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SENATE BILL 649

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

INTRODUCED BY

Michael S. Sanchez

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

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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. "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

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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.--

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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

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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. The court shall order  
4 arrest records and public records to be expunged within thirty  
5 days of the petition if it finds that no other charge or  
6 proceeding is pending and:

7 (1) no other charge or proceeding has occurred  
8 for a period of two years if the conviction was for a  
9 misdemeanor that did not include an offense committed against  
10 minors or children or a sex offense;

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

14 (3) no other charge or proceeding has occurred  
15 for a period of ten years if the conviction was for an offense  
16 involving domestic violence or abuse or an offense involving  
17 driving while under the influence of intoxicating liquor or  
18 drugs.

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

25 Section 6. NOTICES--RULEMAKING.--The administrative

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1 office of the courts and the department of public safety shall  
2 develop rules and procedures to implement the Criminal Record  
3 Expungement Act, including procedures for notifying the accused  
4 of the accused's rights under that act.

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

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

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

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