

HOUSE BILL 564

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING FOR EXPUNGEMENT OF THE RECORDS OF CONVICTION FOR A FOURTH DEGREE FELONY CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

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

SECTION 1. EXPUNGEMENT OF RECORDS RELATED TO A FOURTH DEGREE FELONY CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

A. The record of a person who is a New Mexico resident and who has been convicted of a fourth degree felony based on an offense of driving while under the influence of intoxicating liquor or drugs may be expunged if:

(1) the person petitions the district court for an order to expunge the records of conviction; and

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1 (2) the court finds after a hearing on the
2 petition that:

3 (a) the person has not been convicted
4 for driving while under the influence of intoxicating liquor or
5 drugs and has no other misdemeanor or felony conviction for
6 seven years between the last day of serving a sentence for the
7 fourth degree felony, including probation or parole, and the
8 date the person petitions for expungement;

9 (b) no other charge or proceeding has
10 occurred during the seven-year period described in Subparagraph
11 (a) of this paragraph and no charge or proceeding is pending
12 against the person at the time of the hearing; and

13 (c) justice will be served by an order
14 to expunge.

15 B. If the court makes the findings described in
16 Subsection A of this section, it shall enter an order within
17 thirty days of the hearing requiring that the records of
18 conviction be expunged. A copy of the order shall be delivered
19 to all relevant law enforcement agencies and courts.

20 C. As used in this section, "expunge" means that,
21 for a fourth degree felony conviction for driving while under
22 the influence of intoxicating liquor or drugs:

23 (1) the law enforcement agency involved shall
24 delete the record of the convicted person's arrest from its
25 database, including the agency's tracking number assigned to

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1 the case, fingerprints, photographs and other personal data
2 included for law enforcement purposes related to the
3 conviction;

4 (2) the law enforcement agency involved shall
5 request that the federal bureau of investigation expunge its
6 records created on the basis of the state law enforcement
7 records and photographs regarding the incidents that led to
8 conviction;

9 (3) the administrative office of the courts
10 shall permanently delete the court records, including the trial
11 and appellate court records, if any;

12 (4) the corrections department shall purge the
13 record or records of the convicted person's time served; and

14 (5) the law enforcement agency involved, the
15 administrative office of the courts and the administrative
16 office of the district attorneys shall seal any other records
17 or files related to the conviction that are not expressly
18 covered by this section.

19 D. A person whose record is expunged pursuant to
20 this section shall be able to answer truthfully that the person
21 has not previously been convicted of a fourth degree felony of
22 driving while under the influence of intoxicating liquor or
23 drugs. Upon entry of an order to expunge, the conviction shall
24 be treated as if it never occurred, and officials shall reply
25 to an inquiry that no record of the conviction exists with

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1 respect to the person whose record is expunged. This section
2 does not affect or otherwise infringe upon the expungement
3 provisions of Section 29-3-8.1 NMSA 1978.

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

7 SECTION 2. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2011.