

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 2

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021

AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING FOR EXPUNGEMENT OF
ARREST AND CONVICTION RECORDS FOR CERTAIN CANNABIS OFFENSES;
PROVIDING FOR DISMISSAL OF SENTENCES OF INCARCERATED PERSONS;
REVISING THE LIST OF CRIMINAL RECORDS THAT CANNOT BE CONSIDERED
IN AN APPLICATION FOR PUBLIC EMPLOYMENT, LICENSURE OR OTHER
AUTHORITY TO PRACTICE A TRADE, BUSINESS OR PROFESSION; AMENDING
THE CRIMINAL RECORD EXPUNGEMENT ACT.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974,
Chapter 78, Section 3, as amended) is amended to read:

"28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

A. Subject to the provisions of Subsection B of
this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in
determining eligibility for employment with the state or any of

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1 its political subdivisions or for a license, permit,
2 certificate or other authority to engage in any regulated
3 trade, business or profession, the board or other department or
4 agency having jurisdiction may take into consideration a
5 conviction, but the conviction shall not operate as an
6 automatic bar to obtaining public employment or license or
7 other authority to practice the trade, business or profession.
8 A board, department or agency of the state or any of its
9 political subdivisions shall not make an inquiry regarding a
10 conviction on an initial application for employment and shall
11 only take into consideration a conviction after the applicant
12 has been selected as a finalist for the position.

13 B. The following criminal records shall not be
14 used, distributed or disseminated in connection with an
15 application for any public employment, license or other
16 authority:

17 (1) records of arrest not followed by a valid
18 conviction; ~~[and]~~

19 (2) ~~[misdemeanor]~~ convictions ~~[not involving~~
20 ~~moral turpitude]~~ that have been sealed, dismissed, expunged or
21 pardoned;

22 (3) juvenile adjudications; or

23 (4) convictions for a crime that is not job-
24 related for the position in question and consistent with
25 business necessity."

1 SECTION 2. Section 28-2-4 NMSA 1978 (being Laws 1974,
2 Chapter 78, Section 4, as amended by Laws 1997, Chapter 238,
3 Section 5 and also by Laws 1997, Chapter 251, Section 1) is
4 amended to read:

5 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC
6 EMPLOYMENT OR LICENSE.--

7 A. Any board or other agency having jurisdiction
8 over employment by the state or any of its political
9 subdivisions or the practice of any trade, business or
10 profession may refuse to grant or renew or may suspend or
11 revoke any public employment or license or other authority to
12 engage in the public employment, trade, business or profession
13 for ~~[any one or any combination]~~ one or both of the following
14 causes:

15 (1) where the applicant, employee or licensee
16 has been convicted of a felony ~~[or a misdemeanor involving~~
17 ~~moral turpitude]~~ and the criminal conviction directly relates
18 to the particular employment, trade, business or profession;
19 and

20 ~~[(2) where the applicant, employee or licensee~~
21 ~~has been convicted of a felony or a misdemeanor involving moral~~
22 ~~turpitude and the criminal conviction does not directly relate~~
23 ~~to the particular employment, trade, business or profession, if~~
24 ~~the board or other agency determines after investigation that~~
25 ~~the person so convicted has not been sufficiently rehabilitated~~

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[bracketed material] = delete

1 ~~to warrant the public trust; or~~

2 ~~(3)]~~ (2) where the applicant, employee or
3 licensee has been convicted of homicide, kidnapping, human
4 trafficking, trafficking in controlled substances, criminal
5 sexual penetration or related sexual offenses or child abuse
6 and the applicant, employee or licensee has applied for
7 reinstatement, renewal or issuance of a teaching certificate, a
8 license to operate a child-care facility or employment at a
9 child-care facility, regardless of rehabilitation.

10 B. The board or other agency shall explicitly state
11 in writing the reasons for a decision [~~which~~] that prohibits
12 the person from engaging in the employment, trade, business or
13 profession if the decision is based in whole or in part on
14 conviction of any crime described in Paragraphs (1) and [~~(3)]~~
15 (2) of Subsection A of this section. [~~Completion of probation~~
16 ~~or parole supervision or expiration of a period of three years~~
17 ~~after final discharge or release from any term of imprisonment~~
18 ~~without any subsequent conviction shall create a presumption of~~
19 ~~sufficient rehabilitation for purposes of Paragraph (2) of~~
20 ~~Subsection A of this section.]"~~

21 SECTION 3. Section 29-3A-1 NMSA 1978 (being Laws 2019,
22 Chapter 203, Section 1) is amended to read:

23 "29-3A-1. SHORT TITLE.--~~[This act]~~ Chapter 29, Article 3A
24 NMSA 1978 may be cited as the "Criminal Record Expungement
25 Act"."

