

GENERAL INFORMATION ABOUT EXPUNGING ARREST RECORDS AND COURT RECORDS RELEASE WITHOUT CONVICTION

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.**

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 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.
- 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 located at <https://www.nmcourts.gov>. Go to "Find a Case" and 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.

BASIC ELIGIBILITY FOR EXPUNGEMENT: RELEASE WITHOUT CONVICTION

In order to have your criminal record expunged, you must have been *arrested and released without conviction* for a violation of a municipal ordinance, misdemeanor or felony, it has been at least *one (1) year* since the final disposition in the case, and there are no pending charges or proceedings against you anywhere.

WAITING PERIOD TO FILE

- 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.

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 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 include 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 those records are confidential under state or federal law and are required to be maintained by state or federal law for audit or other purposes; or
- (4) 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

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.

- 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 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.

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/FingerprintingBackgroundCheck/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.

STEPS TO FILING YOUR PETITION FOR EXPUNGEMENT RELEASE WITHOUT CONVICTION

Please review the basic eligibility requirements and waiting period described in the General Information document about Expunging Arrest Records and Court Records and in The Criminal Record Expungement Act, NMSA 1978, 29-3A-1 to -7 (2019).

If you believe your records are eligible for expungement because you were released without a conviction, follow the steps below to file your petition. This process has multiple steps that include filling out forms and contacting agencies for your records. To be certain you understand the process, please read through these instructions carefully before you begin.

Step 1: Locating Your Records

In order to prepare your petition for expungement and prove your eligibility, you may need to gather the following information:

- Records related to the charge(s) you are seeking to expunge. These records should provide the following information:
 - The date of your arrest;
 - The arrest number;
 - The case number (if any);
 - The type of charge(s) you are seeking to expunge: name of the offense(s) and statute or ordinance number(s);
 - The date of final disposition (if applicable);
 - not guilty verdict, dismissal, etc.
- Even though you can ask for expungement of records only in the county where they originated, you may need to provide records of any other convictions, sentences, or pending charges from other counties in New Mexico or from other states. **Most of these records can be obtained from law enforcement agencies and court records. The steps below explain how you can obtain these records.**

Law Enforcement Records

Follow these steps to obtain arrest record information from (1) the New Mexico Department of Public Safety (DPS), and (2) the Federal Bureau of Investigation (FBI). With the required release form and proper payment, all adult arrest records will be released.

- **New Mexico Arrest Record:** To obtain your arrest record information, you may complete a DPS Authorization for Release of Information form located at:

<https://www.dps.nm.gov/index.php/top-links-for-nm-residents/fingerprinting-and-background-checks>

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

- Available in Spanish at:
https://www.dps.nm.gov/templates/g5_hydrogen/custom/PDFs/FingerprintingBackgroundChecks/Authorization-for-Rlease-of-Info-in-Spanish.pdf.
- Once completed and notarized, submit to DPS for processing.
- There is a \$15.00 fee per record check, made payable to the DPS.
Payment must be made by money order or cashiers' check.
- DPS must receive the authorization form with an original signature.
- Once DPS receives the required release and proper payment, it will release all your adult arrest records to you.
- **Federal Arrest Record from the FBI:** The FBI RAP sheet may be obtained directly from the FBI.
 - Instructions on how to obtain the FBI RAP Sheet may be found at either
<http://www.fbi.gov/services/cjis/identity-history-summary-checks>
<http://www.edo.cjis.gov/#/>.

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.

Court Records

Some records may be available on the New Mexico Judiciary's website:

1. Go to <http://www.nmcourts.gov>.
2. Click on **Find a Case** at the top right, enter your last name then first name (with a space, but no comma).
3. Entering your birth date is helpful in case there is another person with the same name as you.
4. You will be able to view and print out information about your specific case(s) here.
5. However, you may need to go the court(s) where your case was heard to get copies of court documents.

Please note that you must file your petition in the district court even if your court case was in a municipal or metropolitan court or was dismissed before any court case was filed.

Step 2: Complete the Appropriate Forms

Complete the appropriate forms for Expungement Without Conviction, including the Petition to Expunge, and the information in the upper left corner of the Notice of Hearing and the Order on the Petition to Expunge.

