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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Collateral Consequences of Conviction Act".

SECTION 2. [NEW MATERIAL] 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

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1 penalty, disability or disadvantage is included in the judgment
2 or sentence. "Collateral sanction" does not include
3 imprisonment, probation, parole, supervised release,
4 forfeiture, restitution, fine, assessment or costs of
5 prosecution;

6 C. "convicted" and "conviction" include an
7 adjudication as a youthful offender or serious youthful
8 offender that results in an adult sentence;

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

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

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

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1 F. "identification agency" means the New Mexico
2 sentencing commission, acting in conjunction with the district
3 attorneys of New Mexico, the attorney general and the public
4 defender department;

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

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

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

16 SECTION 3. [NEW MATERIAL] LIMITATION ON SCOPE.--

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

19 (1) invalidating a plea, conviction or
20 sentence;

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

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

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1 B. The Uniform Collateral Consequences of
2 Conviction Act does not affect:

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

6 (2) a claim or right of a victim of an
7 offense; or

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

11 SECTION 4. [NEW MATERIAL] IDENTIFICATION, COLLECTION AND
12 PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES.--

13 A. The identification agency:

14 (1) shall identify or cause to be identified
15 any provision in the constitution of New Mexico and New
16 Mexico's statutes published in the New Mexico Statutes
17 Annotated that imposes a collateral sanction or authorizes the
18 imposition of a disqualification, and any provision of law that
19 may afford relief from a collateral 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 and the New Mexico
25 Administrative Code are not included in this collection and may

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1 impose additional collateral sanctions and authorize additional
2 disqualifications."; and

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

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

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

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

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

23 SECTION 5. [NEW MATERIAL] NOTICE OF COLLATERAL
24 CONSEQUENCES IN PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

25 A. Except as provided in Subsection C of this

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1 section, counsel representing an individual charged with an
2 offense shall cause information substantially similar to the
3 following to be communicated to the individual during pretrial
4 proceedings and shall discuss the information with the
5 individual:

6 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

7 If you plead guilty or nolo contendere to an
8 offense, or are convicted of an offense, you may
9 suffer additional legal consequences beyond jail or
10 prison, probation, periods of parole and fines.

11 These consequences may include:

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

20 If you are not a United States citizen, a guilty
21 plea or nolo contendere plea or conviction may also result
22 in your deportation, removal or exclusion from admission
23 to the United States or denial of citizenship.

24 The law may provide ways to obtain some relief from
25 these consequences.

1 Further information about the consequences of
2 conviction is available on the internet at [*insert*
3 *internet address of the collection of laws published*
4 *pursuant to Subsections C and D of Section 4 of the*
5 *Uniform Collateral Consequences of Conviction Act*].".

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

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

17 D. This section does not limit the duty that an
18 individual's counsel otherwise owes to the individual.

19 **SECTION 6. [NEW MATERIAL] NOTICE OF COLLATERAL**
20 **CONSEQUENCES AT SENTENCING AND UPON RELEASE.--**

21 A. An individual convicted of an offense shall be
22 given notice as provided in Subsections B and C of this
23 section:

24 (1) that collateral consequences may apply
25 because of the conviction;

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

4 (3) that there may be ways to obtain relief
5 from collateral consequences;

6 (4) of contact information for government or
7 nonprofit agencies, groups or organizations, if any, offering
8 assistance to individuals seeking relief from collateral
9 consequences; and

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

12 B. Except as provided in Subsection D of this
13 section, the individual's counsel shall provide the notice set
14 forth in Subsection A of this section not more than thirty and,
15 if practicable, at least five days before sentencing.

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

22 D. The notice required pursuant to Subsection A of
23 this section need not be given until six months have elapsed
24 after the collection of laws required pursuant to Section 4 of
25 the Uniform Collateral Consequences of Conviction Act is first

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1 available on the internet pursuant to Subsections C and D of
2 Section 4 of that act.

