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_____ BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL RECORD EXPUNGEMENT; APPLYING AUTOMATIC
EXPUNGEMENT TO RECORDS INVOLVING ONLY CANNABIS.

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

SECTION 1. Section 29-3A-8 NMSA 1978 (being Laws 2021
(1st S.S.), Chapter 3, Section 5) is amended to read:

"29-3A-8. EXPUNGEMENT OF ARREST AND CONVICTION RECORDS--
PROCEDURE.--

A. If a person was charged with an offense
involving cannabis that is no longer a crime on [~~the effective
date of the Cannabis Regulation Act~~] June 29, 2021 or that
would have resulted in a lesser offense if [~~that~~] the Cannabis
Regulation Act had been in effect at the time of the offense,
whether or not the person is convicted, all public records held
by a court or an agency of the state or a local jurisdiction

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1 that relate to the person's arrest or conviction shall be
2 automatically expunged two years after the date of the person's
3 conviction or the date of the person's arrest if there was no
4 conviction [~~provided that if the arrest or conviction included~~
5 ~~multiple charges, only the portions of the public records~~
6 ~~related to the cannabis charge shall be expunged~~]. If the
7 person is or was under eighteen years of age at the time of the
8 arrest or conviction, the public records under this section
9 shall be retained for two years or until the person is eighteen
10 years of age, whichever comes first, and shall then be
11 automatically expunged [~~provided that if the arrest or~~
12 ~~conviction included multiple charges, only the portions of the~~
13 ~~public records related to the cannabis charge shall be~~
14 ~~expunged. The public records shall be removed from all~~
15 ~~statewide criminal databases. The supreme court shall~~
16 ~~promulgate rules to implement the provisions of this section~~].
17 Automatic expungement applies to court or agency records
18 involving only cannabis and cannabis paraphernalia charges and
19 requires destruction of the records.

20 B. A person seeking expungement of records
21 involving cannabis and cannabis paraphernalia charges shall
22 make an application to the administrative office of the courts
23 on a form prescribed by the administrative office of the courts
24 for expungement of court records involving only cannabis and
25 cannabis paraphernalia charges.

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C. If the arrest or conviction included multiple charges in addition to a cannabis charge, a person seeking expungement of the cannabis charge shall make an application to the administrative office of the courts on a form prescribed by the administrative office of the courts for expungement of the portions of the court records related to the cannabis charge.

D. There shall be no application fee for an application submitted under the provisions of this section. The supreme court shall promulgate rules to implement the provisions of this section.

E. This section shall not be construed to create a private right of action against any public body."