Petition to Expunge Arrest Records and Public Records (Release Without Conviction)

Complete the Petition to Expunge when seeking to expunge charges where there was no conviction and at least one year has passed since the final disposition.

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

- At the top left corner of the petition form, enter the written number of the district court where your case was filed (First Judicial, Second Judicial, etc.) or where the arrest occurred if there was no case filed, and the name of the county (Santa Fe, Bernalillo, etc.). Enter your full name as Petitioner in the *In re* space provided. (See example below).

| | |
|--------------------------------------|----------|
| STATE OF NEW MEXICO | |
| COUNTY OF <u>Santa Fe</u> | |
| <u>First</u> JUDICIAL DISTRICT COURT | |
| In re <u>John T. Doe</u> , | Case No. |
| Petitioner. | |

- A case number for your Petition to Expunge will be assigned when you file it at the court.
- Fill in all of the requested information being sure to include:
 - Your current contact information;
 - Any aliases or any other names you have used; and
 - Provide the case number that contains the charges you are seeking to expunge.

There can only be one court case number per Petition to Expunge, but there can be more than one arrest and offense per case. Be certain to list all arrests or offenses that you are trying to expunge. If you had more than one court case and you want to expunge offenses from multiple court cases, you must complete a separate Petition to Expunge for each court case.

- Specify the charge(s) for any arrest record or court case file you want expunged.

You may obtain this information from the arresting agency and the court clerk's office as discussed above. Include the offense/arrest date(s), type of charge (felony, misdemeanor, municipal ordinance), outcome of the case, and date of the final disposition.

- Specify the agencies that may hold the records which you want expunged:
 1. The district attorney;
 2. The department of public safety; and
 3. The law enforcement agency that arrested you (the petitioner).

You must provide these agencies with a copy of this Petition as discussed below.

These agencies may also file objections to the request for expungement.

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

- If you had a case that was dismissed due to a plea agreement in a separate case, provide the case number(s) that are related to the plea agreement.
- If your case was joined with another case, provide the case number(s) of the joined case(s).
- Indicate if there are any pending cases or proceedings.
- Indicate which documents are attached to the petition.
- **Sign the Petition.** Your signature is an affirmation that all of the information contained in the petition is accurate to the best of your knowledge.

Notice of Hearing (Expungement of Records)

- In the same way as the previous form, enter the written number of the district court where your case was filed (First Judicial, Second Judicial, etc.), and the name of the county (Santa Fe, Bernalillo, etc.). Enter your full name as Petitioner in the *In re* space provided.
- **Do not fill in anything about the time and location of the hearing.**
The time and location of any hearing will be provided by the court.
- Indicate each agency entitled to receive notice. These should be the same agencies you indicated in your petition, and should include, at a minimum, the district attorney for the district where the charges against you started; DPS; and the law enforcement agency that arrested you.

Order on Petition to Expunge Arrest Records and Public Records (Without Conviction)

- In the same way as the previous forms, enter the written number of the district court where your case was filed (First Judicial, Second Judicial, etc.), and the name of the county (Santa Fe, Bernalillo, etc.). Enter your full name as Petitioner in the *In re* space provided. Enter *only* your name, the district court, and the county in the caption. The court will complete this form.

Form 4-222 NMRA Affidavit for Free Process and Affidavit of Indigency

- Complete this form and provide the necessary paperwork if you are indigent and unable to pay the filing fee.

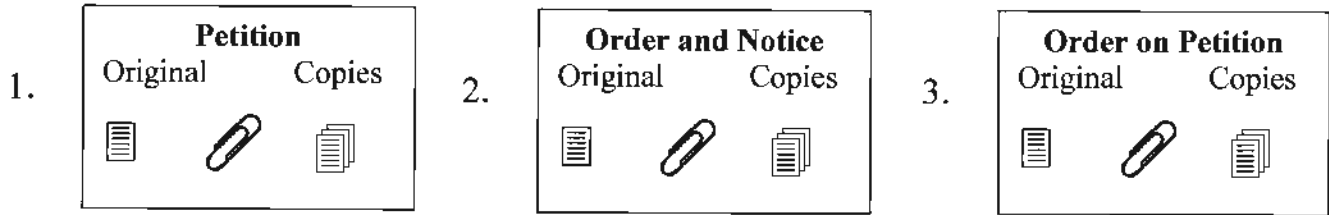
Step 3: Attach arrest records, public records, and sentencing records to your petition

After you have located your records, attached them to your petition. The district court does not need every document related to a case or an arrest. However, the documents provided must show the final disposition of the matter and provide the relevant case information (date, case number, charges).

