

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

AN ACT

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

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  
maintained by the taxation and revenue department;
- (2) computer-aided dispatch information; or
- (3) log books relating to breath alcohol  
testing equipment;

B. "expungement" means the removal from access to  
the general public of a notation of an arrest, complaint,  
indictment, information, plea of guilty, conviction,

1 acquittal, dismissal or discharge record, including a record  
2 posted on a publicly accessible court, corrections or law  
3 enforcement internet website; and

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

9 (1) arrest record information that:

10 (a) reveals confidential sources,  
11 methods, information or individuals accused but not charged  
12 with a crime and that is maintained by the state or any of  
13 its political subdivisions pertaining to any person charged  
14 with the commission of any crime; or

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

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

22 (3) a record maintained by the children,  
23 youth and families department, the human services department  
24 or the public education department when that record is  
25 confidential under state or federal law and is required to be

1 maintained by state or federal law for audit or other  
2 purposes; or

3 (4) a record received pursuant to a  
4 background check as authorized by law.

5 SECTION 3. EXPUNGEMENT OF RECORDS UPON IDENTITY  
6 THEFT.--

7 A. A person who is wrongfully identified in arrest  
8 records or public records as a result of identity theft may  
9 petition the district court for an order to expunge arrest  
10 records and public records.

11 B. After a hearing on the petition and upon a  
12 showing that the person is a victim of identity theft, the  
13 court shall issue an order within thirty days of the hearing  
14 requiring that all arrest records and public records be  
15 expunged.

16 C. The court shall cause a copy of the order to be  
17 delivered to all relevant law enforcement agencies and  
18 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 D. After notice to and a hearing for all  
22 interested parties and in compliance with all applicable law,  
23 the court shall insert in the records the correct name and  
24 other identifying information of the offender, if known or  
25 ascertainable, in lieu of the name of the person wrongly

1 identified.

2 SECTION 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT  
3 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 following parties, which parties shall be  
12 given an opportunity to provide to the district court any  
13 objections to the petition:

- 14 (1) the district attorney for that district;  
15 (2) the department of public safety; and  
16 (3) the law enforcement agency that arrested  
17 the petitioner.

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

- 24 (1) an acquittal or finding of not guilty;  
25 (2) a nolle prosequi, a no bill or other

1 dismissal;

2 (3) a referral to a preprosecution diversion  
3 program;

4 (4) an order of conditional discharge  
5 pursuant to Section 31-20-13 NMSA 1978; or

6 (5) the proceedings were otherwise  
7 discharged.

8 D. The court shall cause a copy of the order to be  
9 delivered to all relevant law enforcement agencies and  
10 courts. The order shall prohibit all relevant law  
11 enforcement agencies and courts from releasing copies of the  
12 records to any person, except upon order of the court.

13 **SECTION 5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--**

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

21 B. A petitioner shall provide notice of the filed  
22 petition to the following parties, which parties shall be  
23 given an opportunity to provide to the district court any  
24 objections to the petition:

25 (1) the district attorney for that district; HB 370/a  
Page 5

1 (2) the department of public safety; and  
2 (3) the law enforcement agency that arrested  
3 the petitioner.

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

8 (1) no other charge or proceeding is pending  
9 against the petitioner;

10 (2) justice will be served by an order to  
11 expunge;

12 (3) the petitioner has fulfilled any victim  
13 restitution ordered by the court in connection with the  
14 petitioner's conviction; and

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

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

20 (b) four years if the petition relates  
21 to a misdemeanor conviction for aggravated battery as  
22 provided in Subsection B of Section 30-3-5 NMSA 1978 or to a  
23 conviction for a fourth degree felony not otherwise provided  
24 in this paragraph;

25 (c) six years if the petition relates

1 to a conviction for a third degree felony not otherwise  
2 provided in this paragraph;

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

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

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

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

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

18 (2) the petitioner's age, criminal history  
19 and employment history;

20 (3) the length of time that has passed since  
21 the offense was committed and the related sentence was  
22 completed;

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

25 (5) any reasons to deny expungement of the

1 records submitted by the district attorney.

2 F. For the purposes of determining the time lapsed  
3 since a criminal conviction as required in Subsection C of  
4 this section, time shall be measured from the last date on  
5 which a person completed a sentence for a conviction in any  
6 jurisdiction.

7 G. The provisions of Subsection A of this section  
8 do not apply to an offense committed against a child, an  
9 offense that caused great bodily harm or death to another  
10 person, a sex offense as defined in Section 29-11A-3 NMSA  
11 1978, embezzlement pursuant to Section 30-16-8 NMSA 1978 or  
12 an offense involving driving while under the influence of  
13 intoxicating liquor or drugs.

14 **SECTION 6. NOTICES--RULEMAKING.--**The administrative  
15 office of the courts and the department of public safety  
16 shall develop rules and procedures to implement the Criminal  
17 Record Expungement Act, including procedures for notifying  
18 the accused of the accused's rights under that act.

19 **SECTION 7. EFFECT OF AN ORDER TO EXPUNGE.--**Upon entry  
20 an of order to expunge, the proceedings shall be treated as  
21 if they never occurred, and officials and the person who  
22 received the order to expunge may reply to an inquiry that no  
23 record exists with respect to the person; provided that  
24 arrest or conviction records shall be disclosed by the person  
25 and officials in connection with any application for or query



1 regarding qualification for employment or association with  
2 any financial institution regulated by the financial industry  
3 regulatory authority or the securities and exchange  
4 commission.

5 SECTION 8. REPEAL.--Sections 29-3-8.1 and 31-26-16  
6 NMSA 1978 (being Laws 2002, Chapter 46, Section 2 and  
7 Laws 2009, Chapter 95, Section 5) are repealed.

8 SECTION 9. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2020. \_\_\_\_\_

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25