

GENERAL INFORMATION ABOUT EXPUNGING ARREST RECORDS AND COURT RECORDS

This general information does not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

- ! **It is important to read this information carefully. Failure to follow instructions or provide complete information to the District Court may result in your petition being dismissed.**
- ! **For step-by-step instructions on the expungement procedure, review the instructions on Steps to Filing Your Petition for Expungement.**
- ! **If you are a non-citizen you should seek legal advice to determine any legal consequences expungement may have on your citizenship status.**
- ! **The following are NOT eligible for expungement:**
 - Civil Cases. The expungement process applies only to criminal records.
 - You were convicted of an offense against a child;
 - You were convicted of an offense that caused great bodily harm or death to another person;
 - You were convicted of a sex offense as defined in Section 29-11A-3 NMSA 1978;
 - You were convicted of embezzlement pursuant to Section 30-16-8 NMSA 1978; or
 - You were convicted of an offense involving driving while under the influence of intoxicating liquor or drugs.

GENERAL INFORMATION

What is expungement? Expungement means the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge records, including a record posted on a publicly accessible court, corrections or law enforcement internet website.

- You may ask the district court to expunge your arrest records and court records if you meet certain requirements, which are discussed below. Expungement means that the general public will not be able to access any information about an arrest or a criminal court case.
- To ask the court to expunge your records, you must file a petition in the district where the arrest and/or criminal records originated. *Please note that you must file your petition in the district court even if your court case was filed in a municipal or metropolitan court or was dismissed before the district attorney or city attorney filed any court case.* This means that if you were arrested in Bernalillo County, you would file your petition in the district court in Bernalillo County.
- The district court *cannot* expunge records from any other state or any federal records.

- A petition to expunge a case where the person was released without conviction shall be filed under seal or under pseudonym.
 - Multiple cases may be included in a single petition. However, if the petition includes cases resulting in conviction as well as cases resulting in release without conviction, the petition will not be subject to automatic sealing or filing under pseudonym.
- If there was a court case filed, you can find out which court it was filed in by going to the New Mexico Courts webpage locate at <https://www.nmcourts.gov>. Go to “Find a Case,” enter your last name and first name (without a comma). You may also want to include your date of birth in the search information so you do not get results for other people who may have the same name as you. You will be able to pull up and print out information about your specific case here.

BASIC ELIGIBILITY FOR EXPUNGEMENT

In order to have your criminal record expunged, you must meet **one** of the following requirements:

- You were a *victim of identity theft* and were wrongly identified in arrest records or public records;
- You were *arrested and released without conviction* for a violation of a municipal ordinance, misdemeanor, felony, penalty assessments under the Criminal Code or the Motor Vehicle Code or violations and deferred sentences under the Motor Vehicle Code; it has been at least *one (1) year* since the date of the final disposition in the case; and there are no pending charges or proceedings against you anywhere;
- You were *convicted* of a violation of a municipal ordinance, misdemeanor or felony and *have completed your sentence and the payment of any fines or fees owed to the state for the conviction*. You will **also** have to demonstrate (1) there are no other charges or proceedings pending against you anywhere; (2) justice will be served by an order to expunge; (3) you have fulfilled any victim restitution ordered by the court in connection with your conviction; and (4) you were not convicted of any other crime during the required Waiting Period discussed below.
- You were charged with an offense involving cannabis that is no longer a crime on the effective date of the Cannabis Regulation Act and it has been at least *two years* since the conviction or arrest *and* the charges have not been automatically expunged.

WAITING PERIOD TO FILE

- If you have been wrongfully identified in arrest records or public records as a result of **identity theft**, you may file your petition in district court for an order to expunge at **any time**.
- If you have been **released without conviction for a violation of a municipal ordinance, misdemeanor, felony, penalty assessments under the Criminal Code or the Motor Vehicle Code or violations and deferred sentences under the Motor Vehicle Code** you may file your petition in the district court for an order to expunge after **one year** from the date of the final disposition in the case.
- If you have been **convicted of a violation of a municipal ordinance, misdemeanor or felony**, you may file your petition in the district court after:

- (a) **Two years** if the petition relates to a conviction for a violation of a municipal ordinance or a misdemeanor not otherwise described in this list;
 - (b) **Four years** if the petition relates to a misdemeanor conviction for aggravated battery as provided in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction for a fourth degree felony not otherwise described in this list;
 - (c) **Six years** if the petition relates to a conviction for a third degree felony not otherwise described in this list;
 - (d) **Eight years** if the petition relates to a conviction for a second degree felony not otherwise described in this list; or
 - (e) **Ten years** if the petition relates to a first degree felony or for any offense provided in the Crimes Against Household Members Act, Section 30-3-10 through 30-3-18 NMSA 1978.
- If you believe you may be entitled to automatic expungement of an offense **involving cannabis that is no longer a crime** and it has been at least **two years** since the conviction or arrest **and** you have not been granted automatic expungement, you may file a petition with the district court.