1. Make a copy of each form (and all other documents) for yourself, and another for the judge assigned to your case.

The court clerk can make copies for a charge of \$0.35 per page, cash, cashier's check, or money order only. No checks, debit cards, or credit cards are accepted. Keep in mind that you will also need to send copies of the signed petition (but not the additional documents) to the interested agencies.

- Sort the documents according to title. The originals of each form should be placed on top of its copies, and then paper clipped together. For example: Place the original *Petition* (and any documents that go with it) on top with the stapled copies underneath, and paper-clip them together. Repeat the procedure for the *Notice of Hearing* and the *Order on Petition to Expunge*.



- Also prepare one (1) self-addressed, stamped envelope. The envelope will be given to the court so that the *Notice of Hearing* can be mailed to you by the court.

Step 4: File the Petition with the district court

Take the *Petition*, the *Notice of Hearing*, and the *Order on Petition to Expunge* and copies that you have prepared along with the self-addressed, stamped envelope to the district court located in the district where your arrest or case began. Provide them to the court clerk and pay the \$132.00 fee if you have not been granted free process. The clerk can accept cash, cashier's check or money order only. No checks, debit cards or credit cards accepted.

Step 5: Provide copies of the petition and attachments to interested agencies

Once your petition has been filed make copies of the file stamped petition and send them to the parties entitled to notice *via certified mail*. Then *immediately* complete the *Certificate of Service*, and file it with the court to certify you have provided notice to the appropriate parties:

Certificate of Service

- In the same way as the previous forms, enter the written number of the district court where your case was filed (First Judicial, Second Judicial, etc.), and the name of the county (Santa Fe, Bernalillo, etc.). Enter your full name as Petitioner in the **In re** space provided. The Certificate of Service should indicate each party receiving service of the petition. You, the petitioner, are responsible for delivering (serving) a copy of the petition to these parties.

You **must** provide a copy of the filed petition to the following parties, and these parties have an opportunity to provide to the district court any objections to the petition:

- The district attorney for that district;
- The Department of Public Safety; and
- The law enforcement agency that arrested you.

Step 6: The Court will Set the Hearing Date

The court will review the petition and supporting documents and set a hearing. Notice of the hearing will be sent to you using the envelope you provided to the court. There will be a period of time for interested parties to object to the petition. The hearing will not be set before this time period ends. If the petition is incomplete, the district court may summarily dismiss the petition and no further action will be taken.

Step 7: The Hearing

Be prepared for your hearing!

- Show up early for your hearing. More than one case may be scheduled at the same time.
- During the hearing, you may be asked questions about the request for expunging an arrest and criminal record and any objections that may have been filed.
- Interested parties may object to the expungement and may be present.

Step 8: After the hearing

After the hearing, the district court will either grant or deny the petition.

- The court has 30 days from the hearing to file a written order granting or denying the petition.
- The court may grant or deny the petition on the day of the hearing.
- If granted, the order will set forth the time period in which the records must be expunged.
- If denied, the matter will be closed.
- You may appeal the denial of your petition to the Court of Appeals.
- You might consider following up with all agencies to make certain that your expungement has taken effect.

REPEAT STEPS 1-8 FOR ANY SEPARATE CASES YOU WOULD LIKE EXPUNGED.

What to Expect from Expungement:

- Even after expungement, your records are ***not destroyed***, but they will no longer be available to the general public.
- The types of records that are removed are:
Arrests • Complaints • Indictments • Guilty Pleas • Convictions • Acquittals • Dismissals/Discharges
- Arrest or conviction records may still be available for use in any future criminal proceedings.
- Courts, law enforcement, and other criminal justice agencies will continue to have access to your records after expungement.
- For anyone else who asks about records that have been expunged, all agencies must respond that ***“no such record exists with respect to such person.”***
- There is an exception to this for any application or query regarding employment at any financial institution regulated by financial regulatory authorities or the Securities and Exchange Commission. Arrest or conviction records are disclosed to these regulators.

