

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0062.01 Michael Dohr

SENATE BILL 11-044

SENATE SPONSORSHIP

Steadman,

HOUSE SPONSORSHIP

Levy,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE COLLATERAL CONSEQUENCES OF A CONVICTION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates a process for persons to seek relief from the collateral consequences of a criminal conviction. The state public defender shall identify and publish a collection of the collateral consequences that are possible in Colorado based on state and federal laws and regulations. The judicial department shall publish the collection on its web site. The court, at a defendant's first appearance and at sentencing, shall inform the defendant about the possible collateral

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
April 25, 2011

1 CONSEQUENCES OF HIS OR HER ORIGINAL CRIME AND SUBSEQUENTLY
2 REOFFENDS GENERATES THE FINANCIAL AND HUMAN COSTS OF THE NEW
3 CRIME, INCLUDING EXPENDITURES OF LAW ENFORCEMENT, JUDICIAL AND
4 CORRECTIONS RESOURCES, AND THE LOSS OF THE PRODUCTIVE WORK THAT
5 THE INDIVIDUAL COULD HAVE CONTRIBUTED TO THE ECONOMY.

6 (c) MAJOR CHALLENGES EXIST FOR INDIVIDUALS WITH CRIMINAL
7 RECORDS, INCLUDING THE INCREASINGLY BURDENSOME LEGAL EFFECT OF
8 THOSE RECORDS AND THE AVAILABILITY OF PUBLIC RECORD INFORMATION,
9 INCLUDING CRIMINAL CONVICTIONS, ABOUT ALL COLORADANS TO ALL
10 ARMS OF GOVERNMENT AND THE GENERAL PUBLIC;

11 (d) A CRIMINAL CONVICTION NEGATIVELY AFFECTS AN
12 INDIVIDUAL'S LEGAL STATUS THROUGH THE ENFORCEMENT OF
13 COLLATERAL CONSEQUENCES AGAINST THE INDIVIDUAL. IN RECENT
14 YEARS, THOSE COLLATERAL CONSEQUENCES HAVE INCREASED IN NUMBER
15 AND SEVERITY.

16 (e) A STRONG CONNECTION EXISTS BETWEEN EMPLOYMENT AND
17 HOUSING STABILITY AND AN INDIVIDUAL'S ABILITY TO LIVE AS A
18 LAW-ABIDING CITIZEN.

19 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS
20 NECESSARY TO PROVIDE INDIVIDUALS CHARGED WITH CRIMINAL
21 OFFENSES, BEING SENTENCED AFTER A CRIMINAL CONVICTION, OR
22 RELEASED FROM SUPERVISION OR INCARCERATION AFTER A CRIMINAL
23 CONVICTION WITH NOTICE OF POTENTIAL COLLATERAL CONSEQUENCES.
24 THIS INFORMATION WILL ALLOW THESE INDIVIDUALS TO CONSIDER SUCH
25 CONSEQUENCES WHEN ENTERING PLEA AGREEMENTS, PREPARING FOR
26 REINTEGRATION AFTER SUPERVISION, OR DEVELOPING A PAROLE PLAN.

27 **16-24-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE

1 CONTEXT OTHERWISE REQUIRES:

2 (1) "COLLATERAL CONSEQUENCE" MEANS A COLLATERAL
3 SANCTION OR A DISQUALIFICATION.

4 (2) "COLLATERAL SANCTION" MEANS A PENALTY, DISABILITY, OR
5 DISADVANTAGE, HOWEVER DENOMINATED, IMPOSED ON AN INDIVIDUAL AS
6 A RESULT OF THE INDIVIDUAL'S CONVICTION OF AN OFFENSE WHICH
7 APPLIES BY OPERATION OF LAW WHETHER OR NOT THE PENALTY,
8 DISABILITY, OR DISADVANTAGE IS INCLUDED IN THE JUDGMENT OR
9 SENTENCE. THE TERM DOES NOT INCLUDE IMPRISONMENT, PROBATION,
10 PAROLE, SUPERVISED RELEASE, FORFEITURE, RESTITUTION, FINE,
11 ASSESSMENT, OR COSTS OF PROSECUTION.

