

1 AN ACT  
2 RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE  
3 A CRIMINAL RECORD.  
4

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

6 Section 1. SHORT TITLE.--This act may be cited as the  
7 "Criminal Record Expungement Act".

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

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

12 B. "arrest records" means records of  
13 identification of a person under arrest or under  
14 investigation for a crime, taken or gathered by an official;  
15 "arrest records" includes information gathered from the  
16 national crime information center or another criminal record  
17 database, photographs, fingerprints and booking sheets;

18 C. "expunge" means to remove a notation of an  
19 arrest placed on an accused's state record or federal bureau  
20 of investigation record and to destroy or otherwise remove  
21 from public access the court records that contain any  
22 reference to or record of the proceeding;

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

25 E. "proceeding" means a hearing, trial or grand

1 jury proceeding; and

2 F. "public records" means documentation relating  
3 to a person's arrest, indictment, proceeding, finding or plea  
4 of guilty, dismissal or discharge; except "public records"  
5 does not include:

6 (1) an investigative report, intelligence  
7 information of law enforcement agencies or the file of a  
8 district attorney or attorney general maintained as a  
9 confidential record for law enforcement purposes and not open  
10 for inspection by members of the public; or

11 (2) a record maintained by the children,  
12 youth and families department, the human services department  
13 or the public education department when that record is  
14 confidential under state or federal law and is required to be  
15 maintained by state or federal law for audit or other  
16 purposes.

17 Section 3. EXPUNGEMENT OF RECORDS.--A court of original  
18 jurisdiction, upon its own motion or upon a petition from an  
19 accused, shall order expungement of public records within  
20 thirty days of a petition for expungement if it finds that no  
21 other charge or proceeding is pending against the accused and  
22 if:

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

24 B. the accused, in a proceeding for a violation of  
25 a municipal ordinance, misdemeanor or felony, was released

1 without a conviction, including:

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

3 (2) a nolle prosequi, a no bill or a  
4 dismissal other than a dismissal pursuant to Section 31-20-9  
5 NMSA 1978; or

6 (3) a referral to a pre-prosecution  
7 diversion program;

8 C. the proceedings were otherwise discharged; or

9 D. the accused was convicted of a misdemeanor or  
10 violation of municipal ordinance, but has had no other  
11 conviction after completion of the sentence and payment of  
12 any fines and fees owed to the state for the original  
13 conviction:

14 (1) for a period of two years, unless the  
15 conviction was an offense committed against minors or  
16 children, a sex offense, an offense involving domestic  
17 violence or abuse or an offense involving driving while under  
18 the influence of intoxicating substances; or

19 (2) for a period of four years after a  
20 misdemeanor aggravated battery conviction.

21 Section 4. NOTICES--RULEMAKING.--The administrative  
22 office of the courts and the department of public safety  
23 shall develop rules and procedures to implement the Criminal  
24 Record Expungement Act, including procedures for notifying  
25 the accused of the accused's rights under that act.

1           Section 5. EFFECT OF AN EXPUNGEMENT ORDER.--Upon entry  
2 of an expungement order, the proceedings shall be treated as  
3 if they never occurred and officials and the accused may  
4 reply to an inquiry that no record exists with respect to the  
5 accused. This section does not affect or otherwise infringe  
6 upon the expungement provisions of Section 29-3-8.1 NMSA  
7 1978.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25