



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 311

Introduced by



VETOED

1 AN ACT
2 RELATING TO CRIMINAL JUSTICE; ENACTING THE UNIFORM COLLATERAL
3 CONSEQUENCES OF CONVICTION ACT.
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. SHORT TITLE.--This act may be cited as the
7 "Uniform Collateral Consequences of Conviction Act".

8 SECTION 2. DEFINITIONS.--As used in the Uniform
9 Collateral Consequences of Conviction Act:

10 A. "collateral consequence" means a collateral
11 sanction or a disqualification;

12 B. "collateral sanction" means a penalty,
13 disability or disadvantage, however denominated, imposed on an
14 individual as a result of the individual's conviction of an
15 offense that applies by operation of law, whether or not the
16 penalty, disability or disadvantage is included in the
17 judgment or sentence. "Collateral sanction" does not include
18 imprisonment, probation, parole, supervised release,
19 forfeiture, restitution, fine, assessment or costs of
20 prosecution;

21 C. "convicted" and "conviction" include an
22 adjudication as a juvenile delinquent;

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

25 (1) a department;

1 (2) an agency;
2 (3) an officer; or
3 (4) an instrumentality, including a
4 political subdivision, an educational institution, a board or
5 a commission or a government contractor, including a
6 subcontractor, made subject to the Uniform Collateral
7 Consequences of Conviction Act by contract, by law other than
8 the Uniform Collateral Consequences of Conviction Act or by
9 ordinance;

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

15 F. "identification agency" means the New Mexico
16 sentencing commission, acting in conjunction with the district
17 attorneys of New Mexico, the attorney general and the public
18 defender department;

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

21 H. "person" means an individual, corporation,
22 business trust, estate, trust, partnership, limited liability
23 company, association, joint venture, public corporation,
24 government or governmental subdivision, agency or
25 instrumentality or any other legal or commercial entity; and

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

5 SECTION 3. LIMITATION ON SCOPE.--

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

- 8 (1) invalidating a plea, conviction or
9 sentence;
10 (2) a cause of action for money damages; or
11 (3) a claim for relief from or defense to
12 the application of a collateral consequence based on a failure
13 to comply with Section 4, 5 or 6 of the Uniform Collateral
14 Consequences of Conviction Act.

15 B. The Uniform Collateral Consequences of
16 Conviction Act does not affect:

- 17 (1) the duty an individual's attorney owes
18 to the individual;
19 (2) a claim or right of a victim of an
20 offense; or
21 (3) a right or remedy pursuant to law other
22 than the Uniform Collateral Consequences of Conviction Act
23 available to an individual convicted of an offense.

24 SECTION 4. IDENTIFICATION, COLLECTION AND PUBLICATION
25 OF LAWS REGARDING COLLATERAL CONSEQUENCES.--

1 A. The identification agency:

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

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

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

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

25 B. As required by Subsection A of this section,

1 the identification agency shall include or cause to be
2 included the following statements in a prominent manner at the
3 beginning of the collection:

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

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

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

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

21 C. The identification agency shall publish or
22 cause to be published in the manner provided in Subsection D
23 of this section the collection prepared and updated as
24 required by Subsection A of this section. If available, the
25 identification agency shall publish or cause to be published,

1 as part of the collection, the title and internet address of:

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

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

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

11 SECTION 5. NOTICE OF COLLATERAL CONSEQUENCES IN
12 PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

13 A. Except as provided in Subsection C of this
14 section, when an individual receives formal notice that the
15 individual is charged with an offense, the court shall cause
16 information substantially similar to the following to be
17 communicated to the individual:

18 "NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

19 If you plead guilty or are convicted of an
20 offense, you may suffer additional legal
21 consequences beyond jail or prison, probation,
22 periods of parole and fines. These consequences
23 may include:

24 1. being unable to get or keep some licenses,
25 permits or jobs;

1 2. being unable to get or keep benefits such as
2 public housing or education;

3 3. receiving a harsher sentence if you are
4 convicted of another offense in the future;

5 4. having the government take your property; and

6 5. being unable to vote or possess a firearm.

