

1 SENATE BILL 493

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Richard C. Martinez

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9  
10 AN ACT

11 RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A  
12 CRIMINAL RECORD; REPEALING AND ENACTING SECTIONS OF THE NMSA  
13 1978.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
17 cited as the "Criminal Record Expungement Act".

18 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
19 Criminal Record Expungement Act:

20 A. "arrest records" means records of identification  
21 of a person under arrest or under investigation for a crime  
22 taken or gathered by an official; "arrest records" includes  
23 information gathered from the national crime information center  
24 or another criminal record database, photographs, fingerprints  
25 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. "expungement" means the removal from access to  
7 the general public of a notation of an arrest, complaint,  
8 indictment, information, plea of guilty, conviction, acquittal,  
9 dismissal or discharge record, including a record posted on a  
10 publicly accessible court, corrections or law enforcement  
11 internet website; and

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

17 (1) arrest record information that:

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

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

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

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

10 SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON  
11 IDENTITY THEFT OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

12 A. A person who is wrongfully arrested, indicted or  
13 charged for any crime or who is wrongfully identified in arrest  
14 records or public records as a result of identity theft may  
15 petition the district court for an order to expunge arrest  
16 records and public records.

17 B. After a hearing on the petition and upon a  
18 showing that the person is a victim of identity theft or was  
19 wrongfully arrested, indicted or charged, the court shall issue  
20 an order within thirty days of the hearing requiring that all  
21 arrest records and public records be expunged.

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

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1 except upon order of the court.

2 SECTION 4. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON  
3 RELEASE WITHOUT CONVICTION.--

4 A. One year from the date of the final disposition  
5 in the case, a person released without conviction for a  
6 violation of a municipal ordinance, misdemeanor or felony may  
7 petition the district court in the district in which the  
8 charges against the person originated for an order to expunge  
9 arrest records and public records related to that case.

10 B. A petitioner shall provide notice of the filed  
11 petition to the district attorney for that district who shall  
12 be given an opportunity to provide to the district court any  
13 objections to the petition.

14 C. After a hearing on the petition, the court shall  
15 issue an order within thirty days of the hearing requiring that  
16 all arrest records and public records related to the case be  
17 expunged if it finds that no other charge or proceeding is  
18 pending against the petitioner and if the petitioner was  
19 released without a conviction, including:

- 20 (1) an acquittal or finding of not guilty;
- 21 (2) a nolle prosequi, a no bill or other  
22 dismissal;
- 23 (3) a referral to a preprosecution diversion  
24 program;
- 25 (4) an order of conditional discharge pursuant

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1 to Section 31-20-13 NMSA 1978; or

2 (5) the proceedings were otherwise discharged.

3 D. The court shall cause a copy of the order to be  
4 delivered to all relevant law enforcement agencies and courts.  
5 The order shall prohibit all relevant law enforcement agencies  
6 and courts from releasing copies of the records to any person,  
7 except upon order of the court.

8 SECTION 5. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON  
9 CONVICTION.--

10 A. A person convicted of a violation of a municipal  
11 ordinance, misdemeanor or felony, following the completion of  
12 the person's sentence and the payment of any fines or fees owed  
13 to the state for the conviction, may petition the district  
14 court in which the person was convicted for an order to expunge  
15 arrest records and public records related to that conviction.

16 B. A petitioner shall provide notice of the filed  
17 petition to the district attorney for that district, who shall  
18 be given an opportunity to provide to the district court any  
19 objections to the petition.

20 C. After a hearing on a petition, the court shall  
21 issue an order within thirty days of the hearing requiring that  
22 all arrest records and public records related to the conviction  
23 be expunged if the court finds that:

24 (1) no other charge or proceeding is pending  
25 against the petitioner;

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1 (2) justice will be served by an order to  
2 expunge; and

3 (3) no other criminal conviction of the  
4 petitioner has occurred for a period of:

5 (a) two years if the petition relates to  
6 a conviction for a violation of a municipal ordinance or a  
7 misdemeanor not otherwise provided in this paragraph;

8 (b) four years if the petition relates  
9 to a misdemeanor conviction for aggravated battery as provided  
10 in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction  
11 for a fourth degree felony not otherwise provided in this  
12 paragraph;

13 (c) six years if the petition relates to  
14 a conviction for a third degree felony not otherwise provided  
15 in this paragraph;

16 (d) eight years if the petition relates  
17 to a conviction for a second degree felony not otherwise  
18 provided in this paragraph; or

19 (e) ten years if the petition relates to  
20 a conviction for a first degree felony or for any offense  
21 provided in the Crimes Against Household Members Act.

22 D. The court shall cause a copy of the order to be  
23 delivered to all relevant law enforcement agencies and courts.  
24 The order shall prohibit all relevant law enforcement agencies  
25 and courts from releasing copies of such records to any person,

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1       except upon order of the court.

2               E. To determine whether justice will be served by  
3       an order to expunge, the court shall consider:

4                       (1) the nature and gravity of the offense or  
5       conduct that resulted in the petitioner's conviction;

6                       (2) the petitioner's age, criminal history and  
7       employment history;

8                       (3) the length of time that has passed since  
9       the offense was committed and the related sentence was  
10      completed;

11                      (4) the specific adverse consequences the  
12      petitioner may be subject to if the petition is denied; and

13                      (5) any reasons for retention of the records  
14      submitted by the district attorney, the department of public  
15      safety or the law enforcement agency that arrested the  
16      petitioner.

17               F. For the purposes of determining the time lapsed  
18      since a criminal conviction as required in Subsection C of this  
19      section, time shall be measured from the last date on which a  
20      person completed a sentence for a conviction in any  
21      jurisdiction.

22               G. The provisions of Subsection A of this section  
23      do not apply to an offense committed against a child, an  
24      offense that caused great bodily harm or death to another  
25      person, a sex offense as defined in Section 29-11A-3 NMSA 1978

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1 or an offense involving driving while under the influence of  
2 intoxicating liquor or drugs.

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

8 SECTION 7. [NEW MATERIAL] EFFECT OF AN ORDER TO  
9 EXPUNGE.--Upon entry an of order to expunge, the proceedings  
10 shall be treated as if they never occurred, and officials and  
11 the person who received the order to expunge shall reply to an  
12 inquiry that no record exists with respect to the person.

13 SECTION 8. [NEW MATERIAL] EXPUNGEMENT OF EXPUNGE  
14 PROCEEDINGS.--Upon a petitioner's request, the court shall also  
15 order expungement of the expunge proceedings.

16 SECTION 9. REPEAL.--Section 29-3-8.1 NMSA 1978 (being  
17 Laws 2002, Chapter 46, Section 2) is repealed.

18 SECTION 10. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2020.