

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

HOUSE BILL 866

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

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. "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

underscored material = new
[bracketed material] = delete

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. "expunge" means to remove a notation of an
6 arrest placed on an accused's state record or federal bureau of
7 investigation record and to destroy or otherwise remove from
8 public access the court records that contain any reference to
9 or record of the proceeding; and

10 C. "public records" means documentation relating to
11 a person's arrest, indictment, proceeding, finding or plea of
12 guilty, conviction, acquittal, dismissal or discharge,
13 including information posted on a court or law enforcement web
14 site; but "public records" does not include:

15 (1) arrest record information that:

16 (a) reveals confidential sources,
17 methods, information or individuals accused but not charged
18 with a crime and that is maintained by the state or any of its
19 political subdivisions pertaining to any person charged with
20 the commission of any crime; or

21 (b) is confidential and unlawful to
22 disseminate or reveal, except as provided in the Arrest Record
23 Information Act or other law;

24 (2) the file of a district attorney or
25 attorney general maintained as a confidential record for law

.175762.4

underscored material = new
[bracketed material] = delete

1 enforcement purposes and not open for inspection by members of
2 the public; or

3 (3) a record maintained by the children, youth
4 and families department, the human services department or the
5 public education department when that record is confidential
6 under state or federal law and is required to be maintained by
7 state or federal law for audit or other purposes.

8 Section 3. EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT OR
9 WRONGFUL CHARGE.--

10 A. A person who is a victim of identity theft or is
11 wrongfully arrested, indicted or charged for any crime may
12 petition the district court to expunge all arrest records and
13 public records.

14 B. After a hearing on the petition and upon a
15 showing by the person that the person is a victim of identity
16 theft or was wrongfully arrested, indicted or charged, the
17 court shall issue an order within thirty days with accompanying
18 justification requiring that all arrest records and public
19 records be expunged and shall cause a copy of the order to be
20 delivered to all relevant law enforcement agencies and courts.
21 The order shall prohibit all relevant law enforcement agencies
22 and courts from releasing copies of such records to any person,
23 except upon order of the court.

24 Section 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT
25 CONVICTION.--

.175762.4

underscored material = new
[bracketed material] = delete

1 A. A person who was released without conviction for
2 a violation of a municipal ordinance, misdemeanor or felony may
3 petition the district court for an order to expunge arrest
4 records and public records. The court shall order arrest
5 records and public records to be expunged within thirty days of
6 the petition if it finds that no other charge or proceeding is
7 pending against the accused and if the person 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 dismissal
11 other than a dismissal pursuant to Section 31-20-9 NMSA 1978;

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

14 (4) the proceedings were otherwise discharged.

15 B. The court's order shall require that all arrest
16 records and public records be expunged and shall cause a copy
17 of the order to be delivered to all relevant law enforcement
18 agencies and courts. The order shall prohibit all relevant law
19 enforcement agencies and courts from releasing copies of such
20 records to any person, except upon order of the court.

21 Section 5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

22 A. A person who was convicted of a misdemeanor,
23 violation of municipal ordinance or felony but who has had no
24 other conviction after completion of the sentence and the
25 payment of any fines and fees owed to the state for the

.175762.4

1 original conviction may petition the district court within the
2 time periods provided for in this section for an order to
3 expunge arrest and public records. Upon a finding that justice
4 will be served upon an order to expunge, the court shall order
5 arrest records and public records to be expunged within thirty
6 days of the petition if it finds that no other charge or
7 proceeding is pending and:

8 (1) for a petty misdemeanor conviction, one
9 year has passed;

10 (2) for a nonviolent misdemeanor conviction,
11 two years have passed;

12 (3) for a violent misdemeanor conviction,
13 three years have passed;

14 (4) for a nonviolent felony, five years have
15 passed;

16 (5) for a violent felony conviction not
17 resulting in death, not involving use of a deadly weapon or
18 requiring sex offender registration, ten years have passed; or

19 (6) for driving while under the influence of
20 intoxicating liquor or drugs or a domestic violence conviction,
21 ten years have passed.

22 B. The court's order shall require that all arrest
23 records and public records be expunged and shall cause a copy
24 of the order to be delivered to all relevant law enforcement
25 agencies and courts. The order shall prohibit all relevant law

underscoring material = new
[bracketed material] = delete

1 enforcement agencies and courts from releasing copies of such
2 records to any person, except upon order of the court.

3 Section 6. NOTICES--RULEMAKING.--The administrative
4 office of the courts and the department of public safety shall
5 develop rules and procedures to implement the Criminal Record
6 Expungement Act, including procedures for notifying the accused
7 of the accused's rights under that act.

8 Section 7. EFFECT OF AN EXPUNGEMENT ORDER.--

9 A. Upon entry of an expungement order, the
10 proceedings shall be treated as if they never occurred, and
11 officials and the person who received the expungement order may
12 reply to an inquiry that no record exists with respect to the
13 person. This section does not affect or otherwise infringe
14 upon the expungement provisions of Section 29-3-8.1 NMSA 1978.

15 B. For purposes of the Criminal Sentencing Act, an
16 expunged proceeding shall not be used to establish duties of a
17 district attorney or law enforcement officer with regard to an
18 habitual offender or the fact of a previous conviction.

19 Section 8. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2010.

21 - 6 -

22

23

24

25