

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 389

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Michael S. Sanchez

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

.184359.1

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

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

15 (1) arrest record information that:

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

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

24 (2) the file of a district attorney or
25 attorney general maintained as a confidential record for law

.184359.1

underscoring material = new
~~[bracketed material]~~ = delete

1 enforcement purposes and not open for inspection by members of
2 the public;

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

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

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

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

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

21 C. 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.

.184359.1

underscored material = new
[bracketed material] = delete

1 SECTION 4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT
2 CONVICTION.--

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

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) successful completion of a pre-prosecution
18 diversion 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.--

.184359.1

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

18 C. The time for calculating eligibility for
19 expungement begins the day a person's sentence, including
20 probation, is completed.

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

25 E. The court shall cause a copy of the order to be

.184359.1

underscoring material = new
[bracketed material] = delete

1 delivered to all relevant law enforcement agencies and courts.
2 The order shall prohibit all relevant law enforcement agencies
3 and courts from releasing copies of such records to the general
4 public, except upon order of the court.

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

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

17 SECTION 8. APPLICABILITY.--Nothing in the Criminal Record
18 Expungement Act shall be construed to prohibit a law
19 enforcement agency from maintaining and using criminal history
20 information for any lawful purpose.

21 SECTION 9. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2012.