12 (3) "CONVICTION" OR "CONVICTED" MEANS A VERDICT OF GUILTY
13 BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE THAT IS
14 ACCEPTED BY THE COURT OR AN ADJUDICATION FOR AN OFFENSE THAT
15 WOULD CONSTITUTE A CRIMINAL OFFENSE IF COMMITTED BY AN ADULT, OR
16 A CONVICTION OF A CRIME UNDER THE LAWS OF ANY OTHER STATE, THE
17 UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE
18 UNITED STATES, WHICH, IF COMMITTED WITHIN THIS STATE, WOULD BE A
19 FELONY OR MISDEMEANOR IN COLORADO. "CONVICTED" OR
20 "CONVICTION" ALSO INCLUDES HAVING RECEIVED A DEFERRED JUDGMENT
21 AND SENTENCE OR A DEFERRED ADJUDICATION; EXCEPT THAT A PERSON
22 SHALL NOT BE DEEMED TO HAVE BEEN CONVICTED IF THE PERSON HAS
23 SUCCESSFULLY COMPLETED A DEFERRED SENTENCE OR A DEFERRED
24 ADJUDICATION.

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26 (4) "DISQUALIFICATION" MEANS A PENALTY, DISABILITY, OR
27 DISADVANTAGE, HOWEVER DENOMINATED, THAT AN ADMINISTRATIVE

1 AGENCY, GOVERNMENTAL OFFICIAL, OR COURT IN A CIVIL PROCEEDING IS
2 AUTHORIZED, BUT NOT REQUIRED, TO IMPOSE ON AN INDIVIDUAL ON
3 GROUNDS RELATING TO THE INDIVIDUAL'S CONVICTION OF AN OFFENSE.

4 (5) "OFFENSE" MEANS A FELONY, MISDEMEANOR, OR PETTY
5 OFFENSE UNDER THE LAW OF THIS STATE, ANOTHER STATE, OR THE UNITED
6 STATES OR A MUNICIPAL ORDINANCE VIOLATION.

7 (6) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
8 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
9 ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR
10 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY
11 OTHER LEGAL OR COMMERCIAL ENTITY.

12 **16-24-104. Limitation on scope.** (1) THIS ARTICLE DOES NOT
13 PROVIDE A BASIS FOR:

- 14 (a) INVALIDATING A PLEA, CONVICTION, OR SENTENCE;
- 15 (b) A CAUSE OF ACTION FOR MONEY DAMAGES; OR
- 16 (c) A CLAIM FOR RELIEF FROM OR DEFENSE TO THE APPLICATION OF
17 A COLLATERAL CONSEQUENCE BASED ON A FAILURE TO COMPLY WITH
18 SECTION 16-24-105, 16-24-106, OR 16-24-107.

19 (2) THIS ARTICLE DOES NOT AFFECT:

- 20 (a) THE DUTY AN INDIVIDUAL'S ATTORNEY OWES TO THE
21 INDIVIDUAL;
- 22 (b) A CLAIM OR RIGHT OF A VICTIM OF AN OFFENSE; OR
- 23 (c) A RIGHT OR REMEDY UNDER LAW OTHER THAN THIS ARTICLE
24 AVAILABLE TO AN INDIVIDUAL CONVICTED OF AN OFFENSE.

