

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

HOUSE BILL 505

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING AUTHORITY TO EXPUNGE A
CRIMINAL RECORD.

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

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--This act may be
cited as the "Criminal Record Expungement Act".

SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Criminal Record Expungement Act:

A. "arrest records":

(1) means records that identify a person under
arrest or under investigation for a crime that are created or
maintained by an official and that may include information
gathered from the national crime information center or another
criminal record database, photographs, fingerprints and booking
sheets; and

.206730.2

underscoring material = new
~~[bracketed material] = delete~~

1 (2) does not include:

2 (a) citations for driving under the
3 influence of intoxicating liquor or drugs maintained by the
4 taxation and revenue department;

5 (b) computer-aided dispatch information;
6 or

7 (c) log books relating to breath alcohol
8 testing equipment;

9 B. "expunge" means to remove from access by the
10 general public a record, notation of or any reference to an
11 arrest, complaint, indictment, information, plea of guilty,
12 conviction, acquittal, dismissal or discharge record, including
13 access on a publicly accessible court, corrections or law
14 enforcement website; and

15 C. "public records" means:

16 (1) documentation that relates to a person's
17 arrest or indictment; or to a proceeding or a finding or plea
18 of guilty, a conviction, an acquittal, a dismissal or a
19 discharge related to a proceeding that involves the person; and
20 includes information posted on a court, corrections or law
21 enforcement website; and

22 (2) does not include:

23 (a) arrest record information that: 1)
24 is maintained by the state or any of its political subdivisions
25 that pertains to a person charged with the commission of any

underscoring material = new
[bracketed material] = delete

1 crime and that reveals confidential sources, methods,
2 information or individuals accused of but not charged with a
3 crime; or 2) is confidential and prohibited from release,
4 except as provided in the Arrest Record Information Act or
5 another applicable law;

6 (b) a district attorney's or the
7 attorney general's file maintained as a confidential record for
8 law enforcement purposes and that is not open for inspection by
9 members of the public;

10 (c) a record maintained by the children,
11 youth and families department, the human services department or
12 the public education department when that record is
13 confidential pursuant to state or federal law and is required
14 by state or federal law to be maintained for audit or other
15 purposes; or

16 (d) a record received pursuant to a
17 background check authorized by law.

18 SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON
19 IDENTITY THEFT OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

20 A. A person who is a victim of identity theft or is
21 wrongfully arrested, indicted or charged for any crime may
22 petition the district court for an order to expunge the related
23 arrest records and public records.

24 B. After a hearing on the petition and upon a
25 showing that the person is a victim of identity theft or was

.206730.2

underscored material = new
[bracketed material] = delete

1 wrongfully arrested, indicted or charged, the court shall issue
2 an order within thirty days of the hearing requiring that all
3 arrest records and public records be expunged.

4 C. The court shall provide a copy of the order to
5 all relevant law enforcement agencies and courts. The order
6 shall prohibit all relevant law enforcement agencies and courts
7 from releasing copies of the records to any person, except upon
8 order of the court.

9 SECTION 4. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON
10 RELEASE WITHOUT CONVICTION.--

11 A. A person released without conviction for a
12 violation of a municipal ordinance, misdemeanor or felony may
13 petition the district court for an order to expunge arrest
14 records and public records. A person is eligible to petition
15 for expungement one year after dismissal of the matter.

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

- 22 (1) an acquittal or finding of not guilty;
23 (2) a nolle prosequi, a no bill or a dismissal
24 other than a dismissal pursuant to Section 31-20-9 NMSA 1978;
25 (3) successful completion of a pre-prosecution

.206730.2

underscored material = new
[bracketed material] = delete

1 diversion program; or

2 (4) the proceedings were otherwise discharged.

3 C. The court shall provide a copy of the order to
4 all relevant law enforcement agencies and courts. The order
5 shall prohibit all relevant law enforcement agencies and courts
6 from releasing copies of the records to any person, except upon
7 order of the court.

8 SECTION 5. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON
9 CONVICTION.--

10 A. A person convicted after no more than one
11 incident involving a misdemeanor or violation of a municipal
12 ordinance and who has had no other convictions after completion
13 of the sentence and the payment of any fines and fees owed to
14 the state for the conviction may petition the district court
15 within the time periods provided in this section for an order
16 to expunge the person's arrest records and public records.

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

22 (1) no other charge or proceeding has occurred
23 for a period of five years if the conviction was for a
24 misdemeanor; or

25 (2) no other charge or proceeding has occurred

.206730.2

underscored material = new
[bracketed material] = delete

1 for a period of ten years if the conviction was for an offense
2 involving domestic violence or abuse.

3 C. The time for calculating eligibility for
4 expungement begins the day a person's sentence, including
5 probation, is completed.

6 D. The provisions of Subsection A of this section
7 do not apply to a crime committed against a person younger than
8 eighteen years of age, a sex offense, an embezzlement offense
9 or an offense involving driving while under the influence of
10 intoxicating liquor or drugs.

11 E. The court shall provide a copy of the order to
12 all relevant law enforcement agencies and courts. The order
13 shall prohibit all relevant law enforcement agencies and courts
14 from releasing copies of the records to the general public,
15 except upon order of the court.

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

21 SECTION 7. [NEW MATERIAL] EFFECT OF AN ORDER TO
22 EXPUNGE.--Upon entry of an order to expunge, the proceedings
23 shall be treated as if they never occurred, and officials and
24 the person who received the order to expunge may reply to an
25 inquiry that no record exists with respect to the person. This

.206730.2

underscoring material = new
~~[bracketed material] = delete~~

1 section does not affect or otherwise infringe upon the
2 expungement provisions of Section 29-3-8.1 NMSA 1978.

3 SECTION 8. APPLICABILITY.--Nothing in the Criminal Record
4 Expungement Act shall be construed to prohibit a law
5 enforcement agency from maintaining and using criminal history
6 information for any lawful purpose.

7 SECTION 9. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is January 1, 2018.

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