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SENATE BILL 2

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021

INTRODUCED BY

Linda M. Lopez and Andrea Romero and Javier Martínez and
Katy Duhigg and Gerald Ortiz y Pino

AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING FOR EXPUNGEMENT OF
ARREST AND CONVICTION RECORDS FOR CERTAIN CANNABIS OFFENSES;
PROVIDING FOR RECALL OR DISMISSAL OF SENTENCES OF INCARCERATED
PERSONS; REVISING THE LIST OF CRIMINAL RECORDS THAT CANNOT BE
CONSIDERED IN AN APPLICATION FOR PUBLIC EMPLOYMENT, LICENSURE
OR OTHER AUTHORITY TO PRACTICE A TRADE, BUSINESS OR PROFESSION.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974,
Chapter 78, Section 3, as amended) is amended to read:

"28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

A. Subject to the provisions of Subsection B of
this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in
determining eligibility for employment with the state or any of
its political subdivisions or for a license, permit,

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1 certificate or other authority to engage in any regulated
2 trade, business or profession, the board or other department or
3 agency having jurisdiction may take into consideration a
4 conviction, but the conviction shall not operate as an
5 automatic bar to obtaining public employment or license or
6 other authority to practice the trade, business or profession.
7 A board, department or agency of the state or any of its
8 political subdivisions shall not make an inquiry regarding a
9 conviction on an initial application for employment and shall
10 only take into consideration a conviction after the applicant
11 has been selected as a finalist for the position.

12 B. The following criminal records shall not be
13 used, distributed or disseminated in connection with an
14 application for any public employment, license or other
15 authority:

16 (1) records of arrest not followed by a valid
17 conviction; ~~[and]~~

18 (2) ~~[misdemeanor]~~ convictions ~~[not involving~~
19 ~~moral turpitude]~~ that have been sealed, dismissed, expunged or
20 pardoned;

21 (3) juvenile adjudications; or

22 (4) convictions for a crime that is not recent
23 enough and sufficiently job-related to be predictive of
24 performance in the position sought, given the position's duties
25 and responsibilities."

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1 SECTION 2. Section 28-2-4 NMSA 1978 (being Laws 1974,
2 Chapter 78, Section 4, as amended by Laws 1997, Chapter 238,
3 Section 5 and also by Laws 1997, Chapter 251, Section 1) is
4 amended to read:

5 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC
6 EMPLOYMENT OR LICENSE.--

7 A. Any board or other agency having jurisdiction
8 over employment by the state or any of its political
9 subdivisions or the practice of any trade, business or
10 profession may refuse to grant or renew or may suspend or
11 revoke any public employment or license or other authority to
12 engage in the public employment, trade, business or profession
13 for [~~any one or any combination~~] one or both of the following
14 causes:

15 (1) where the applicant, employee or licensee
16 has been convicted of a felony [~~or a misdemeanor involving~~
17 ~~moral turpitude~~] and the criminal conviction directly relates
18 to the particular employment, trade, business or profession;
19 and

20 [~~(2) where the applicant, employee or licensee~~
21 ~~has been convicted of a felony or a misdemeanor involving moral~~
22 ~~turpitude and the criminal conviction does not directly relate~~
23 ~~to the particular employment, trade, business or profession, if~~
24 ~~the board or other agency determines after investigation that~~
25 ~~the person so convicted has not been sufficiently rehabilitated~~

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1 ~~to warrant the public trust; or~~

2 ~~(3)]~~ (2) where the applicant, employee or
3 licensee has been convicted of homicide, kidnapping,
4 trafficking in controlled substances, criminal sexual
5 penetration or related sexual offenses or child abuse and the
6 applicant, employee or licensee has applied for reinstatement,
7 renewal or issuance of a teaching certificate, a license to
8 operate a child-care facility or employment at a child-care
9 facility, regardless of rehabilitation.

10 B. The board or other agency shall explicitly state
11 in writing the reasons for a decision [~~which~~] that prohibits
12 the person from engaging in the employment, trade, business or
13 profession if the decision is based in whole or in part on
14 conviction of any crime described in Paragraphs (1) and [~~(3)~~]
15 (2) of Subsection A of this section. [~~Completion of probation~~
16 ~~or parole supervision or expiration of a period of three years~~
17 ~~after final discharge or release from any term of imprisonment~~
18 ~~without any subsequent conviction shall create a presumption of~~
19 ~~sufficient rehabilitation for purposes of Paragraph (2) of~~
20 ~~Subsection A of this section.]"~~

21 SECTION 3. Section 29-3A-1 NMSA 1978 (being Laws 2019,
22 Chapter 203, Section 1) is amended to read:

23 "29-3A-1. SHORT TITLE.--~~[This act]~~ Chapter 29, Article 3A
24 NMSA 1978 may be cited as the "Criminal Record Expungement
25 Act"."

