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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, the attorney general and
20 the public defender department;

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

23 H. "person" means an individual, corporation,
24 business trust, estate, trust, partnership, limited liability
25 company, association, joint venture, public corporation,

1 government or governmental subdivision, agency or
2 instrumentality or any other legal or commercial entity; and

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

7 SECTION 3. LIMITATION ON SCOPE.--

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

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

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

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

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

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

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

24 (3) a right or remedy pursuant to law other
25 than the Uniform Collateral Consequences of Conviction Act

1 available to an individual convicted of an offense.

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

4 A. The identification agency:

5 (1) shall identify or cause to be identified
6 any provision in the constitution of New Mexico and
7 New Mexico's statutes published in the New Mexico Statutes
8 Annotated that imposes a collateral sanction or authorizes
9 the imposition of a disqualification, and any provision of
10 law that may afford relief from a collateral consequence;

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

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

22 (4) in complying with Paragraphs (1) and (2)
23 of this subsection, may rely on the study of New Mexico's
24 collateral sanctions, disqualifications and relief provisions
25 prepared by the national institute of justice described in

1 Section 510 of the Court Security Improvement Act of 2007,
2 Pub. L. 110-177.

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

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

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

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

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

24 C. The identification agency shall publish or
25 cause to be published in the manner provided in Subsection D

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

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

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

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

14 SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN
15 PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

16 A. Except as provided in Subsection C of this
17 section, counsel representing an individual charged with an
18 offense shall cause information substantially similar to the
19 following to be communicated to the individual during
20 pretrial proceedings and shall discuss the information with
21 the individual:

22 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

23 If you plead guilty or nolo contendere 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 nolo contendere plea or conviction may also
13 result in your deportation, removal or exclusion from
14 admission to 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 nolo
23 contendere from an individual, the court shall confirm that
24 the individual received and understands the notice required
25 by 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 individual's counsel shall provide the notice
6 set forth in Subsection A of this section not more than
7 thirty and, if practicable, at least five days before
8 sentencing.

9 C. Except as provided in Subsection D of this
10 section, if an individual is sentenced to imprisonment or
11 other incarceration, the officer or agency releasing the
12 individual shall provide the notice set forth in Subsection A
13 of this section not more than thirty and, if practicable, at
14 least five 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
18 of the Uniform Collateral Consequences of Conviction Act is
19 first available on the internet pursuant to Subsections C and
20 D of 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
25 adopted in accordance with applicable law.

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
4 authorizing a disqualification.

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

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

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

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

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

24 E. A conviction that has been relieved by
25 expungement, sealing, annulment, set-aside or vacation by a

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

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

1 participation in the deferred adjudication or diversion
2 program, before or after the termination of the charge or
3 prosecution.

4 SECTION 10. ORDER OF LIMITED RELIEF.--

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

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

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

5 C. An order of limited relief shall 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 to
4 Section 4 of the Uniform Collateral Consequences of
5 Conviction Act is first available on the internet pursuant to
6 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, 2014. _____

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