. SAVING AND TRANSITIONAL PROVISIONS.--

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

15 B. The Uniform Collateral Consequences of
16 Conviction Act does not apply to the imposition of a collateral
17 sanction on an individual until the date that is six months
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 Subsections C and D of
21 Section 4 of the Uniform Collateral Consequences of Conviction
22 Act, but a collateral sanction validly imposed before that date
23 may be the subject of relief pursuant to that act.

24 SECTION 17. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is January 1, 2012.

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