

FIFTIETH LEGISLATURE
FIRST SESSION

March 11, 2011

SENATE FLOOR AMENDMENT number ___2___ to SENATE BILL 365, as amended
Amendment sponsored by Senator Michael S. Sanchez

1. On page 1, line 12, before the period, insert "; PROVIDING FOR EXPUNGEMENT OF ARREST RECORDS AND PUBLIC RECORDS IN THE SAME CIRCUMSTANCES AS FOR DNA SAMPLES".

2. On page 2, between lines 24 and 25, insert the following sections:

"SECTION 2. Section 29-16-10 NMSA 1978 (being Laws 1997, Chapter 105, Section 10, as amended) is amended to read:

"29-16-10. EXPUNGEMENT OF SAMPLES AND DNA RECORDS FROM THE DNA IDENTIFICATION SYSTEM AND CODIS--EXPUNGEMENT OF RECORDS.--

A. A person may request expungement of the person's sample and DNA records from the DNA identification system on the following grounds:

(1) the conviction that led to the inclusion of the sample has been reversed; or

(2) the arrest that led to the inclusion of the sample has:

(a) resulted in a felony charge that has been resolved by a dismissal, nolle prosequi, successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(b) not resulted in a felony charge within one year of arrest.

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B. The administrative center shall expunge a person's sample and DNA records from the DNA identification system when the person provides the administrative center with ~~[the following materials:~~

~~(1)]~~ a written request for expungement of the sample and DNA records and:

~~[(2)]~~ (1) a certified copy of a court order that reverses the conviction that led to the inclusion of the sample; or

~~[(3)]~~ (2) for samples included pursuant to arrest:

(a) a certified copy of the dismissal, nolle prosequi, successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(b) a sworn affidavit that no felony charges arising out of the arrest have been filed within one year.

C. When a person's sample and DNA records are expunged from the DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS.

D. The administrative center shall not expunge a person's sample and DNA records from the DNA identification system if the person has a prior felony conviction or a pending felony charge for which collection of a sample is authorized pursuant to the provisions of the DNA Identification Act.

E. A person requesting expungement pursuant to this section may also be eligible to remove from public access the person's arrest records and public records as provided in Section 3 of this 2011 act."

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SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF ARREST RECORDS AND PUBLIC RECORDS--REMOVAL FROM PUBLIC ACCESS.--

A. A person who is arrested for, charged with or wrongfully convicted of a felony offense may petition the district court for an order to expunge arrest records and public records relating to the felony on the following grounds:

(1) the felony conviction has been reversed and the reversal has been finally determined on appeal;

(2) the felony charge has been resolved by a dismissal, nolle prosequi, successful completion of a pre-prosecution diversion program or conditional discharge, misdemeanor conviction or acquittal; or

(3) the arrest for the felony has not resulted in a felony charge within one year of the arrest.

B. After a hearing on the petition and a determination that the person qualifies for expungement pursuant to Subsection A of this section, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records relating to the felony be expunged.

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

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

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E. The administrative office of the courts and the department of public safety shall develop rules and procedures to implement this section, including procedures for notifying the accused of the accused's rights under this section.

F. Nothing in this section shall be construed to prohibit a law enforcement agency from maintaining and using criminal history information for any lawful purpose.

G. As used in this section:

(1) "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 and photographs, fingerprints and booking sheets but does not include:

(a) driving while intoxicated citations maintained by the taxation and revenue department;

(b) computer-aided dispatch information; or

(c) log books relating to breath alcohol testing equipment;

(2) "expunge" means to remove from access to the general public a notation of an arrest, complaint, indictment, information, proceeding, conviction, reversal, acquittal, dismissal or discharge, including information posted on a publicly accessible court, corrections or law enforcement web site; and

(3) "public records" means documentation relating to a person's arrest, complaint, indictment, information, proceeding, conviction, reversal, acquittal, dismissal or discharge, including information posted on a court, corrections or law enforcement web site; but "public records" does not include:

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(a) arrest record information that: 1) reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime; or 2) is confidential and unlawful to disseminate or reveal, except as provided in the Arrest Record Information Act or other law;

(b) the file of a district attorney or attorney general maintained as a confidential record for law enforcement purposes and not open for inspection by members of the public;

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

(d) a record received pursuant to a background check as authorized by law."

3. Renumber the succeeding section accordingly.

Michael S. Sanchez

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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Date _____