

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 New  
7 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 website 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 to  
25 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 fact  
19 or law, the individual and any prosecutor notified pursuant to  
20 Subsection A of this section or another prosecutorial agency  
21 designated by a prosecutor notified pursuant to Subsection A  
22 of this section may submit evidence and be heard on those  
23 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 shall  
15 be given to the need to promote uniformity of the law with  
16 respect to its subject matter among states that enact it.

17 SECTION 16. SAVING AND TRANSITIONAL PROVISIONS.--

18 A. Except as provided in Subsection B of this  
19 section, the Uniform Collateral Consequences of Conviction Act  
20 applies to collateral consequences whenever enacted or imposed  
21 unless the law creating the collateral consequence expressly  
22 states that the Uniform Collateral Consequences of Conviction  
23 Act does not apply.

24 B. The Uniform Collateral Consequences of  
25 Conviction Act does not apply to the imposition of a



1 collateral sanction on an individual until the date that is  
2 six months after the collection of laws required pursuant to  
3 Section 4 of the Uniform Collateral Consequences of Conviction  
4 Act is first available on the internet pursuant to Subsections  
5 C and D of Section 4 of that act, but a collateral sanction  
6 validly imposed before that date may be the subject of relief  
7 pursuant to that act.

8 SECTION 17. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2018. \_\_\_\_\_

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25