3 SECTION 7. [NEW MATERIAL] AUTHORIZATION REQUIRED FOR
4 COLLATERAL SANCTION--AMBIGUITY.--

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

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

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

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1 SECTION 9. [NEW MATERIAL] EFFECT OF CONVICTION BY ANOTHER

2 STATE OR THE UNITED STATES--RELIEVED OR PARDONED CONVICTION.--

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

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

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

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

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

24 F. A charge or prosecution in any jurisdiction that
25 has been finally terminated without a conviction and imposition

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

8 SECTION 10. [NEW MATERIAL] ORDER OF LIMITED RELIEF.--

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

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

24 (1) granting the petition will materially
25 assist the individual in obtaining or maintaining employment,

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1 education, housing, public benefits or occupational licensing;

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

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

7 C. An order of limited relief shall specify:

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

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

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

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

19 **SECTION 11. [NEW MATERIAL] COLLATERAL SANCTIONS NOT**
20 **SUBJECT TO ORDER OF LIMITED RELIEF.--**An order of limited relief
21 shall not be issued to relieve the following collateral
22 sanctions:

23 A. requirements imposed by the Sex Offender
24 Registration and Notification Act;

25 B. a motor vehicle license suspension, revocation,

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1 limitation or ineligibility pursuant to the Motor Vehicle Code,
2 for which restoration or relief is available pursuant to law
3 other than the Uniform Collateral Consequences of Conviction
4 Act;

5 C. ineligibility for certification as a law
6 enforcement officer pursuant to the Law Enforcement Training
7 Act or for employment as a correctional officer pursuant to the
8 Corrections Act; or

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

12 SECTION 12. [NEW MATERIAL] ISSUANCE OF ORDER OF LIMITED
13 RELIEF.--

14 A. The prosecutor shall be notified of a request
15 for an order of limited relief. The court may issue an order
16 of limited relief subject to restriction, condition or
17 additional requirement.

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

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1 SECTION 13. ~~[NEW MATERIAL]~~ RELIANCE ON ORDER AS EVIDENCE
2 OF DUE CARE.--In a judicial or administrative proceeding
3 alleging negligence or other fault, an order of limited relief
4 may be introduced as evidence of a person's due care in hiring,
5 retaining, licensing, leasing to, admitting to a school or
6 program or otherwise transacting business or engaging in
7 activity with the individual to whom the order was issued if
8 the person knew of the order at the time of the alleged
9 negligence or other fault.

10 SECTION 14. ~~[NEW MATERIAL]~~ VICTIM'S RIGHTS.--A victim of
11 an offense may participate in a proceeding for issuance of an
12 order of limited relief in the same manner as at a sentencing
13 proceeding pursuant to the Victims of Crime Act.

14 SECTION 15. ~~[NEW MATERIAL]~~ UNIFORMITY OF APPLICATION AND
15 CONSTRUCTION.--In applying and construing the Uniform
16 Collateral Consequences of Conviction Act, consideration shall
17 be given to the need to promote uniformity of the law with
18 respect to its subject matter among states that enact it.

19 SECTION 16. ~~[NEW MATERIAL]~~ SAVING AND TRANSITIONAL
20 PROVISIONS.--

21 A. Except as provided in Subsection B of this
22 section, the Uniform Collateral Consequences of Conviction Act
23 applies to collateral consequences whenever enacted or imposed
24 unless the law creating the collateral consequence expressly
25 states that the Uniform Collateral Consequences of Conviction

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1 Act does not apply.

2 B. The Uniform Collateral Consequences of
3 Conviction Act does not apply to the imposition of a collateral
4 sanction on an individual until the date that is six months
5 after the collection of laws required pursuant to Section 4 of
6 the Uniform Collateral Consequences of Conviction Act is first
7 available on the internet pursuant to Subsections C and D of
8 Section 4 of that act, but a collateral sanction validly
9 imposed before that date may be the subject of relief pursuant
10 to that act.

11 SECTION 17. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2018.