

1 HOUSE BILL 531

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Antonio "Moe" Maestas

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10 AN ACT

11 RELATING TO CRIMINAL RECORDS; PROVIDING AUTHORITY TO EXPUNGE A  
12 CRIMINAL RECORD.

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

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
16 cited as the "Criminal Record Expungement Act".

17 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
18 Criminal Record Expungement Act:

19 A. "arrest records" means records of identification  
20 of a person under arrest or under investigation for a crime  
21 taken or gathered by an official; "arrest records" includes  
22 information gathered from the national crime information center  
23 or another criminal record database, photographs, fingerprints  
24 and booking sheets; except "arrest records" does not include:

25 (1) driving while intoxicated citations

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1 maintained by the taxation and revenue department;

2 (2) computer-aided dispatch information; or

3 (3) log books relating to breath alcohol  
4 testing equipment;

5 B. "expunge" means to remove from access by the  
6 general public a notation of an arrest, complaint, indictment,  
7 information, plea of guilty, conviction, acquittal, dismissal  
8 or discharge record, including a record posted on a publicly  
9 accessible court, corrections or law enforcement internet web  
10 site; and

11 C. "public records" means documentation relating to  
12 a person's arrest, indictment, proceeding, finding or plea of  
13 guilty, conviction, acquittal, dismissal or discharge,  
14 including information posted on a court or law enforcement web  
15 site; but "public records" does not include:

16 (1) arrest record information that:

17 (a) reveals confidential sources,  
18 methods, information or individuals accused but not charged  
19 with a crime and that is maintained by the state or any of its  
20 political subdivisions pertaining to any person charged with  
21 the commission of any crime; or

22 (b) is confidential and unlawful to  
23 disseminate or reveal, except as provided in the Arrest Record  
24 Information Act or other law;

25 (2) the file of a district attorney or the

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1 attorney general maintained as a confidential record for law  
2 enforcement purposes and not open for inspection by members of  
3 the public;

4 (3) a record maintained by the children, youth  
5 and families department, the human services department or the  
6 public education department when that record is confidential  
7 under state or federal law and is required to be maintained by  
8 state or federal law for audit or other purposes; or

9 (4) a record received pursuant to a background  
10 check as authorized by law.

11 SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON  
12 IDENTITY THEFT OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

13 A. A person who is a victim of identity theft or is  
14 wrongfully arrested, indicted or charged for any crime may  
15 petition the district court for an order to expunge arrest  
16 records and public records.

17 B. After a hearing on the petition and upon a  
18 showing that the person is a victim of identity theft or was  
19 wrongfully arrested, indicted or charged, the court shall issue  
20 an order within thirty days of the hearing requiring that all  
21 arrest records and public records be expunged.

22 C. The court shall cause a copy of the order to be  
23 delivered to all relevant law enforcement agencies and courts.  
24 The order shall prohibit all relevant law enforcement agencies  
25 and courts from releasing copies of such records to any person,

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1       except upon order of the court.

2               SECTION 4.   [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON  
3       RELEASE WITHOUT CONVICTION.--

4               A.   A person released without conviction for a  
5       violation of a municipal ordinance, misdemeanor or felony may  
6       petition the district court for an order to expunge arrest  
7       records and public records.  A person is eligible to petition  
8       for expungement one year after dismissal.

9               B.   After a hearing on the petition, the court shall  
10       issue an order within thirty days of the hearing requiring that  
11       all arrest records and public records be expunged if it finds  
12       that no other charge or proceeding is pending against the  
13       person and if the person was released without a conviction,  
14       including:

- 15                       (1)  an acquittal or finding of not guilty;
- 16                       (2)  a nolle prosequi, a no bill or a dismissal  
17       other than a dismissal pursuant to Section 31-20-9 NMSA 1978;
- 18                       (3)  successful completion of a pre-prosecution  
19       diversion program; or
- 20                       (4)  the proceedings were otherwise discharged.

21               C.   The court shall cause a copy of the order to be  
22       delivered to all relevant law enforcement agencies and courts.  
23       The order shall prohibit all relevant law enforcement agencies  
24       and courts from releasing copies of such records to any person,  
25       except upon order of the court.

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1           SECTION 5.   ~~[NEW MATERIAL]~~ EXPUNGEMENT OF RECORDS UPON

2 CONVICTION.--

3           A.   A person convicted after no more than one  
4 incident involving a misdemeanor or violation of a municipal  
5 ordinance and who has had no other convictions after completion  
6 of the sentence and the payment of any fines and fees owed to  
7 the state for the conviction may petition the district court  
8 within the time periods provided in this section for an order  
9 to expunge arrest records and public records.

10           B.   After a hearing on the petition, the court shall  
11 issue an order within thirty days of the hearing requiring that  
12 arrest records and public records be expunged if it finds that  
13 no other charge or proceeding is pending against the accused  
14 and that justice will be served by an order to expunge and:

15                   (1) no other charge or proceeding has occurred  
16 for a period of five years if the conviction was for a  
17 misdemeanor; or

18                   (2) no other charge or proceeding has occurred  
19 for a period of ten years if the conviction was for an offense  
20 involving domestic violence or abuse.

21           C.   The time for calculating eligibility for  
22 expungement begins the day a person's sentence, including  
23 probation, is completed.

24           D.   The provisions of Subsection A of this section  
25 do not apply to a crime committed against minors or children, a

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1 sex offense, an embezzlement offense or an offense involving  
2 driving while under the influence of intoxicating liquor or  
3 drugs.

4 E. The court shall cause a copy of the order to be  
5 delivered to all relevant law enforcement agencies and courts.  
6 The order shall prohibit all relevant law enforcement agencies  
7 and courts from releasing copies of such records to the general  
8 public, except upon order of the court.

9 SECTION 6. [NEW MATERIAL] NOTICES--RULEMAKING.--The  
10 administrative office of the courts and the department of  
11 public safety shall develop rules and procedures to implement  
12 the Criminal Record Expungement Act, including procedures for  
13 notifying the accused of the accused's rights under that act.

14 SECTION 7. [NEW MATERIAL] EFFECT OF AN ORDER TO  
15 EXPUNGE.--Upon entry of an order to expunge, the proceedings  
16 shall be treated as if they never occurred, and officials and  
17 the person who received the order to expunge may reply to an  
18 inquiry that no record exists with respect to the person. This  
19 section does not affect or otherwise infringe upon the  
20 expungement provisions of Section 29-3-8.1 NMSA 1978.

21 SECTION 8. APPLICABILITY.--Nothing in the Criminal Record  
22 Expungement Act shall be construed to prohibit a law  
23 enforcement agency from maintaining and using criminal history  
24 information for any lawful purpose.

25 SECTION 9. EFFECTIVE DATE.--The effective date of the  
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provisions of this act is January 1, 2016.