25 **16-24-105. Identification, collection, and publication of laws**
26 **regarding collateral consequences.** (1) THE STATE PUBLIC DEFENDER:

- 27 (a) SHALL IDENTIFY ALL PROVISIONS IN THE COLORADO AND

1 UNITED STATES CONSTITUTIONS, COLORADO AND UNITED STATES
2 STATUTES, AND COLORADO ADMINISTRATIVE RULES WHICH IMPOSE A
3 COLLATERAL SANCTION OR AUTHORIZE THE IMPOSITION OF A
4 DISQUALIFICATION AND ANY PROVISION OF LAW THAT MAY AFFORD RELIEF
5 FROM A COLLATERAL CONSEQUENCE;

6 (b) NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THE
7 EFFECTIVE DATE OF THIS ARTICLE, SHALL PREPARE A COLLECTION OF
8 CITATIONS TO, AND THE TEXT OR SHORT DESCRIPTIONS OF, THE PROVISIONS
9 IDENTIFIED UNDER PARAGRAPH (a) OF THIS SUBSECTION (1);

10 (c) SHALL UPDATE THE COLLECTION OF CITATIONS WITHIN ONE
11 HUNDRED EIGHTY DAYS AFTER EACH REGULAR SESSION OF THE GENERAL
12 ASSEMBLY; AND

13 (d) MAY RELY ON THE STUDY OF THIS STATE'S COLLATERAL
14 SANCTIONS, DISQUALIFICATIONS, AND RELIEF PROVISIONS PREPARED BY
15 THE NATIONAL INSTITUTE OF JUSTICE DESCRIBED IN SECTION 510 OF THE
16 FEDERAL "COURT SECURITY IMPROVEMENT ACT OF 2007", PUB.L.
17 110-177 IN COMPLYING WITH PARAGRAPHS (a) AND (b) OF THIS
18 SUBSECTION (1).

19 (2) THE STATE PUBLIC DEFENDER SHALL INCLUDE THE FOLLOWING
20 STATEMENTS IN A PROMINENT MANNER AT THE BEGINNING OF THE
21 COLLECTION REQUIRED BY SUBSECTION (1) OF THIS SECTION:

22 (a) THIS COLLECTION HAS NOT BEEN ENACTED INTO LAW AND DOES
23 NOT HAVE THE FORCE OF LAW.

24 (b) AN ERROR OR OMISSION IN THIS COLLECTION IS NOT A REASON
25 FOR INVALIDATING A PLEA, CONVICTION, OR SENTENCE OR FOR NOT
26 IMPOSING A COLLATERAL SANCTION OR AUTHORIZING A DISQUALIFICATION
27 OR DOES NOT GIVE RISE TO A CLAIM OF INEFFECTIVE ASSISTANCE OF

1 COUNSEL OR CLAIM FOR A DISCIPLINARY PROCEEDING AGAINST THE STATE
2 PUBLIC DEFENDER OR AN ATTORNEY EMPLOYED BY THE STATE PUBLIC
3 DEFENDER.

4 (c) THE LAWS OF OTHER JURISDICTIONS AND POLITICAL
5 SUBDIVISIONS OF THE STATE WHICH IMPOSE ADDITIONAL COLLATERAL
6 SANCTIONS AND AUTHORIZE ADDITIONAL DISQUALIFICATIONS ARE NOT
7 LISTED IN THIS COLLECTION.

8 (d) THIS COLLECTION DOES NOT INCLUDE ANY LAW OR OTHER
9 PROVISION REGARDING THE IMPOSITION OF OR RELIEF FROM A COLLATERAL
10 SANCTION OR A DISQUALIFICATION ENACTED OR ADOPTED AFTER THE LAST
11 DATE THE COLLECTION WAS UPDATED.

12 (3) THE STATE PUBLIC DEFENDER SHALL PUBLISH THE COLLECTION
13 PREPARED AND UPDATED AS REQUIRED BY SUBSECTION (1) OF THIS
14 SECTION ON ITS WEB SITE WITHOUT CHARGE NOT LATER THAN THIRTY
15 DAYS AFTER IT IS CREATED OR UPDATED AS A SERVICE TO THE PUBLIC.
16 THE COLLECTION SHALL BE AVAILABLE TO THE PUBLIC ON THE STATE
17 JUDICIAL DEPARTMENT'S WEB SITE WITHOUT CHARGE NOT LATER THAN
18 THIRTY DAYS AFTER IT IS CREATED OR UPDATED.