**For the purposes of determining the time since a criminal conviction, time is measured from the last date on which a person completed a sentence for a conviction in any jurisdiction.

*** Remember that not all convictions are eligible for expungement (see above).

EFFECT OF EXPUNGEMENT

The courts, law enforcement agencies, and other criminal justice agencies may always have access to your records, even after expungement. The records are **not destroyed**. However, if anyone else asks about records that have been expunged, all agencies must respond that *“no such record exists with respect to such person.”*

- Arrest or conviction records may still be available for use in any future criminal proceedings.
- Arrest or conviction records will also be disclosed in connection with any application for or query regarding employment or association with any financial institution regulated by the financial industry regulatory authority or Securities and Exchange Commission.
- Once records are expunged, the following documents will no longer be available to the general public:
 - a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement Internet website.
- For additional information, including information about which records are NOT “arrest records” or “public records”, please review **Section 29-3A-2 NMSA 1978**.

“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 records database, photographs, fingerprints and booking sheets.

“Public records” means documentation relating to a person’s arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law enforcement website; but public records does not include:

(1) Arrest record information that:

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

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

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

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

(4) a records received pursuant to a background check as authorized by law.

- *If you have any questions regarding the limits of expungement, you may wish to consult with an attorney.*

If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website: <https://humanresources.nmcourts.gov/americans-with-disabilities-act.aspx>.

COMMON TERMS

- ⇒ **Arrest Records:** Records that identify a person under arrest or under investigation for a crime created or gathered by law enforcement officials, including information gathered from the National Crime Information Center or another criminal record database, photographs, fingerprints and booking sheets.¹
- ⇒ **Public Records:** Documentation relating to a person’s arrest, indictment, court proceeding, guilty plea, conviction, acquittal,

¹ For information about what are NOT “arrest records”, see Section 29-3A-2(A) NMSA 1978

- dismissal or discharge of a court case, including information posted on a court or law enforcement website.²
- ⇒ **Expungement:** Removing general public access to a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement internet website.
 - ⇒ **Petition:** The document that officially begins the expungement of records process.
 - ⇒ **Petitioner:** The person or persons filing a Petition to Expunge Arrest Records and Public Records.
 - ⇒ **Arrest:** To take into custody by legal authority.
 - ⇒ **Conviction:** A judgment of guilt against a criminal defendant resulting from a jury verdict, verdict at a bench trial, or plea agreement.
 - ⇒ **Criminal case:** A case brought by the government against an individual accused of committing a crime.
 - ⇒ **Release without conviction** Includes: (1) an acquittal or finding of not guilty; (2) a *nolle prosequi*, a no bill or other dismissal; (3) a referral to a preprosecution diversion program; (4) an order of conditional discharge pursuant to Section 31-20-13 NMSA 1978; or (5) proceedings otherwise discharged.
 - ⇒ **May:** In legal terms, “may” means “optional” or “can”.
 - ⇒ **Shall:** In legal terms, “shall” means “required” or “must”.

If you do not understand this information, please contact an attorney.

FEES

You must pay the District Court Clerk a filing fee of \$132.00 at the time you file your petition. Most courts require filing fees be paid with cash, a credit/debit card, a money order, or a cashier’s check (made payable to the “District Court Clerk”) not your personal check.³ If you are unable to pay, you must complete an Application for Free Process and Affidavit of Indigency (Form 4-222 NMRA). You can ask the district court if they have a copy of the Application for Free Process and Affidavit of Indigency or you can find it at <https://nmcourts.gov/forms.aspx>.

If you are filing a petition pursuant to Section 29-3A-8 NMSA 1978, to expunge records related to an offense involving cannabis that may be invalid because of the passage of the Cannabis Regulation Act, there is no filing fee.

To obtain arrest record information, you must completely fill out a Department of Public Safety (DPS) [Authorization for Release of Information form](#) (click [here](#) for Spanish version) and submit

² For information about what are NOT “public records”, see Section 2903A-2(C) NMSA 1978.

³ It is advisable to call the court before you file to ask what forms of payment are acceptable.

it to DPS for processing. The form must be notarized. There is a \$15.00 fee per record check, which should be a money order or cashiers check made payable to the Department of Public Safety. The DPS must receive the authorization form with the “original” signature. With the required release and proper payment, all adult arrest records are released.

There may be other fees associated with getting copies of your records from courts and various law enforcement agencies. Contact those entities for further information about fees.

FORMS

To access forms online, go to the website at <https://seconddistrictcourt.nmcourts.gov/> or visit the Second Judicial District Court Self-Help Center located at Second Judicial Court Courthouse at 400 Lomas NW.