1-077.1. Expungement.

A. **Scope of Rule.** This rule governs proceedings for expungement of arrest and public records under the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978.

B. **Commencement of Action.** An expungement proceeding is commenced by filing a civil petition in the appropriate district court as follows:

(1) A petition seeking expungement of arrest records or public records wrongfully identifying a person therein as a result of identity theft under Section 29-3A-3 NMSA 1978 shall be filed in the district court of the county where the charges originated, or the arrest occurred, or where a conviction was entered.

(2) A petition seeking expungement of arrest records and public records where there is no conviction under Section 29-3A-4 NMSA 1978 shall be filed in the district court for the county where the charges originated or the arrest occurred.

(3) An action seeking expungement of records upon conviction under Section 29-3A-5 NMSA 1978 shall be filed in the district court in the county in which petitioner's conviction was entered.

(4) An action seeking expungement of an arrest, release without conviction, or conviction of a charge that the petitioner believes is legally invalid due to the passage of the Cannabis Regulation Act and is eligible for automatic expungement under Section 29-3A-8 NMSA 1978, which automatic expungement has not occurred, shall be filed in the district court in which the arrest occurred, the charges were originally filed, or the conviction was entered. There shall be no filing fee for an action commenced under the automatic expungement provisions of Section 29-3A-8.

(5) A petition to expunge may contain a request to expunge arrest records and public records pertaining to any number of arrests, criminal charges filed without arrest, and/or convictions in a single judicial district.

C. **Sealing of Petition.** A petition for expungement of records upon release without conviction shall be filed under seal and subject to the requirements of Rule 1-079 NMRA and the provisions of this rule. If the petition seeks both expungement of records upon conviction and expungement of records upon release without conviction, the district court shall treat the petition as one filed for expungement of records upon conviction and the petition shall not be subject to Rule 1-079 NMRA.

D. **Contents of Petition.** A petition for expungement shall conform with the requirements of Form 4-951 NMRA (expungement of arrest records and public records upon identity theft), Form 4-452 NMRA (expungement of arrest records and public records upon release without conviction), Form 4-953 NMRA (expungement of arrest records and public records upon conviction), or Form 4-954 NMRA (automatic expungement of arrest records and public records), the use of which are mandatory in expungement proceedings.

E. **Service.** Service of the petition and attachments thereto is only required in cases seeking expungement of records upon release without conviction and upon conviction.

(1) A petition for expungement of records upon release without conviction and all attachments thereto shall be served upon:

(a) the district attorney for the county in which the arrest was made or the criminal charge or proceeding filed; and

(b) the New Mexico Department of Public Safety.

(2) A petition for expungement of records upon conviction and all attachments thereto shall be served upon:

(a) the district attorney for the county in which the conviction was entered;

(b) the New Mexico Department of Public Safety; and

(c) the law enforcement agency that arrested petitioner.

(3) Service under this section is made by first-class United States mail. Petitioner shall file a certificate of service with the district court.

(4) Subsequent pleadings shall be served in accordance with Rules 1-005, 1-005.1, or **1-005.2** NMRA.

F. Court action upon insufficient petition. If the court concludes that the initial petition does not comply with the provisions of this rule and the applicable form, the court may enter an order granting the petitioner leave to file a proper amended petition within sixty (60) days from entry of the order. If the petition fails to comply with the order or this rule, the court may dismiss the petition without prejudice.

G. Response.

(1) Within sixty (60) days from service of the petition, the parties entitled to notice of the proceeding by way of service of the petition, as identified in Paragraph E of this rule, shall file and serve specific objections (Form **4-957** NMRA) or shall file a Notice of Non-Objection (Form **4-958** NMRA). A responding party filing and serving a Notice of Non-Objection shall be excused from further participation in the proceeding.

(2) If a party objects to a petition for expungement of arrest records or public records without conviction on the basis of the contents of petitioner's Federal Bureau of Investigation's record of arrests and prosecutions, the objecting party shall provide petitioner with a copy of the FBI Rap sheet, at no charge, at the time of filing the objection.

