

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.

GENERAL INFORMATION

- 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.
- If there was a court case filed, you can find out which court it was filed in by using Case Lookup <https://caselookup.nmcourts.gov/caselookup/>. 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.
- You may include multiple charges and arrests arising under the same case number in a single petition. However, if you are seeking to expunge arrest records that are not associated with a filed case, you must file a separate expungement petition for each arrest to expunge court records connected to that arrest.
- Your expungement petition and all the information you provide during the petition process to the district court will be sealed. This means that the district court will not allow the general public to see court records connected to your petition and will not answer questions from the public about your petition. Even if your petition is not granted, your petition and any information provided during the petition process will not be accessible to the public.

BASIC ELIGIBILITY FOR EXPUNGEMENT

In order to request expungement of records related to a criminal conviction of a violation of a municipal ordinance, misdemeanor or felony, you must *have completed your sentence and the paid 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.

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 or felony**, 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.

**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.

CONVICTIONS INELIGIBLE FOR EXPUNGEMENT

Convictions and records related to convictions for the following offenses cannot be expunged:

- 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.

EFFECT OF EXPUNGEMENT

The courts, law enforcement agencies, and other criminal justice agencies will 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**.

Public records are 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, 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) *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".

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 a money order, not your personal check or credit/debit card. 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 print it out at nmcourts.gov/forms.aspx.

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

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

To obtain arrest record information, you must completely fill out a Department of Public Safety (DPS) *Authorization for Release of Information* form located at <https://www.dps.nm.gov/top-links-for-nm-residents/fingerprinting-and-background-checks>

Available in Spanish at https://www.dps.nm.gov/templates/g5_hydrogen/custom/PDFs/FingerprintingBackgroundChecks/Authorization-for-Release-of-Info-in-Spanish.pdf

Once completed and notarized, submit it to DPS for processing. There is a \$15.00 fee per record check, made payable to the Department of Public Safety. Payment must be made by money order or cashiers' check. 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.