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1 SECTION 4. A new section of the Criminal Record

2 Expungement Act is enacted to read:

3 "[NEW MATERIAL] EXPUNGEMENT OF ARREST AND CONVICTION
4 RECORDS--PROCEDURE.--

5 A. If a person was charged with an offense
6 involving cannabis that is no longer a crime on the effective
7 date of the Cannabis Regulation Act or that would have resulted
8 in a lesser offense if that act had been in effect at the time
9 of the offense, whether or not the person is convicted, under
10 the direction and review of the attorney general, all public
11 records held by a court or an agency of the state or a local
12 jurisdiction that relate to the person's arrest or conviction
13 shall be automatically expunged two years after the date of the
14 person's conviction or the date of the person's arrest if there
15 was no conviction; provided that if the arrest or conviction
16 included multiple charges, only the public records related to
17 the cannabis charge shall be expunged. If the person is or was
18 under eighteen years of age at the time of the arrest or
19 conviction, the public records shall be retained for two years
20 or until the person is eighteen years of age, whichever comes
21 first, and shall then be expunged; provided that if the arrest
22 or conviction included multiple charges, only the public
23 records related to the cannabis charge shall be expunged. The
24 public records shall be removed from all statewide criminal
25 databases.

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1 B. Under the direction and review of the attorney
2 general, public records held by a court, an agency of the state
3 or a local jurisdiction that relate to a person's arrest or
4 conviction for trafficking cannabis in violation of Section
5 30-31-20 NMSA 1978, distribution of cannabis or possession with
6 intent to distribute cannabis in violation of Section 30-31-22
7 NMSA 1978 or possession of cannabis in violation of Section
8 30-31-23 NMSA 1978 prior to the effective date of the Cannabis
9 Regulation Act shall be expunged after two years from the date
10 of the person's conviction or from the date of the person's
11 arrest if there was no conviction; provided that if the arrest
12 or conviction included multiple charges, only the public
13 records related to the cannabis charge shall be expunged. If
14 the person was under eighteen years of age at the time of the
15 arrest or conviction, the public records shall be retained
16 until the offender is eighteen years of age and shall then be
17 expunged; provided that if the arrest or conviction included
18 multiple charges, only the public records related to the
19 cannabis charge shall be expunged. The public records shall be
20 removed from all statewide criminal databases."

21 SECTION 5. A new section of the Criminal Record
22 Expungement Act is enacted to read:

23 "NEW MATERIAL RECALL OR DISMISSAL OF SENTENCES--
24 INCARCERATED PERSONS.--

25 A. Within thirty days following the effective date

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1 of this section, under the direction and review of the attorney
2 general, a correctional facility, a county jail or a juvenile
3 correctional facility in which a person is currently
4 incarcerated for an offense that is no longer a crime pursuant
5 to the provisions of the Cannabis Regulation Act, or that would
6 have resulted in a lesser offense if that act had been in
7 effect at the time of the offense, shall notify the court that
8 the convicted person's case may be:

9 (1) reopened to consider possible recall or
10 dismissal of the person's sentence; or

11 (2) expunged pursuant to the provisions of the
12 Criminal Record Expungement Act.

13 B. A court shall reopen a case pursuant to
14 Subsection A of this section and dismiss the person's sentence
15 if it is legally invalid.

16 C. A person who has completed the person's sentence
17 for a conviction, whether by trial or negotiated plea, who
18 would not have been guilty of an offense or who would have been
19 guilty of a lesser offense if the Cannabis Regulation Act had
20 been in effect at the time of the offense is entitled to have
21 the conviction dismissed and expunged because the prior
22 conviction is now legally invalid or redesignated as a penalty
23 assessment citation. The court shall dismiss and expunge the
24 public records of the conviction as legally invalid because of
25 the enactment of the Cannabis Regulation Act, unless the court

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1 makes a finding that the conviction is not legally invalid or
2 was not redesignated as a penalty assessment citation pursuant
3 to that act.

4 D. On or before January 1, 2022, the department of
5 public safety shall review the public records in the state
6 criminal history databases and shall identify all past
7 convictions that are potentially eligible for recall or
8 dismissal of sentence, dismissal and expungement or
9 redesignation pursuant to the Cannabis Regulation Act. The
10 department of public safety shall notify the corrections
11 department, prosecutors and the public defender department of
12 all cases that are eligible for recall or dismissal of
13 sentence, dismissal and expungement or redesignation.

