

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 649

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A  
CRIMINAL RECORD.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Criminal Record Expungement Act".

Section 2. 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:

- (1) driving while intoxicated citations

.178747.1

underscored material = new  
[bracketed material] = delete

1 maintained by the taxation and revenue department;

2 (2) computer-aided dispatch information; or

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

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

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

16 (1) arrest record information that:

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

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

25 (2) the file of a district attorney or

.178747.1

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

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

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

11 Section 3. EXPUNGEMENT OF RECORDS UPON IDENTITY THEFT OR  
12 WRONGFUL ARREST, INDICTMENT OR CHARGE.--

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

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

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

.178747.1

1 except upon order of the court.

2 Section 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT  
3 CONVICTION.--

4 A. A person released without conviction for a  
5 violation of a municipal ordinance, misdemeanor or felony may  
6 petition the district court for an order to expunge arrest  
7 records and public records.

8 B. After a hearing on the petition, the court shall  
9 issue an order within thirty days of the hearing requiring that  
10 all arrest records and public records be expunged if it finds  
11 that no other charge or proceeding is pending against the  
12 person and if the person was released without a conviction,  
13 including:

- 14 (1) an acquittal or finding of not guilty;  
15 (2) a nolle prosequi, a no bill or a dismissal  
16 other than a dismissal pursuant to Section 31-20-9 NMSA 1978;  
17 (3) a referral to a pre-prosecution diversion  
18 program; or  
19 (4) the proceedings were otherwise discharged.

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

25 Section 5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

.178747.1

1           A. A person convicted of no more than one  
2 misdemeanor or violation of a municipal ordinance and who has  
3 had no other convictions after completion of the sentence and  
4 the payment of any fines and fees owed to the state for the  
5 conviction may petition the district court within the time  
6 periods provided in this section for an order to expunge arrest  
7 records and public records.

8           B. After a hearing on the petition, the court shall  
9 issue an order within thirty days of the hearing requiring that  
10 arrest records and public records be expunged if it finds that  
11 no other charge or proceeding is pending against the accused  
12 and that justice will be served by an order to expunge and:

13                   (1) no other charge or proceeding has occurred  
14 for a period of two years if the conviction was for a  
15 misdemeanor;

16                   (2) no other charge or proceeding has occurred  
17 for a period of four years if the conviction was for  
18 misdemeanor aggravated battery; or

19                   (3) no other charge or proceeding has occurred  
20 for a period of ten years if the conviction was for an offense  
21 involving domestic violence or abuse.

22           C. The provisions of Subsection A of this section  
23 do not apply to a crime committed against minors or children, a  
24 sex offense or an offense involving driving while under the  
25 influence of intoxicating liquor or drugs.

.178747.1

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

6           Section 6. NOTICES--RULEMAKING.--The administrative  
7 office of the courts and the department of public safety shall  
8 develop rules and procedures to implement the Criminal Record  
9 Expungement Act, including procedures for notifying the accused  
10 of the accused's rights under that act.

11           Section 7. EFFECT OF AN ORDER TO EXPUNGE.--Upon entry of  
12 order to expunge, the proceedings shall be treated as if they  
13 never occurred, and officials and the person who received the  
14 order to expunge may reply to an inquiry that no record exists  
15 with respect to the person. This section does not affect or  
16 otherwise infringe upon the expungement provisions of Section  
17 29-3-8.1 NMSA 1978.

18           Section 8. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is January 1, 2010.