7 If you are not a United States citizen, a guilty
8 plea or conviction may also result in your deportation,
9 removal or exclusion from admission to the United States
10 or denial of citizenship.

11 The law may provide ways to obtain some relief from
12 these consequences.

13 Further information about the consequences of
14 conviction is available on the internet at [*insert*
15 *internet address of the collection of laws published*
16 *pursuant to Subsections C and D of Section 4 of the*
17 *Uniform Collateral Consequences of Conviction Act*].".

18 B. Before a court accepts a plea of guilty or nolo
19 contendere from an individual, the court shall confirm that
20 the individual received and understands the notice required by
21 Subsection A of this section and has had an opportunity to
22 discuss the notice with counsel.

23 C. The notice required pursuant to Subsection A of
24 this section need not be given until six months have elapsed
25 after the collection of laws required pursuant to Section 4 of

1 the Uniform Collateral Consequences of Conviction Act is first
2 available on the internet pursuant to Subsections C and D of
3 Section 4 of that act.

4 SECTION 6. NOTICE OF COLLATERAL CONSEQUENCES AT
5 SENTENCING AND UPON RELEASE.--

6 A. An individual convicted of an offense shall be
7 given notice as provided in Subsections B and C of this
8 section:

9 (1) that collateral consequences may apply
10 because of the conviction;

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

15 (3) that there may be ways to obtain relief
16 from collateral consequences;

17 (4) of contact information for government or
18 nonprofit agencies, groups or organizations, if any, offering
19 assistance to individuals seeking relief from collateral
20 consequences; and

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

23 B. Except as provided in Subsection D of this
24 section, the court shall provide the notice set forth in
25 Subsection A of this section as a part of sentencing.

1 C. Except as provided in Subsection D of this
2 section, if an individual is sentenced to imprisonment or
3 other incarceration, the officer or agency releasing the
4 individual shall provide the notice set forth in Subsection A
5 of this section not more than thirty and, if practicable, at
6 least five days before release.

7 D. 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 7. AUTHORIZATION REQUIRED FOR COLLATERAL**
14 **SANCTION--AMBIGUITY.--**

15 A. A collateral sanction may be imposed only by
16 statute or ordinance or by a rule authorized by law and
17 adopted in accordance with applicable law.

18 B. A law creating a collateral consequence that is
19 ambiguous as to whether it imposes a collateral sanction or
20 authorizes a disqualification shall be construed as
21 authorizing a disqualification.

22 **SECTION 8. DECISION TO DISQUALIFY.--**In deciding whether
23 to impose a disqualification, a decision-maker shall undertake
24 an individualized assessment to determine whether the benefit
25 or opportunity at issue should be denied the individual. In

1 making that decision, the decision-maker may consider, if
2 substantially related to the benefit or opportunity at issue,
3 the particular facts and circumstances involved in the offense
4 and the essential elements of the offense. A conviction
5 itself shall not be considered except as having established
6 the elements of the offense. The decision-maker shall also
7 consider other relevant information, including the effect on
8 third parties of granting the benefit or opportunity and
9 whether the individual has been granted relief such as an
10 order of limited relief.

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

13 A. For purposes of authorizing or imposing a
14 collateral consequence in New Mexico, a conviction of an
15 offense in a court of another state or the United States is
16 deemed a conviction of the offense in New Mexico with the same
17 elements. If there is no offense in New Mexico with the same
18 elements, the conviction is deemed a conviction of the most
19 serious offense in New Mexico that is established by the
20 elements of the offense. A misdemeanor in the jurisdiction of
21 conviction shall not be deemed a felony in New Mexico, and an
22 offense lesser than a misdemeanor in the jurisdiction of
23 conviction shall not be deemed a conviction of a felony or
24 misdemeanor in New Mexico.

