

1 AN ACT
2 RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE
3 A CRIMINAL RECORD.
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 Section 1. SHORT TITLE.--This act may be cited as the
7 "Criminal Record Expungement Act".

8 Section 2. DEFINITIONS.--As used in the Criminal Record
9 Expungement Act:

10 A. "arrest records" means records of
11 identification of a person under arrest or under
12 investigation for a crime taken or gathered by an official;
13 "arrest records" includes information gathered from the
14 national crime information center or another criminal record
15 database, photographs, fingerprints and booking sheets;
16 except "arrest records" does not include:

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

19 (2) computer-aided dispatch information; or

20 (3) log books relating to breath alcohol
21 testing equipment;

22 B. "expunge" means to remove from access to the
23 general public a notation of an arrest, complaint,
24 indictment, information, plea of guilty, conviction,
25 acquittal, dismissal or discharge record, including a record

1 posted on a publicly accessible court, corrections or law
2 enforcement internet web site; and

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

8 (1) arrest record information that:

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

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

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

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

1 purposes; or

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

4 Section 3. EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT
5 OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

6 A. A person who is a victim of identity theft or
7 is wrongfully arrested, indicted or charged for any crime may
8 petition the district court for an order to expunge arrest
9 records and public records.

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

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

20 Section 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT
21 CONVICTION.--

22 A. A person released without conviction for a
23 violation of a municipal ordinance, misdemeanor or felony may
24 petition the district court for an order to expunge arrest
25 records and public records. A person is eligible to petition

1 for expungement one year after dismissal.

2 B. After a hearing on the petition, the court
3 shall issue an order within thirty days of the hearing
4 requiring that all arrest records and public records be
5 expunged if it finds that no other charge or proceeding is
6 pending against the person and if the person was released
7 without a conviction, including:

8 (1) an acquittal or finding of not guilty;

9 (2) a nolle prosequi, a no bill or a
10 dismissal other than a dismissal pursuant to Section 31-20-9
11 NMSA 1978;

12 (3) successful completion of a
13 pre-prosecution diversion program; or

14 (4) the proceedings were otherwise
15 discharged.

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 Section 5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

22 A. A person convicted after no more than one
23 incident involving a misdemeanor or violation of a municipal
24 ordinance and who has had no other convictions after
25 completion of the sentence for the conviction may petition

1 the district court within the time periods provided in this
2 section for an order to expunge arrest records and public
3 records.

4 B. After a hearing on the petition, the court
5 shall issue an order within thirty days of the hearing
6 requiring that arrest records and public records be expunged
7 if it finds that no other charge or proceeding is pending
8 against the accused and that justice will be served by an
9 order to expunge and:

10 (1) no other charge or proceeding has
11 occurred for a period of five years if the conviction was for
12 a misdemeanor; or

13 (2) no other charge or proceeding has
14 occurred for a period of ten years if the conviction was for
15 an offense involving domestic violence or abuse.

16 C. The time for calculating eligibility for
17 expungement begins the day a person's sentence, including
18 probation, is completed.

19 D. The provisions of Subsection A of this section
20 do not apply to a crime committed against minors or children,
21 a sex offense or an offense involving driving while under the
22 influence of intoxicating liquor or drugs.

23 E. The court shall cause a copy of the order to be
24 delivered to all relevant law enforcement agencies and
25 courts. The order shall prohibit all relevant law

1 enforcement agencies and courts from releasing copies of such
2 records to the general public, except upon order of the
3 court.

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

9 Section 7. EFFECT OF AN ORDER TO EXPUNGE.--Upon entry
10 of order to expunge, the proceedings shall be treated as if
11 they never occurred, and officials and the person who
12 received the order to expunge may reply to an inquiry that no
13 record exists with respect to the person. This section does
14 not affect or otherwise infringe upon the expungement
15 provisions of Section 29-3-8.1 NMSA 1978.

16 Section 8. APPLICABILITY.--Nothing in the Criminal
17 Record Expungement Act shall be construed to prohibit a law
18 enforcement agency from maintaining and using criminal
19 history information for any lawful purpose.

20 Section 9. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is January 1, 2010. _____