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SENATE BILL 467

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Antonio Maestas

AN ACT

RELATING TO CRIMINAL RECORDS; REMOVING THE TIME REQUIREMENT FOR THE COURT TO ISSUE AN ORDER; REMOVING THE REQUIREMENT FOR NOTICE TO THE DEPARTMENT OF PUBLIC SAFETY AND LAW ENFORCEMENT AGENCIES IN CERTAIN CIRCUMSTANCES; REMOVING EMBEZZLEMENT AS A QUALIFYING OFFENSE FOR EXPUNGEMENT.

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

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

"29-3A-3. EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT.--

A. A person who is 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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1 B. After a hearing on the petition and upon a
2 showing that the person is a victim of identity theft, the
3 court shall issue an order [~~within thirty days of the hearing~~]
4 requiring that all arrest records and public records be
5 expunged.

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

11 D. After notice to and a hearing for all interested
12 parties and in compliance with all applicable law, the court
13 shall insert in the records the correct name and other
14 identifying information of the offender, if known or
15 ascertainable, in lieu of the name of the person wrongly
16 identified."

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

19 "29-3A-4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT
20 CONVICTION.--

21 A. One year from the date of the final disposition
22 in the case, a person released without conviction for a
23 violation of a municipal ordinance, misdemeanor, felony,
24 penalty assessments under the Criminal Code and the Motor
25 Vehicle Code or violations and deferred sentences under the

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1 Motor Vehicle Code may petition the district court in the
2 district in which the charges against the person originated for
3 an order to expunge arrest records and public records related
4 to that case.

5 B. A petitioner shall provide notice by first-class
6 United States mail of the filed petition to the ~~[following~~
7 ~~parties]~~ district attorney for that district, which ~~[parties]~~
8 shall be given thirty days in which to provide to the district
9 court any objections to the petition

10 ~~[(1) the district attorney for that district;~~
11 ~~and~~

12 ~~(2) the department of public safety].~~

13 C. A single petition filed pursuant to Subsection A
14 of this section may include a request to expunge multiple
15 arrest records and public records that originated within the
16 jurisdiction of a district. A petition shall be filed under
17 seal or under pseudonym. Petitions brought pursuant to the
18 Criminal Record Expungement Act and all records of proceedings
19 thereunder shall be expunged upon the conclusion of
20 proceedings. The petitioner shall attach to and file with the
21 petition copies of the petitioner's record of arrest and
22 prosecutions from the department of public safety dated no
23 earlier than ninety days prior to the date the petition is
24 filed.

25 D. A party that seeks to object to a petition on

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1 the basis of the contents of a petitioner's record of arrest
2 and prosecutions from the federal bureau of investigation must
3 provide a copy of that record to a petitioner at no charge at
4 the time the party objects.

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

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

19 F. The court shall cause a copy of the order to be
20 delivered to all relevant law enforcement agencies and courts.
21 The order shall prohibit all relevant law enforcement agencies
22 and courts from releasing copies of the records to any person,
23 except upon order of the court."

24 SECTION 3. Section 29-3A-5 NMSA 1978 (being Laws 2019,
25 Chapter 203, Section 5) is amended to read:

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1 "29-3A-5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

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

8 B. A petitioner shall provide notice of the filed
9 petition to the ~~[following parties]~~ district attorney for that
10 district, which ~~[parties]~~ shall be given an opportunity to
11 provide to the district court any objections to the petition

12 ~~[(1) the district attorney for that district;~~
13 ~~(2) the department of public safety; and~~
14 ~~(3) the law enforcement agency that arrested~~
15 ~~the petitioner].~~

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

20 (1) no other charge or proceeding is pending
21 against the petitioner;

22 (2) justice will be served by an order to
23 expunge;

24 (3) the petitioner has fulfilled any victim
25 restitution ordered by the court in connection with the

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1 petitioner's conviction; and

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

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

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

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

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

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

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

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

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

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

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

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

12 (5) any reasons to deny expungement of the
13 records submitted by the district attorney.

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

19 G. The provisions of Subsection A of this section
20 do not apply to an offense committed against a child, an
21 offense that caused great bodily harm or death to another
22 person, a sex offense as defined in Section 29-11A-3 NMSA 1978
23 [~~embezzlement pursuant to Section 30-16-8 NMSA 1978~~] or an
24 offense involving driving while under the influence of
25 intoxicating liquor or drugs."

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SECTION 4. REPEAL.--Section 29-10-8 NMSA 1978 (being Laws
1977, Chapter 339, Section 5, as amended) is repealed.