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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A
CRIMINAL RECORD.

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

- (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. "expungement" means the removal from access to
6 the general public of a notation of an arrest, complaint,
7 indictment, information, plea of guilty, conviction, acquittal,
8 dismissal or discharge record, including a record posted on a
9 publicly accessible court, corrections or law enforcement
10 internet website; 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
15 website; 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

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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.

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

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

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

25 SECTION 5. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON

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1 CONVICTION.--

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

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

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

17 (2) no other charge or proceeding has occurred
18 for a period of four years if the conviction was for
19 misdemeanor aggravated battery; or

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

23 C. The provisions of Subsection A of this section
24 do not apply to a crime committed against a child, a sex
25 offense or an offense involving driving while under the

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1 influence of intoxicating liquor or drugs.

2 D. The court shall cause a copy of the order to be
3 delivered to all relevant law enforcement agencies and courts.
4 The order shall prohibit all relevant law enforcement agencies
5 and courts from releasing copies of such records to any person,
6 except upon order of the court.

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

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

19 SECTION 8. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2020.