

HOUSE BILL 370

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A CRIMINAL RECORD; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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" means records of identification

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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, photographs, fingerprints and booking sheets; except "arrest records" 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. "expungement" means the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement internet website; and

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

- (1) arrest record information that:
 - (a) reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its

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political subdivisions pertaining to any person charged with the commission of any crime; or

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

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

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

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

SECTION 3. [NEW MATERIAL] EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT Hfl→~~OR WRONGFUL HJC→ARREST,←HJC Hfl→ARREST,←Hfl INDICTMENT OR CHARGE←Hfl.--~~

A. A person who is Hfl→~~wrongfully HJC→arrested,←HJC Hfl→arrested,←Hfl indicted or charged for any crime or who is←Hfl~~ wrongfully identified in arrest records or public records as a result of identity theft may petition the district court for an order to expunge arrest records and public records.

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

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

D. SJC→~~The~~←SJC SJC→**After notice to and a hearing for all interested parties and in compliance with all applicable law, the**←SJC court shall insert in the records the correct name and other identifying information of the offender, if known or ascertainable, in lieu of the name of the person wrongly identified.

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

A. One year from the date of the final disposition in the case, a person released without conviction for a violation of a municipal ordinance, misdemeanor or felony may petition the district court in the district in which the charges against the person originated for an order to expunge arrest records and public records related to that case.

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B. A petitioner shall provide notice of the filed petition to the following parties, which parties shall be given an opportunity to provide to the district court any objections to the petition:

- (1) the district attorney for that district;
- (2) the department of public safety; and
- (3) the law enforcement agency that arrested the petitioner.

C. After a hearing on the petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the case be expunged if it finds that no other charge or proceeding is pending against the petitioner and if the petitioner was released without a conviction, including:

- (1) an acquittal or finding of not guilty;
- (2) a nolle prosequi, a no bill or other dismissal;
- (3) a referral to a preprosecution diversion program;
- (4) an order of conditional discharge pursuant to Section 31-20-13 NMSA 1978; or
- (5) the proceedings were otherwise discharged.

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

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and courts from releasing copies of the records to any person, except upon order of the court.

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

A. A person convicted of a violation of a municipal ordinance, misdemeanor or felony, following the completion of the person's sentence and the payment of any fines or fees owed to the state for the conviction, may petition the district court in which the person was convicted for an order to expunge arrest records and public records related to that conviction.

B. A petitioner shall provide notice of the filed petition to the following parties, which parties shall be given an opportunity to provide to the district court any objections to the petition:

- (1) the district attorney for that district;
- (2) the department of public safety; and
- (3) the law enforcement agency that arrested the petitioner.

C. After a hearing on a petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the conviction be expunged if the court finds that:

- (1) no other charge or proceeding is pending against the petitioner;
- (2) justice will be served by an order to

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expunge; Hf1→and←Hf1

Hf1→(3) the petitioner has fulfilled any
victim restitution ordered by the court in connection with the
petitioner's conviction; and←Hf1

Hf1→(3) (4)←Hf1 no other criminal conviction
of the petitioner has occurred for a period of:

(a) two years if the petition relates to
a conviction for a violation of a municipal ordinance or a
misdemeanor not otherwise provided in this paragraph;

(b) four years if the petition relates
to a misdemeanor conviction for aggravated battery as provided
in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction
for a fourth degree felony not otherwise provided in this
paragraph;

(c) six years if the petition relates to
a conviction for a third degree felony not otherwise provided
in this paragraph;

(d) eight years if the petition relates
to a conviction for a second degree felony not otherwise
provided in this paragraph; or

(e) ten years if the petition relates to
a conviction for a first degree felony or for any offense
provided in the Crimes Against Household Members Act.

D. The court shall cause a copy of the order to be
delivered to all relevant law enforcement agencies and courts.

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The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of such records to any person, except upon order of the court.

E. To determine whether justice will be served by an order to expunge, the court shall consider:

(1) the nature and gravity of the offense or conduct that resulted in the petitioner's conviction;

(2) the petitioner's age, criminal history and employment history;

(3) the length of time that has passed since the offense was committed and the related sentence was completed;

(4) the specific adverse consequences the petitioner may be subject to if the petition is denied; and

(5) any reasons HJC→for retention to deny expungement←HJC of the records submitted by the district attorney Sfl→.←Sfl Sfl→, the department of public safety or the law enforcement agency that arrested the petitioner.←Sfl

F. For the purposes of determining the time lapsed since a criminal conviction as required in Subsection C of this section, time shall be measured from the last date on which a person completed a sentence for a conviction in any jurisdiction.

G. The provisions of Subsection A of this section do not apply to an offense committed against a child, an

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offense that caused great bodily harm or death to another person, a sex offense as defined in Section 29-11A-3 NMSA 1978 HJC→, embezzlement pursuant to Section 30-16-8 NMSA 1978←HJC or an offense involving driving while under the influence of intoxicating liquor or drugs.

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

SECTION 7. [NEW MATERIAL] EFFECT OF AN ORDER TO EXPUNGE.--Upon entry an of order to expunge, the proceedings shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person Hf1→HJC→; provided that arrest or conviction records shall be disclosed by the person and officials if required pursuant to federal law←HJC.←Hf1 Hf1→; provided that arrest or conviction records shall be disclosed by the person and officials in connection with any application for or query regarding qualification for employment or association with any financial institution regulated by the financial industry regulatory authority or the securities and exchange commission.←Hf1

SECTION 8. REPEAL.-- HJC→Section 29-3-8.1 NMSA 1978 (being Laws 2002, Chapter 46, Section 2) is repealed Sections

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29-3-8.1 and 31-26-16 NMSA 1978 (being Laws 2002, Chapter 46,
Section 2 and Laws 2009, Chapter 95, Section 5) are
repealed←HJC.

SECTION 9. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2020.

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