14 E. The prosecutor of the case shall have until July
15 1, 2022 to review all cases and determine whether to challenge
16 the recall or dismissal of sentence, dismissal and expungement
17 or redesignation.

18 F. The prosecutor of the case may challenge the
19 resentencing of a person pursuant to this section when the
20 person does not meet the criteria established under the
21 Cannabis Regulation Act.

22 G. On or before July 1, 2022, the prosecutor of the
23 case shall inform the court and the public defender department
24 when the prosecutor of the case is challenging a particular
25 recall or dismissal of sentence, dismissal and expungement or

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1 redesignation. The prosecutor of the case shall also inform
2 the court when the prosecutor of the case is not challenging a
3 particular recall or dismissal of sentence, dismissal and
4 expungement or redesignation.

5 H. The public defender department, upon receiving
6 notice from the prosecutor of the case, shall make a reasonable
7 effort to notify the person whose recall or dismissal of
8 sentence, dismissal and expungement or redesignation is being
9 challenged.

10 I. If the prosecutor of the case does not challenge
11 the recall or dismissal of sentence, dismissal and expungement
12 or redesignation by July 1, 2022, the court shall notify the
13 department of public safety that the case has been dismissed.
14 Upon notice, the department of public safety shall expunge the
15 public record pertaining to the offense; provided that if the
16 arrest included multiple charges, only the cannabis charge
17 shall be expunged.

18 J. A person who is currently incarcerated or who
19 was incarcerated in the past for an offense that is no longer a
20 crime may at any time petition to modify the person's criminal
21 sentence or to have the person's conviction vacated.

22 K. Nothing in this section is intended to diminish
23 or abrogate any rights or remedies otherwise available to a
24 person who was convicted of or incarcerated for a cannabis
25 offense.

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1 L. The provisions of this section shall apply
2 equally to juvenile delinquency adjudications and convictions
3 of a juvenile if the juvenile would not have been guilty
4 of an offense or would have been guilty of a lesser offense as
5 provided in the Cannabis Regulation Act.

6 M. No fee or cost of any kind shall be imposed upon
7 a person whose sentence is reviewed pursuant to this section."

8 SECTION 6. Section 61-1-1 NMSA 1978 (being Laws 1957,
9 Chapter 247, Section 1, as amended) is amended to read:

10 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~
11 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the
12 "Uniform Licensing Act".

13 SECTION 7. A new section of the Uniform Licensing Act is
14 enacted to read:

15 "[NEW MATERIAL] CRIMINAL CONVICTIONS--EXCLUSION FROM
16 LICENSURE--DISCLOSURE REQUIREMENT.--

17 A. A board shall not exclude from licensure a
18 person who is otherwise qualified on the sole basis that the
19 person has been previously arrested for or convicted of a
20 crime, unless the person has a disqualifying criminal
21 conviction.

22 B. By December 31, 2021, each board shall
23 promulgate and post on the board's website rules relating to
24 licensing requirements to list the specific criminal
25 convictions that could disqualify an applicant from receiving a

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1 license on the basis of a previous felony conviction. Rules
2 relating to licensing requirements promulgated by a board shall
3 not use the terms "moral turpitude" or "good character". A
4 board shall only list disqualifying criminal convictions.

5 C. In an administrative hearing or agency appeal, a
6 board shall carry the burden of proof on the question of
7 whether the exclusion from occupational or professional
8 licensure is based upon a disqualifying criminal conviction.

9 D. No later than October 31 of each year, while
10 ensuring the confidentiality of individual applicants, a board
11 shall make available to the public an annual report for the
12 prior fiscal year containing the following information:

13 (1) the number of applicants for licensure
14 and, of that number, the number granted a license;

15 (2) the number of applicants for licensure or
16 license renewal with a potential disqualifying criminal
17 conviction who received notice of potential disqualification;

18 (3) the number of applicants for licensure or
19 license renewal with a potential disqualifying criminal
20 conviction who provided a written justification with evidence
21 of mitigation or rehabilitation; and

22 (4) the number of applicants for licensure or
23 license renewal with a potential disqualifying criminal
24 conviction who were granted a license, denied a license for any
25 reason or denied a license because of the conviction.

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E. As used in this section, "disqualifying criminal conviction" means a conviction for a crime that is recent enough and sufficiently job-related to be predictive of performance in the position sought, given the position's duties and responsibilities."