19 **16-24-106. Notice of collateral consequences in pretrial**
20 **proceeding.** WHEN AN INDIVIDUAL RECEIVES FORMAL NOTICE THAT THE
21 INDIVIDUAL IS CHARGED WITH AN OFFENSE, THE COURT AT THE
22 INDIVIDUAL'S FIRST COURT APPEARANCE SHALL COMMUNICATE THE
23 FOLLOWING INFORMATION TO THE INDIVIDUAL IN WRITING AND IN THE
24 FOLLOWING FORM:

25 NOTICE OF ADDITIONAL LEGAL CONSEQUENCES
26 IF YOU PLEAD GUILTY OR ARE CONVICTED OF AN OFFENSE
27 YOU MAY SUFFER ADDITIONAL LEGAL CONSEQUENCES

1 BEYOND JAIL OR PRISON, PERIODS OF PAROLE, AND FINES.

2 THESE CONSEQUENCES MAY INCLUDE:

3 ! BEING UNABLE TO GET OR KEEP SOME
4 LICENSES, PERMITS, OR JOBS;

5 ! BEING UNABLE TO GET OR KEEP BENEFITS
6 SUCH AS PUBLIC HOUSING OR EDUCATION;

7 ! RECEIVING A HARSHER SENTENCE IF YOU ARE
8 CONVICTED OF ANOTHER OFFENSE IN THE
9 FUTURE;

10 ! HAVING THE GOVERNMENT TAKE YOUR
11 PROPERTY; AND

12 ! BEING UNABLE TO VOTE OR POSSESS A
13 FIREARM.

14 IF YOU ARE NOT A UNITED STATES CITIZEN, A GUILTY PLEA
15 OR CONVICTION MAY ALSO RESULT IN YOUR DEPORTATION,
16 REMOVAL, EXCLUSION FROM ADMISSION TO THE UNITED
17 STATES, OR DENIAL OF CITIZENSHIP.

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19 FURTHER INFORMATION ABOUT THE CONSEQUENCES OF
20 CONVICTION IS AVAILABLE ON THE INTERNET AT THE STATE
21 JUDICIAL DEPARTMENT'S WEB SITE.

22 **16-24-107. Notice of collateral consequences at sentencing and**

23 **upon release.** (1) AT AN INDIVIDUAL'S SENTENCING HEARING, THE
24 COURT SHALL ADVISE THE INDIVIDUAL IN WRITING:

25 (a) THAT COLLATERAL CONSEQUENCES MAY APPLY BECAUSE OF
26 THE CONVICTION;

27 (b) OF THE INTERNET ADDRESS OF THE COLLECTION OF LAWS

1 PUBLISHED UNDER SECTION 16-24-105 (3);

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3 (c) OF CONTACT INFORMATION FOR GOVERNMENT OR NONPROFIT
4 AGENCIES, GROUPS, OR ORGANIZATIONS, IF ANY, OFFERING ASSISTANCE TO
5 INDIVIDUALS FACING COLLATERAL CONSEQUENCES; AND

6 (d) OF WHEN AN INDIVIDUAL CONVICTED OF AN OFFENSE MAY
7 VOTE UNDER THIS STATE'S LAW.

8 (2) IF AN INDIVIDUAL IS SENTENCED TO IMPRISONMENT OR OTHER
9 INCARCERATION, THE OFFICER OR AGENCY RELEASING THE INDIVIDUAL
10 SHALL PROVIDE THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS
11 SECTION NOT MORE THAN THIRTY, AND, IF PRACTICABLE, AT LEAST TEN
12 DAYS BEFORE RELEASE.

13

14 **SECTION 2. No appropriation. The general assembly has**
15 **determined that this act can be implemented within existing**
16 **appropriations, and therefore no separate appropriation of state moneys**
17 **is necessary to carry out the purposes of this act.**

18 **SECTION 3. Act subject to petition - effective date.** This act
19 shall take effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part shall not take effect
25 unless approved by the people at the general election to be held in
26 November 2012 and shall take effect on the date of the official
27 declaration of the vote thereon by the governor.