

1 HOUSE BILL 496

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Ambrose Castellano

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10 AN ACT

11 RELATING TO CRIMINAL RECORDS; PROVIDING EXPUNGEMENT OF A
12 PERSON'S NONVIOLENT FELONY RECORD UPON PETITION TO A COURT AND
13 A COURT'S FINDING THAT THE PERSON HAS NO SUBSEQUENT CRIMINAL
14 CONVICTION, HAS NO OTHER CRIMINAL CHARGE OR PROCEEDING PENDING,
15 HAS FULFILLED ALL COURT-ORDERED RESTITUTION AND EITHER THIRTY
16 YEARS HAVE PASSED SINCE COMPLETION OF THE SENTENCE OR THE
17 PERSON IS AT LEAST SIXTY YEARS OF AGE AND TEN YEARS OR MORE
18 HAVE PASSED SINCE THE PERSON COMPLETED THE SENTENCE.

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

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

23 "29-3A-2. DEFINITIONS.--As used in the Criminal Record
24 Expungement Act:

25 A. "arrest records" means records of identification

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1 of a person under arrest or under investigation for a crime
2 taken or gathered by an official; "arrest records" includes
3 information gathered from the national crime information center
4 or another criminal record database, photographs, fingerprints
5 and booking sheets; except "arrest records" does not include:

6 (1) driving while intoxicated citations
7 maintained by the taxation and revenue department;

8 (2) computer-aided dispatch information; or

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

11 B. "expungement" means the removal from access to
12 the general public of a notation of an arrest, complaint,
13 indictment, information, plea of guilty, conviction, acquittal,
14 dismissal or discharge record, including a record posted on a
15 publicly accessible court, corrections or law enforcement
16 internet website; ~~and~~

17 C. "nonviolent felony" means a felony conviction
18 for an offense that did not cause actual physical harm to a
19 person or a threat of physical harm to a person and excludes
20 murder, manslaughter, battery, assault, sexual assault or a sex
21 offense, kidnapping, arson, robbery or another offense when the
22 nature and resulting harm of the offense are such that a court
23 judges the crime to be a violent offense for the purposes of
24 the Criminal Record Expungement Act; and

25 [~~C.~~] D. "public records" means documentation

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1 relating to a person's arrest, indictment, proceeding, finding
2 or plea of guilty, conviction, acquittal, dismissal or
3 discharge, including information posted on a court or law
4 enforcement website; but "public records" does not include:

5 (1) arrest record information that:

6 (a) reveals confidential sources,
7 methods, information or individuals accused but not charged
8 with a crime and that is maintained by the state or any of its
9 political subdivisions pertaining to any person charged with
10 the commission of any crime; or

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

14 (2) the file of a district attorney or
15 attorney general maintained as a confidential record for law
16 enforcement purposes and not open for inspection by members of
17 the public;

18 (3) a record maintained by the children, youth
19 and families department, the human services department or the
20 public education department when that record is confidential
21 under state or federal law and is required to be maintained by
22 state or federal law for audit or other purposes; or

23 (4) a record received pursuant to a background
24 check as authorized by law."

25 SECTION 2. A new section of the Criminal Record

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1 Expungement Act is enacted to read:

2 "[NEW MATERIAL] EXPUNGEMENT OF NONVIOLENT FELONY--
3 PROCEDURE.--

4 A. Notwithstanding the provisions of Section
5 29-3A-5 NMSA 1978, a person convicted of a nonviolent felony
6 may petition the district court in which the person was
7 convicted for an order to expunge arrest records and public
8 records related to the conviction, and the court shall issue an
9 order to expunge the arrest records and public records if the
10 court finds that:

11 (1) the person was convicted of a nonviolent
12 felony;

13 (2) the person has not been convicted of a
14 criminal offense subsequent to the nonviolent felony;

15 (3) the person has no other criminal charge or
16 proceeding pending against the person;

17 (4) the person has fulfilled all victim
18 restitution ordered by a court in connection with the
19 nonviolent felony conviction; and

20 (5) either:

21 (a) thirty years have passed since the
22 person completed the sentence for the nonviolent felony
23 conviction; or

24 (b) the person is sixty years of age or
25 older and at least ten years have passed since the person

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1 completed the sentence for the nonviolent felony conviction.

2 B. Expungement pursuant to this section applies to
3 court or agency records involving only a nonviolent felony and
4 requires destruction of the records.

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