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HOUSE BILL 260

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Daymon Ely and Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL RECORDS; ENACTING THE CRIMINAL RECORD
EXPUNGEMENT ACT; PROVIDING AUTHORITY TO EXPUNGE A CRIMINAL
RECORD UNDER CERTAIN CIRCUMSTANCES; REQUIRING RULEMAKING.

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 "Criminal Record Expungement Act".

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

A. "arrest record":

(1) means a record that identifies a person
under arrest or under investigation for a crime that is created
or maintained by a law enforcement, jail, corrections facility
or court official and that may include information obtained
from the national crime information center or another criminal

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1 record database, photographs, fingerprints and booking sheets;
2 and

3 (2) does not include:

4 (a) a citation for driving under the
5 influence of intoxicating liquor or drugs maintained by the
6 taxation and revenue department;

7 (b) information from a computer-aided
8 dispatch service; or

9 (c) log books relating to breath alcohol
10 testing equipment;

11 B. "expunge" means to remove from access by the
12 general public, including access on a publicly accessible
13 court, corrections or law enforcement website, a record of,
14 notation of or any reference to an arrest, complaint or
15 criminal information, indictment, criminal proceeding, plea,
16 conviction, acquittal, dismissal or discharge; and

17 C. "public record" includes information posted on a
18 publicly accessible court, corrections or law enforcement
19 website and:

20 (1) means documentation that relates to:

21 (a) a person's arrest;
22 (b) a complaint or criminal information
23 filed against a person;

24 (c) a person's indictment;

25 (d) a criminal proceeding against a

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1 person;

2 (e) a person's plea, conviction or
3 acquittal; or

4 (f) the dismissal or discharge of a
5 criminal proceeding against a person; and

6 (2) does not include:

7 (a) an arrest record that: 1) is
8 maintained by the state or any of its political subdivisions
9 that relates to a person charged with the commission of any
10 crime and that reveals confidential sources, methods or
11 information or the identity of a person accused of but not
12 charged with a crime; or 2) is confidential and prohibited from
13 release, except as provided in the Arrest Record Information
14 Act or another applicable law;

15 (b) a district attorney's or the
16 attorney general's file maintained for law enforcement purposes
17 that is not open for inspection by members of the public;

18 (c) a record maintained by the children,
19 youth and families department, the human services department or
20 the public education department that is confidential pursuant
21 to state or federal law and that is required by state or
22 federal law to be maintained for audit or other purposes; or

23 (d) a record received pursuant to a
24 background check authorized by law.

25 SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON

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1 IDENTITY THEFT OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

2 A. A person who is a victim of identity theft or is
3 wrongfully arrested, indicted or charged for a crime may
4 petition the district court for an order to expunge the related
5 arrest records and public records.

6 B. After a hearing on the petition and upon a
7 showing that the person is a victim of identity theft or was
8 wrongfully arrested, indicted or charged, the court shall issue
9 an order within thirty days of the hearing that requires that
10 all related arrest records and public records be expunged.

11 C. The court shall provide a copy of the order to
12 all relevant law enforcement agencies and courts. The order
13 shall prohibit the law enforcement agencies and courts from
14 releasing copies of the related arrest records and public
15 records to any person, except upon order of the court.

16 SECTION 4. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON
17 DISMISSAL WITHOUT CONVICTION.--

18 A. One year after a criminal case against a person
19 that alleged violation of a municipal ordinance or commission
20 of a misdemeanor or felony offense is dismissed without a
21 conviction, the person may petition the district court for an
22 order to expunge the related arrest records and public records.

23 B. After a hearing on the petition, the court shall
24 issue an order within thirty days of the hearing that requires
25 that all related arrest records and public records be expunged

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1 if the court finds that:

2 (1) no other criminal proceeding against the
3 person is pending; and

4 (2) the case against the person was dismissed
5 without a conviction due to:

6 (a) an acquittal or finding of not
7 guilty;

8 (b) a nolle prosequi, a grand jury no-
9 bill or a dismissal other than a dismissal pursuant to Section
10 31-20-9 NMSA 1978;

11 (c) the person's successful completion
12 of a pre-prosecution diversion program; or

13 (d) the proceedings otherwise being
14 discharged.

15 C. The court shall provide a copy of the order to
16 all relevant law enforcement agencies and courts. The order
17 shall prohibit the law enforcement agencies and courts from
18 releasing copies of the related arrest records and public
19 records to any person, except upon an order of the court.

20 SECTION 5. [NEW MATERIAL] NOTICES--RULEMAKING.--The
21 administrative office of the courts and the department of
22 public safety shall develop rules and procedures to implement
23 the Criminal Record Expungement Act, including procedures to
24 notify a person accused of a violation or offense of the
25 person's rights pursuant to that act.

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SECTION 6. [NEW MATERIAL] EFFECT OF AN ORDER TO
EXPUNGE.--Upon entry of an order to expunge, the proceedings
shall be treated as if they never occurred, and officials and
the person who received the order to expunge may reply to an
inquiry for records that no record exists with respect to the
person. This section does not affect or otherwise infringe
upon the expungement provisions of Section 29-3-8.1 NMSA 1978.

SECTION 7. APPLICABILITY.--Nothing in the Criminal Record
Expungement Act shall be construed to prohibit a law
enforcement agency from maintaining and using criminal history
information for any lawful purpose.

SECTION 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2019.