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AN ACT

RELATING TO CRIMINAL RECORDS; ENACTING THE CRIMINAL RECORD
EXPUNGEMENT ACT; PROVIDING FOR EXPUNGEMENT OF ARREST RECORDS
AND PUBLIC RECORDS IN CERTAIN CIRCUMSTANCES.

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 and photographs, fingerprints and booking sheets but
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. "expunge" means to remove from access to the
general public a notation of an arrest, complaint,
indictment, information, proceeding, plea, conviction,

1 acquittal, reversal, dismissal or discharge, including
2 information posted on a publicly accessible court,
3 corrections or law enforcement web site; and

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

10 (1) arrest record information that:

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

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

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

23 (3) a record maintained by the children,
24 youth and families department, the human services department
25 or the public education department when that record is

1 confidential under state or federal law and is required to be
2 maintained by state or federal law for audit or other
3 purposes; or

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

6 SECTION 3. EXPUNGEMENT OF RECORDS DUE TO IDENTITY THEFT
7 OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

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

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

17 C. The court shall cause a copy of the order to be
18 delivered to all relevant law enforcement agencies and
19 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 4. EXPUNGEMENT OF RECORDS AFTER RELEASE WITHOUT
23 CONVICTION.--

24 A. A person released without conviction for a
25 violation of a municipal ordinance, misdemeanor or felony may

1 petition the district court for an order to expunge arrest
2 records and public records one year after dismissal or
3 release.

4 B. After a hearing on the petition, the court
5 shall issue an order within thirty days of the hearing
6 requiring that all arrest records and public records be
7 expunged if it finds that no other charge or proceeding is
8 pending against the person 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
12 dismissal other than a dismissal pursuant to Section 31-20-9
13 NMSA 1978;

14 (3) successful completion of a
15 pre-prosecution diversion program; or

16 (4) the proceedings were otherwise
17 discharged.

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

23 SECTION 5. EXPUNGEMENT OF RECORDS AFTER CONVICTION.--

24 A. A person who has been convicted of one or more
25 misdemeanors or violations of a municipal ordinance arising

1 out of one incident and who has had no other convictions
2 after completion of the sentence may petition the district
3 court within the time periods provided in this section for an
4 order to expunge arrest records and public records.

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

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

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

17 C. The court shall cause a copy of the order to be
18 delivered to all relevant law enforcement agencies and
19 courts. The order shall prohibit all relevant law
20 enforcement agencies and courts from releasing copies of such
21 records to the general public, except upon order of the
22 court.

23 D. The time for calculating eligibility for
24 expungement begins the day a person's sentence, including
25 probation, is completed.

1 E. The provisions of this section do not apply to
2 a crime committed against minors or children, a sex offense
3 or an offense involving driving while under the influence of
4 intoxicating liquor or drugs.

5 SECTION 6. EFFECT OF AN ORDER TO EXPUNGE.--Upon entry
6 of an order to expunge, the proceedings shall be treated as
7 if they never occurred, and officials and the person who
8 received the order to expunge may reply to an inquiry that no
9 record exists with respect to the person. This section does
10 not affect or otherwise infringe upon the expungement
11 provisions of Section 29-3-8.1 NMSA 1978.

12 SECTION 7. NOTICES--RULEMAKING.--The administrative
13 office of the courts and the department of public safety
14 shall develop rules and procedures to implement the Criminal
15 Record Expungement Act, including procedures for notifying
16 the accused of the accused's rights under that act.

17 SECTION 8. USE BY LAW ENFORCEMENT.--Nothing in the
18 Criminal Record Expungement Act shall be construed to
19 prohibit a law enforcement agency from maintaining and using
20 criminal history information for any lawful purpose.

21 SECTION 9. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2013. _____