H. Notice of Completion of Briefing. For petitions seeking expungement of records upon release without conviction and upon conviction, petitioner must file a notice of completion of briefing (Form **4-959** NMRA (upon release without conviction) or Form **4-960** NMRA (upon conviction)) after expiration of the objection period set forth in Paragraph G of this rule. Petitioner shall serve the notice of completion of briefing on all parties that have filed an objection.

Petitioner shall attach completed Form **4-960.2** NMRA (affirmation in support of expungement of records, upon release without conviction) or Form **4-960.3** NMRA (affirmation in support of expungement of records, upon conviction) to the notice of completion of briefing. If Form 4-960.2 or Form 4-960.3 contains information regarding arrests, charges without arrest, and/or convictions that occurred subsequent to the filing of the petition, the parties shall have twenty (20) days after service of the notice of completion of briefing and attachments thereto to file additional objections to the petition for expungement.

I. Burden of Proof. Petitioner bears the burden of proving the requirements for statutory expungement.

J. **Hearings.** No hearing on the merits will be set in an expungement action prior to the filing and service of the notice of completion of briefing as set forth in Paragraph H of this rule.

If the petition is filed under Section 29-3A-3 NMSA 1978 (expungement of records upon identity theft) or Section 29-3A-4 NMSA 1978 (expungement of records upon release without conviction) and no objections to the petition are filed, the court may decide the petition on the pleadings and affirmation (if applicable) without a hearing.

If the petition is filed under Section 29-3A-8 NMSA 1978, the court may decide the petition on the pleadings without a hearing.

If the petition is filed under Section 29-3A-5 NMSA 1978 (expungement of records upon conviction), the court shall hold a hearing to determine whether petitioner has established that the requirements of Section 29-3A-5(C) NMSA 1978 have been met.

Any party wishing to participate in any hearing by telephonic or other electronic means, may do so by giving notice to the court and the other parties as provided for in the petition and objection forms. A motion and order for telephonic or electronic appearance shall not be required. The court may order any party to attend a hearing in-person.

K. **Orders.** When there is a hearing on a petition for expungement, the court shall issue an order within sixty (60) days of the hearing. Any order requiring the expungement of arrest and public records shall allow a minimum of sixty (60) days to complete the expungement. Any order granting a petition shall require that the civil expungement proceeding be expunged. The court shall not expunge court records earlier than 30-days from entry of its order of expungement.

L. **Service of Orders on the Merits.** On granting a petition for expungement, the court shall cause a copy of an order on a petition for expungement to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of the records to any persons, except as authorized by the Criminal Records Expungement Act, or on order of the court.

M. **Mandatory Forms.** The use of Forms 4-951 to -960.3 NMRA, as appropriate, is mandatory in expungement proceedings.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

Committee commentary. —

2021 Amendment to Rule 1-004 NMRA

The Supreme Court has concluded that in the context of proceedings under the Criminal Record Expungement Act, NMSA 1978, Sections 29-3A-1 to -9 (2019, as amended 2021), if the petitioner serves notice of the petition as required by Paragraph F of Rule 1-077.1 NMRA and subsequently affirms that service was made in accordance with this rule, see Form 4-955 NMRA (certificate of service, expungement of records upon release without conviction) or Form 4-956 NMRA (certificate of service, expungement of records upon conviction), such service satisfies the requirements of due process because the recipients of the notice must either file objections or file a “Notice of Non-Objection” before the district court holds a hearing pursuant to Section 29-3A-4(E) or Section 29-3A-5(C).

Section 29-3A-3(D) (expungement of records upon identity theft); due process issue

Section 29-3A-3(D) provides that “After notice to and a hearing for all interested parties and in compliance with all applicable law, the court shall insert in the records the correct name and other identifying information of the offender, if known or ascertainable, in lieu of the name of the person wrongly identified.” Identity theft is a crime. See, e.g., NMSA 1978, § 30-16-24.1 (2009) (theft of identity; obtaining identity by electronic fraud). It would be a violation of due process for the court in a civil proceeding to publicly declare that it found a person guilty of the crime of identity theft and to identify in public records the name and identifying information of the offender, particularly when the statute does not require notice of the proceeding be given to the alleged wrongdoer. For this reason, Rule 1-077.1 omits requirements related to the statutory provision quoted above.

