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HOUSE BILL 598

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL RECORDS; ENACTING THE CRIMINAL RECORD  
EXPUNGEMENT ACT; 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:

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

3 (2) computer-aided dispatch information; or

4 (3) log books relating to breath alcohol  
5 testing equipment;

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

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

16 (1) arrest record information that:

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

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

25 (2) the file of a district attorney or

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1 attorney general maintained as a confidential record for law  
2 enforcement purposes and not open for inspection by members of  
3 the public; or

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

9 SECTION 3. EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT OR  
10 WRONGFUL CHARGE.--

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

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

25 SECTION 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT

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1 CONVICTION.--

2 A. A person who was released without conviction for  
3 a violation of a municipal ordinance, misdemeanor or felony may  
4 petition the district court for an order to expunge arrest  
5 records and public records. The court shall order arrest  
6 records and public records to be expunged within thirty days of  
7 the petition if it finds that no other charge or proceeding is  
8 pending against the accused and if the person was released  
9 without a conviction, including:

- 10 (1) an acquittal or finding of not guilty;
- 11 (2) a nolle prosequi, a no bill or a dismissal  
12 other than a dismissal pursuant to Section 31-20-9 NMSA 1978;
- 13 (3) a referral to a pre-prosecution diversion  
14 program; or
- 15 (4) the proceedings were otherwise discharged.

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

22 SECTION 5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

23 A. A person who was convicted of a misdemeanor,  
24 violation of municipal ordinance or felony but who has had no  
25 other conviction after completion of the sentence and the

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

- 10 (1) for a nonviolent misdemeanor conviction,  
11 three years have passed;
- 12 (2) for a violent misdemeanor conviction, five  
13 years have passed;
- 14 (3) for a nonviolent felony, seven years have  
15 passed; or
- 16 (4) for all other felony convictions, ten  
17 years have passed.

18 B. Records shall not be expunged for convictions  
19 for:

- 20 (1) offenses involving the use of a deadly  
21 weapon;
- 22 (2) embezzlement;
- 23 (3) driving while under the influence of  
24 intoxicating liquor or drugs; or
- 25 (4) an offense that requires registration

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1 under the Sex Offender Registration and Notification Act.

2 C. The court's order shall require that all arrest  
3 records and public records be expunged and shall cause a copy  
4 of the order to be delivered to all relevant law enforcement  
5 agencies and courts. The order shall prohibit all relevant law  
6 enforcement agencies and courts from releasing copies of such  
7 records to any person, except upon order of the court.

8 SECTION 6. NOTICES--RULEMAKING.--The administrative  
9 office of the courts and the department of public safety shall  
10 develop rules and procedures to implement the Criminal Record  
11 Expungement Act, including procedures for notifying the accused  
12 of the accused's rights under that act.

13 SECTION 7. EFFECT OF AN EXPUNGEMENT ORDER.--

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

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

24 SECTION 8. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is January 1, 2014.

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