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SENATE BILL 2

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CRIMINAL RECORDS; ENACTING THE CRIMINAL RECORD
EXPUNGEMENT ACT; PROVIDING FOR EXPUNGEMENT OF ARREST RECORDS
AND PUBLIC RECORDS IN CERTAIN CIRCUMSTANCES.

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 and photographs,
fingerprints and booking sheets but does not include:

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. "expunge" means to remove from access to the
7 general public a notation of an arrest, complaint, indictment,
8 information, proceeding, plea, conviction, acquittal, reversal,
9 dismissal or discharge, including information posted on a
10 publicly accessible court, corrections or law enforcement web
11 site; and

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

18 (1) arrest record information that:

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

24 (b) is confidential and unlawful to
25 disseminate or reveal, except as provided in the Arrest Record

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1 Information Act or other law;

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

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

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

13 SECTION 3. EXPUNGEMENT OF RECORDS DUE TO IDENTITY THEFT
14 OR WRONGFUL ARREST, INDICTMENT OR CHARGE.--

15 A. A person who is a victim of identity theft or is
16 wrongfully arrested, indicted or charged for any crime 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 SECTION 4. EXPUNGEMENT OF RECORDS AFTER RELEASE WITHOUT
5 CONVICTION.--

6 A. A person released without conviction for a
7 violation of a municipal ordinance, misdemeanor or felony may
8 petition the district court for an order to expunge arrest
9 records and public records one year after dismissal or release.

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

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

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,

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1 except upon order of the court.

2 **SECTION 5. EXPUNGEMENT OF RECORDS AFTER CONVICTION.--**

3 A. A person who has been convicted of one or more
4 misdemeanors or violations of a municipal ordinance arising out
5 of one incident and who has had no other convictions after
6 completion of the sentence may petition the district court
7 within the time periods provided in this section for an order
8 to expunge arrest records and public records.

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

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

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

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 the general
24 public, except upon order of the court.

25 D. The time for calculating eligibility for

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1 expungement begins the day a person's sentence, including
2 probation, is completed.

3 E. The provisions of this section do not apply to a
4 crime committed against minors or children, a sex offense or an
5 offense involving driving while under the influence of
6 intoxicating liquor or drugs.

7 SECTION 6. EFFECT OF AN ORDER TO EXPUNGE.--Upon entry of
8 an order to expunge, the proceedings shall be treated as if
9 they never occurred, and officials and the person who received
10 the order to expunge may reply to an inquiry that no record
11 exists with respect to the person. This section does not
12 affect or otherwise infringe upon the expungement provisions of
13 Section 29-3-8.1 NMSA 1978.

14 SECTION 7. NOTICES--RULEMAKING.--The administrative
15 office of the courts and the department of public safety shall
16 develop rules and procedures to implement the Criminal Record
17 Expungement Act, including procedures for notifying the accused
18 of the accused's rights under that act.

19 SECTION 8. USE BY LAW ENFORCEMENT.--Nothing in the
20 Criminal Record Expungement Act shall be construed to prohibit
21 a law enforcement agency from maintaining and using criminal
22 history information for any lawful purpose.

23 SECTION 9. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is January 1, 2013.