25 B. For purposes of authorizing or imposing a

1 collateral consequence in New Mexico, a juvenile adjudication
2 in another state or the United States shall not be deemed a
3 conviction of a felony, misdemeanor or offense lesser than a
4 misdemeanor in New Mexico.

5 C. A conviction that is reversed, overturned or
6 otherwise vacated by a court of competent jurisdiction of New
7 Mexico, another state or the United States on grounds other
8 than rehabilitation or good behavior shall not serve as the
9 basis for authorizing or imposing a collateral consequence in
10 New Mexico.

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

15 E. A conviction that has been relieved by
16 expungement, sealing, annulment, set-aside or vacation by a
17 court of competent jurisdiction of another state or the United
18 States on grounds of rehabilitation or good behavior, or for
19 which civil rights are restored pursuant to statute, has the
20 same effect for purposes of authorizing or imposing collateral
21 consequences in New Mexico as it has in the jurisdiction of
22 conviction; provided, however, that such relief or restoration
23 of civil rights does not relieve collateral consequences
24 applicable pursuant to the law of New Mexico for which relief
25 could not be granted pursuant to Section 11 of the Uniform

1 Collateral Consequences of Conviction Act or for which relief
2 was expressly withheld by the court order or by the law of the
3 jurisdiction that relieved the conviction. An individual
4 convicted in another jurisdiction may seek relief pursuant to
5 Section 10 of the Uniform Collateral Consequences of
6 Conviction Act from any collateral consequence for which
7 relief was not granted in the issuing jurisdiction except
8 those consequences listed in Section 11 of that act.

9 F. A charge or prosecution in any jurisdiction
10 that has been finally terminated without a conviction and
11 imposition of sentence based on participation in a deferred
12 adjudication or diversion program shall not serve as the basis
13 for authorizing or imposing a collateral consequence in New
14 Mexico. This subsection does not affect the validity of any
15 restriction or condition imposed by law as part of
16 participation in the deferred adjudication or diversion
17 program, before or after the termination of the charge or
18 prosecution.

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

20 A. An individual convicted of an offense may
21 petition for an order of limited relief from one or more
22 collateral sanctions related to employment, education,
23 housing, public benefits or occupational licensing. The
24 petition may be presented to the sentencing court at or before
25 sentencing.

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

11 (1) granting the petition will materially
12 assist the individual in obtaining or maintaining employment,
13 education, housing, public benefits or occupational licensing;

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

16 (3) granting the petition would not pose an
17 unreasonable risk to the safety or welfare of the public or
18 any individual.

19 C. An order of limited relief shall specify:

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

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

25 D. An order of limited relief relieves a

1 collateral sanction to the extent provided in the order.

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

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

9 A. requirements imposed by the Sex Offender
10 Registration and Notification Act;

11 B. a motor vehicle license suspension, revocation,
12 limitation or ineligibility pursuant to the Motor Vehicle
13 Code, for which restoration or relief is available pursuant to
14 law other than the Uniform Collateral Consequences of
15 Conviction Act;

16 C. ineligibility for certification as a law
17 enforcement officer pursuant to the Law Enforcement Training
18 Act; or

19 D. prohibitions imposed pursuant to Section
20 30-7-16 NMSA 1978 making it unlawful for felons to receive,
21 transport or possess a firearm or destructive device while in
22 this state.

23 SECTION 12. ISSUANCE OF ORDER OF LIMITED RELIEF.--

24 A. The prosecutor shall be notified of a request
25 for an order of limited relief. The court may issue an order

1 of limited relief subject to restriction, condition or
2 additional requirement.

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

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

21 SECTION 14. VICTIM'S RIGHTS.--A victim of an offense
22 may participate in a proceeding for issuance of an order of
23 limited relief in the same manner as at a sentencing
24 proceeding pursuant to the Victims of Crime Act.

25 SECTION 15. UNIFORMITY OF APPLICATION AND

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

5 SECTION 16. SAVING AND TRANSITIONAL PROVISIONS.--

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

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

22 SECTION 17. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is January 1, 2012. _____

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Approved by me this _____ day of _____, 2011

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO