

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 1081

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Timothy Z. Jennings

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. SHORT TITLE.--This act may be cited as the  
"Criminal Record Expungement Act".

Section 2. DEFINITIONS.--As used in the Criminal Record  
Expungement Act:

A. "accused" means a person charged with a crime  
who is the subject of an expungement order;

B. "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

underscoring material = new  
[bracketed material] = delete

1 and booking sheets;

2 C. "expunge" means to remove a notation of an  
3 arrest placed on an accused's state record or federal bureau of  
4 investigation record and to destroy or otherwise remove all  
5 records of the proceeding;

6 D. "official" means a person employed by a  
7 governmental entity and acting within assigned duties;

8 E. "proceeding" means a hearing, trial or grand  
9 jury proceeding; and

10 F. "public records" means documentation relating to  
11 a person's arrest, indictment, proceeding, finding or plea of  
12 guilty, dismissal or discharge; except "public records" does  
13 not include:

14 (1) an investigative report, intelligence  
15 information of law enforcement agencies or the file of a  
16 district attorney or attorney general maintained as a  
17 confidential record for law enforcement purposes and not open  
18 for inspection by members of the public; or

19 (2) a record maintained by the children, youth  
20 and families department, the human services department or the  
21 public education department when that record is confidential  
22 under state or federal law and is required to be maintained by  
23 state or federal law for audit or other purposes.

24 Section 3. EXPUNGEMENT OF RECORDS.--A court of original  
25 jurisdiction, upon its own motion or upon a petition from an

.166954.1

1 accused, shall order expungement of public records within  
2 thirty days of a petition for expungement if it finds that no  
3 other charge or proceeding is pending against the accused and  
4 if:

5 A. the accused was a victim of identity theft;

6 B. the accused, in a proceeding for a violation of  
7 a municipal ordinance, misdemeanor or felony, was released  
8 without a conviction, including:

9 (1) an acquittal or finding of not guilty;

10 (2) a nolle prosequi, a no bill or a  
11 dismissal; or

12 (3) a referral to a pre-prosecution diversion  
13 program;

14 C. the proceedings were otherwise discharged; or

15 D. the accused was convicted of a misdemeanor or  
16 violation of municipal ordinance, but has had no other  
17 conviction after completion of the sentence for the original  
18 conviction:

19 (1) for a period of two years, unless the  
20 conviction was an offense committed against minors or children,  
21 a sex offense, an offense involving domestic violence or abuse  
22 or an offense involving driving while under the influence of  
23 intoxicating substances; or

24 (2) for a period of four years after a  
25 misdemeanor aggravated battery conviction.

1           Section 4. NOTICES--RULEMAKING.--

2           A. Expungement requires:

3                   (1) a court to expunge its public records;

4                   (2) a court to serve written notice to an  
5 accused who was the victim of identity theft or an accused who  
6 was charged but released without a conviction of the procedures  
7 for expungement and the right to petition the court for  
8 expungement;

9                   (3) a court to transmit copies of the order of  
10 expungement to an appropriate agency or official with a demand  
11 to expunge public records concerning the accused and a response  
12 form to be returned to the court within thirty days to verify  
13 that the public records have been expunged; and

14                   (4) a court to issue a certificate of  
15 expungement, to be returned to the court, verifying that public  
16 records have been expunged and a copy of that certificate shall  
17 be made available to the accused.

18           B. When an order of expungement is directed to the  
19 children, youth and families department, the human services  
20 department or the public education department, the department  
21 may respond by complying with the order or by:

22                   (1) notifying the court if the records are  
23 confidential records under state or federal law and are  
24 required to be maintained by state or federal law for audit or  
25 other purposes;

.166954.1

underscoring material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(2) deleting identifying information and subsequently releasing the records when permitted by state or federal law; or

(3) deleting information related to the expungement order when permitted by state or federal law.

Section 5. EFFECT OF AN EXPUNGEMENT ORDER.--Upon entry of an expungement order, the proceedings shall be treated as if they never occurred and officials and the accused may reply to an inquiry that no record exists with respect to the accused. This section does not affect or otherwise infringe upon the expungement provisions of Section 29-3-8.1 NMSA 1978.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2008.