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1 SECTION 4. Section 29-3A-4 NMSA 1978 (being Laws 2019,
2 Chapter 203, Section 4) is amended to read:

3 "29-3A-4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT
4 CONVICTION.--

5 A. One year from the date of the final disposition
6 in the case, a person released without conviction for a
7 violation of a municipal ordinance, misdemeanor ~~[or]~~, felony,
8 penalty assessments under the Criminal Code and the Motor
9 Vehicle Code or violations and deferred sentences under the
10 Motor Vehicle Code may petition the district court in the
11 district in which the charges against the person originated for
12 an order to expunge arrest records and public records related
13 to that case.

14 B. A petitioner shall provide notice by first-class
15 United States mail of the filed petition to the following
16 parties, which parties shall be given ~~[an opportunity]~~ thirty
17 days in which to provide to the district court any objections
18 to the petition:

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

24 C. A single petition filed pursuant to Subsection A
25 of this section may include a request to expunge multiple

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1 arrest records and public records that originated within the
2 jurisdiction of a district. A petition shall be filed under
3 seal or under pseudonym. Petitions brought pursuant to the
4 Criminal Record Expungement Act and all records of proceedings
5 thereunder shall be expunged upon the conclusion of
6 proceedings. The petitioner shall attach to and file with the
7 petition copies of the petitioner's record of arrest and
8 prosecutions from the department of public safety dated no
9 earlier than ninety days prior to the date the petition is
10 filed.

11 D. A party that seeks to object to a petition on
12 the basis of the contents of a petitioner's record of arrest
13 and prosecutions from the federal bureau of investigation must
14 provide a copy of that record to a petitioner at no charge at
15 the time the party objects.

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

- 22 (1) an acquittal or finding of not guilty;
23 (2) a nolle prosequi, a no bill or other
24 dismissal;
25 (3) a referral to a preprosecution diversion

1 program;

2 (4) an order of conditional discharge pursuant
3 to Section 31-20-13 NMSA 1978; or

4 (5) the proceedings were otherwise discharged.

5 ~~[D.]~~ F. The court shall cause a copy of the order
6 to be delivered to all relevant law enforcement agencies and
7 courts. The order shall prohibit all relevant law enforcement
8 agencies and courts from releasing copies of the records to any
9 person, except upon order of the court."

10 SECTION 5. A new section of the Criminal Record
11 Expungement Act is enacted to read:

12 "[NEW MATERIAL] EXPUNGEMENT OF ARREST AND CONVICTION
13 RECORDS--PROCEDURE.--If a person was charged with an offense
14 involving cannabis that is no longer a crime on the effective
15 date of the Cannabis Regulation Act or that would have resulted
16 in a lesser offense if that act had been in effect at the time
17 of the offense, whether or not the person is convicted, all
18 public records held by a court or an agency of the state or a
19 local jurisdiction that relate to the person's arrest or
20 conviction shall be automatically expunged two years after the
21 date of the person's conviction or the date of the person's
22 arrest if there was no conviction; provided that if the arrest
23 or conviction included multiple charges, only the portions of
24 the public records related to the cannabis charge shall be
25 expunged. If the person is or was under eighteen years of age

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1 at the time of the arrest or conviction, the public records
2 shall be retained for two years or until the person is eighteen
3 years of age, whichever comes first, and shall then be
4 automatically expunged; provided that if the arrest or
5 conviction included multiple charges, only the portions of the
6 public records related to the cannabis charge shall be
7 expunged. The public records shall be removed from all
8 statewide criminal databases."

9 SECTION 6. A new section of the Criminal Record
10 Expungement Act is enacted to read:

11 "[NEW MATERIAL] DISMISSAL OF SENTENCES--INCARCERATED
12 PERSONS.--

13 A. Within thirty days following the effective date
14 of this section, a correctional facility, a county jail or a
15 juvenile correctional facility in which a person is currently
16 incarcerated for an offense that is no longer a crime pursuant
17 to the provisions of the Cannabis Regulation Act, or that would
18 have resulted in a lesser offense if that act had been in
19 effect at the time of the offense, shall notify the court that
20 the convicted person's case may be:

21 (1) reopened to consider possible dismissal of
22 the person's sentence; or

23 (2) expunged pursuant to the provisions of the
24 Criminal Record Expungement Act.

25 B. A court shall reopen a case pursuant to

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1 Subsection A of this section and dismiss the person's sentence
2 if it is legally invalid.

3 C. A person who has completed the person's sentence
4 for a conviction, whether by trial or negotiated plea, who
5 would not have been guilty of an offense or who would have been
6 guilty of a lesser offense if the Cannabis Regulation Act had
7 been in effect at the time of the offense is entitled to have
8 the conviction dismissed and expunged because the prior
9 conviction is now legally invalid or redesignated as a penalty
10 assessment citation.

