

1 AN ACT
2 RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE
3 A CRIMINAL RECORD; REPEALING AND ENACTING SECTIONS OF THE
4 NMSA 1978.

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

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

9 SECTION 2. DEFINITIONS.--As used in the Criminal Record
10 Expungement Act:

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

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

20 (2) computer-aided dispatch information; or

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

23 B. "expungement" means the removal from access to
24 the general public of a notation of an arrest, complaint,
25 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._____

HB 370/a
Page 9