Rule 1-077.1(G)

Rule 1-077.1(G) provides that parties entitled to notice of these proceedings must file and serve specific objections or a Notice of Non-Objection within sixty days of service of the petition. This time limit is contrary to Section 29-3A-4(B), which provides for a thirty-day response time for filing objections to a petition seeking expungement of records upon release without conviction. Rule 1-077.1(G) controls because the Supreme Court can modify a procedural provision in a statute by adopting a contrary rule. *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 15, 111 N.M. 336, 805 P.2d 603 (“[L]egislative rules relating to pleading, practice and procedure in the courts, particularly where those rules relate to court management or housekeeping functions, may be modified by a subsequent rule promulgated by the Supreme Court.”); see also *id.* ¶ 10 (“[T]here are good reasons for construing [statutory time limits] simply as the legislative adoption of a housekeeping rule to assist the courts with the management of their cases, [which] have effect unless and until waived by a court in a particular case or modified by a rule of this Court on the same subject.”).

Rule 1-077.1(J)

Rule 1-077.1(J) provides that if no objections are filed, the district court may decide a petition for expungement of records upon identity theft, § 29-3A-3, or for expungement of records upon release without conviction, § 29-3A-4, without a hearing. This conflicts with Section 29-3A-3(B), which provides that the district court shall issue an order “after a hearing” on a petition for expungement of records upon identity theft and with Section 29-3A-4(E), which provides likewise in the context of a petition for expungement of records upon release without conviction. Rule 1-077.1(J) controls because the Supreme Court can modify a procedural provision in a statute by adopting a contrary rule. *Lovelace Med. Ctr.*, 1991-NMSC-002, ¶ 15 (“[L]egislative rules relating to pleading, practice and procedure in the courts, particularly where those rules relate to court management or housekeeping functions, may be modified by a subsequent rule promulgated by the Supreme Court.”).

Rule 1-077.1(K)

Rule 1-077.1(K) provides that the district court shall issue an order within sixty (60) days of an expungement hearing. This time limit is contrary to Section 29-3A-4(E) and Section 29-3A-5(C), which require the district court to issue an order within thirty (30) days of certain expungement hearings. For the reasons stated above in the committee commentary to Rule 1-077.1(G), the time limits in Rule 1-077.1(K) control.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-952. Petition to expunge arrest records and public records; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER
SECTION 29-3A-4 NMSA 1978
(Upon Release without Conviction)

Petitioner, [] unrepresented by counsel/ [] represented by counsel (*select one*), under Section 29-3A-4 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the case and charge(s) below.

1. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known (*include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

2. [] Petitioner has no pending expungement cases in the _____ Judicial District.
[] Petitioner has the following pending expungement case or cases in the _____
Judicial District (*provide expungement case numbers for any expungement cases that may be
currently pending before the _____ Judicial District Court*):

3. [] Petitioner has never applied for expungement and been denied.
[] Petitioner has applied for expungement and been denied in the following expungement
cases (*provide the expungement case numbers*): _____

4. The following case(s) and record(s) are the subject of Petitioner's Petition to Expunge

(Include additional pages, if necessary):

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s):

Law Enforcement Agency case number(s): _____

Arrest number(s): _____

5. Petitioner was released without conviction for the following charges: (Complete for each charge sought to be expunged. Include additional pages if necessary.)

(1) Date of arrest: _____

Name of offense and statute/ordinance number: _____

Final disposition of offense: (check one) acquittal or finding of not guilty nolle prosequi no bill referral to pre-prosecution diversion program Order of Conditional Discharge under Section 31-20-13 (1994) NMSA 1978 other dismissal/discharge (explain): _____

Degree of offense, if known (e.g., misdemeanor, petty misdemeanor, etc.): _____

Date of final disposition: _____

Check if additional pages attached.

6. Petitioner has no cases related to the charges sought to be expunged.
 The following cases are related to the charges sought to be expunged: (Include case names and numbers for any cases that were joined either with a co-defendant or joined as the result of a plea.)

7. It has been one (1) year or more since the date of the final disposition of the charge(s) Petitioner seeks to expunge.

