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HOUSE BILL 370

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

INTRODUCED BY

Antonio Maestas and Andrea Romero and Bill B. O'Neill

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
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:

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

3 (2) computer-aided dispatch information; or

4 (3) log books relating to breath alcohol
5 testing equipment;

6 B. "expungement" means the removal from access to
7 the general public of a notation of an arrest, complaint,
8 indictment, information, plea of guilty, conviction, acquittal,
9 dismissal or discharge record, including a record posted on a
10 publicly accessible court, corrections or law enforcement
11 internet website; and

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

17 (1) arrest record information that:

18 (a) reveals confidential sources,
19 methods, information or individuals accused but not charged
20 with a crime and that is maintained by the state or any of its
21 political subdivisions pertaining to any person charged with
22 the commission of any crime; or

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

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

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

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

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

14 A. A person who is wrongfully arrested, indicted or
15 charged for any crime or who is wrongfully identified in arrest
16 records or public records as a result of identity theft may
17 petition the district court for an order to expunge arrest
18 records and public records.

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

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

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

4 D. The court shall insert in the records the
5 correct name and other identifying information of the offender,
6 if known or ascertainable, in lieu of the name of the person
7 wrongly identified.

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

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

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

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

24 C. After a hearing on the petition, the court shall
25 issue an order within thirty days of the hearing requiring that

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1 all arrest records and public records related to the case be
2 expunged if it finds that no other charge or proceeding is
3 pending against the petitioner and if the petitioner was
4 released without a conviction, including:

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

13 D. The court shall cause a copy of the order to be
14 delivered to all relevant law enforcement agencies and courts.
15 The order shall prohibit all relevant law enforcement agencies
16 and courts from releasing copies of the records to any person,
17 except upon order of the court.

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

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

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

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

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

- 13 (1) no other charge or proceeding is pending
- 14 against the petitioner;
- 15 (2) justice will be served by an order to
- 16 expunge; and
- 17 (3) no other criminal conviction of the
- 18 petitioner has occurred for a period of:

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

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

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1 paragraph;

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

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

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

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

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

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

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

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

25 (4) the specific adverse consequences the

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1 petitioner may be subject to if the petition is denied; and

2 (5) any reasons for retention of the records
3 submitted by the district attorney, the department of public
4 safety or the law enforcement agency that arrested the
5 petitioner.

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

11 G. The provisions of Subsection A of this section
12 do not apply to an offense committed against a child, an
13 offense that caused great bodily harm or death to another
14 person, a sex offense as defined in Section 29-11A-3 NMSA 1978
15 or an offense involving driving while under the influence of
16 intoxicating liquor or drugs.

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

22 SECTION 7. [NEW MATERIAL] EFFECT OF AN ORDER TO
23 EXPUNGE.--Upon entry an of order to expunge, the proceedings
24 shall be treated as if they never occurred, and officials and
25 the person who received the order to expunge may reply to an

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inquiry that no record exists with respect to the person.

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

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