11 D. On or before January 1, 2022, the department of
12 public safety shall review the public records in the state
13 criminal history databases and shall identify all past
14 convictions that are potentially eligible for dismissal and
15 expungement or redesignation pursuant to the Cannabis
16 Regulation Act. The department of public safety shall notify
17 the corrections department, prosecutors and the public defender
18 department of all cases that are eligible for dismissal and
19 expungement or redesignation.

20 E. The prosecutor of the case shall have until July
21 1, 2022 to review all cases and determine whether to challenge
22 the dismissal and expungement or redesignation.

23 F. The prosecutor of the case may challenge the
24 resentencing of a person pursuant to this section when the
25 person does not meet the criteria established under the

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1 Cannabis Regulation Act.

2 G. On or before July 1, 2022, the prosecutor of the
3 case shall inform the court and the public defender department
4 when the prosecutor of the case is challenging a particular
5 dismissal and expungement or redesignation. The prosecutor of
6 the case shall also inform the court when the prosecutor of the
7 case is not challenging a particular dismissal and expungement
8 or redesignation.

9 H. The public defender department, upon receiving
10 notice from the prosecutor of the case, shall make a reasonable
11 effort to notify the person whose dismissal and expungement or
12 redesignation is being challenged.

13 I. If the prosecutor of the case does not challenge
14 the dismissal and expungement or redesignation by July 1, 2022,
15 the court shall notify the department of public safety that the
16 case has been dismissed. Upon notice, the department of public
17 safety shall expunge the public record pertaining to the
18 offense; provided that if the arrest included multiple charges,
19 only the portions of the public records related to the cannabis
20 charge shall be expunged.

21 J. A person who is currently incarcerated or who
22 was incarcerated in the past for a cannabis offense that is no
23 longer a crime may at any time petition to modify the person's
24 criminal sentence or to have the person's conviction vacated.

25 If the petition is granted, the court shall issue an order

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1 within thirty days of the granting of the petition requiring
 2 that the portions of the public records related to the cannabis
 3 offense, as well as all records of proceedings related to the
 4 petition for expungement, be expunged.

5 K. Nothing in this section is intended to diminish
 6 or abrogate any rights or remedies otherwise available to a
 7 person who was convicted of or incarcerated for a cannabis
 8 offense.

9 L. The provisions of this section shall apply
 10 equally to juvenile delinquency adjudications and convictions
 11 of a juvenile if the juvenile would not have been guilty
 12 of an offense or would have been guilty of a lesser offense as
 13 provided in the Cannabis Regulation Act.

14 M. No fee or cost of any kind shall be imposed upon
 15 a person whose sentence is reviewed pursuant to this section."

16 SECTION 7. Section 61-1-1 NMSA 1978 (being Laws 1957,
 17 Chapter 247, Section 1, as amended) is amended to read:

18 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~
 19 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the
 20 "Uniform Licensing Act".

21 SECTION 8. A new section of the Uniform Licensing Act is
 22 enacted to read:

23 "[NEW MATERIAL] CRIMINAL CONVICTIONS--EXCLUSION FROM
 24 LICENSURE--DISCLOSURE REQUIREMENT.--

25 A. A board shall not exclude from licensure a

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1 person who is otherwise qualified on the sole basis that the
2 person has been previously arrested for or convicted of a
3 crime, unless the person has a disqualifying criminal
4 conviction.

5 B. By December 31, 2021, each board shall
6 promulgate and post on the board's website rules relating to
7 licensing requirements to list the specific criminal
8 convictions that could disqualify an applicant from receiving a
9 license on the basis of a previous felony conviction. Rules
10 relating to licensing requirements promulgated by a board shall
11 not use the terms "moral turpitude" or "good character". A
12 board shall only list disqualifying criminal convictions.

13 C. In an administrative hearing or agency appeal, a
14 board shall carry the burden of proof on the question of
15 whether the exclusion from occupational or professional
16 licensure is based upon a disqualifying criminal conviction.

17 D. No later than October 31 of each year, while
18 ensuring the confidentiality of individual applicants, a board
19 shall make available to the public an annual report for the
20 prior fiscal year containing the following information:

21 (1) the number of applicants for licensure
22 and, of that number, the number granted a license;

23 (2) the number of applicants for licensure or
24 license renewal with a potential disqualifying criminal
25 conviction who received notice of potential disqualification;

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1 (3) the number of applicants for licensure or
2 license renewal with a potential disqualifying criminal
3 conviction who provided a written justification with evidence
4 of mitigation or rehabilitation; and

5 (4) the number of applicants for licensure or
6 license renewal with a potential disqualifying criminal
7 conviction who were granted a license, denied a license for any
8 reason or denied a license because of the conviction.

9 E. As used in this section, "disqualifying criminal
10 conviction" means a conviction for a crime that is job-related
11 for the position in question and consistent with business
12 necessity."