8. There is no other charge or proceeding pending against Petitioner.

9. Petitioner asks this Court for an Order to Expunge arrest records and public records in the custody of the following agencies:

District Court in the _____ Judicial District;

_____ County Sheriff's Department;

District Attorney for the _____ Judicial District;

New Mexico Department of Public Safety

Law Enforcement Agency (name of agency that arrested Petitioner);

 Metropolitan/Magistrate/Municipal Court in _____ (location);

New Mexico State Police Investigations Bureau

Other _____

10. A copy of this Petition, when filed with the Court, will be mailed by first class United States mail to:

- (1) The District Attorney in the _____ Judicial District
(The District Attorney in the Judicial District where Petitioner's charge originated)

(Address)

- (2) The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628

11. The charges sought to be expunged were originally disposed of or originated in (*select one*)

- District Court in the _____ Judicial District
 Metropolitan Court in _____ (*location*)
 Magistrate Court in _____ (*location*)
 Municipal Court in _____ (*location*)

12. Petitioner has included Petitioner's State of New Mexico, Department of Public Safety Record of Arrest and Prosecution (RAP) sheet, dated no later than ninety (90) days prior to the filing of the petition.

13. Petitioner has also included the following documentation related to Petitioner's criminal history:

- a. Docket sheet, arrest sheet, or other record detailing the offenses Petitioner is seeking to expunge;
b. Documentation showing final disposition of the charges Petitioner is seeking to expunge;
c. Other: _____
(*list any other documentation provided with the petition.*)

14. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (*if applicable*)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-955. Certificate of service; expungement of records upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

CERTIFICATE OF SERVICE
(Required for Petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

I hereby certify that on the _____ (day) of _____ (month) _____ (year), an endorsed copy of the Petition to Expunge New Mexico Arrest Records and Public Records under Section 29-3A-4 NMSA 1978, filed on _____ (date), and this Certificate of Service were mailed via first-class United States mail to:

- The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628
 - The district attorney in the _____ Judicial District
- _____
(Address)

Petitioner is pro se **OR** Petitioner is represented by counsel

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Petitioner Printed Name

Attorney Printed Signature

Petitioner Address

Attorney Address

Petitioner Telephone Number

Attorney Telephone Number

Petitioner Signature

Attorney Signature

Date of Signature

Date of Signature

USE NOTES

This certificate of service must be filed with the district court.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-959. Notice of completion of briefing; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

NOTICE OF COMPLETION OF BRIEFING

(for use with petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

Petitioner hereby notifies the Court, in accordance with Rule 1-077.1(H) NMRA, that briefing is complete as to Petitioner’s Petition to Expungement Arrest Records and Public Records and that the Petition is ready for decision. Petitioner further states:

Notice of the Petition has been provided via first-class United States mail to:

- The District Attorney in the _____ Judicial District;
- The New Mexico Department of Public Safety.

At least sixty-three (63) days have passed since Petitioner mailed the Petition to the parties entitled to notice.

The District Attorney:

- Has filed a Notice of Non-Objection; or
- Has filed an objection.

The New Mexico Department of Public Safety:

- Has filed a Notice of Non-Objection; or
- Has filed an objection.

Petitioner has included an Affirmation in Support of Expungement (Form 4-960.2 NMRA) with this Notice of Completion of Briefing.

Printed name of Petitioner

Signature of Petitioner

Mailing Address

Telephone Number

Date

Attorney Name *(if applicable)*

Attorney Signature

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this Notice of Completion of Briefing was served by United States first class mail on the following:

(The District Attorney in the _____ Judicial District)

(Address)

(Telephone)

AND

New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico, 87504-1628
(505) _____

Signature of person sending paper

Date of signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-960.2. Affirmation in support of expungement; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

AFFIRMATION IN SUPPORT OF EXPUNGEMENT
(Upon Release without Conviction)

I, _____, (*Petitioner name*), am requesting the expungement of records under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction), and hereby affirm the following:

No charge or criminal proceeding is pending against me in any state or federal court in the United States.

OR

The following charge(s) or criminal proceeding(s) are pending against me in New Mexico state court:

The following charge(s) or criminal proceeding(s) are pending against me in another state court: _____

The following charge(s) or criminal proceeding(s) are pending against me in federal court:

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

(*Petitioner Signature*)

(*Print Name*)

Street Address

City

State

Zip Code

(*Telephone*)

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]