

# STEPS TO FILING YOUR PETITION FOR EXPUNGEMENT (AUTOMATIC EXPUNGEMENT)

**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 -9 (2021).**

If you believe you may be eligible for automatic expungement of certain cannabis offenses, pursuant to Section 29-3A-8 and the Cannabis Regulation Act 26-2C-1 to 26-2C-42 NMSA 1978, and you have not been granted automatic expungement, you may petition the district court for expungement. In order to be granted expungement:

- The offense must no longer be a crime on the effective date of the Cannabis Regulation Act;
- The offense need not have resulted in a conviction;
- Two years have passed since the date of conviction or arrest;
- If the arrest or conviction includes multiple charges, only the portion of the records related to the cannabis charges will be expunged under Section 29-3A-8. **If you believe you have other eligible charges, it is recommended to file a petition pursuant to Section 29-3A-4 or 29-3A-5.**

## **Step 1: Locating Your Records**

**In order to prepare your petition for expungement and prove your eligibility and to provide the court with all the necessary information to expunge all eligible records, it may be helpful to provide the court with information related to your underlying cannabis charge(s):**

- Records related to the charge(s) you are seeking to expunge. These records should provide the following information:
  - The date of your arrest or conviction;
  - The arrest number and any related law enforcement agency numbers associated with the arrest(s) or charge(s);
  - 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, verdict, sentence, etc.

**Most of this information can be obtained from law enforcement records related to your arrest and court records. Certain law enforcement and court records may be helpful for the court and provided with your petition. 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:

## EXPUNGEMENT INSTRUCTIONS (CONVICTION)

<https://www.dps.nm.gov/index.php/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](https://www.dps.nm.gov/templates/g5_hydrogen/custom/PDFs/FingerprintingBackgroundChecks/Authorization-for-Release-of-Info-in-Spanish.pdf).

- Once completed and notarized, submit the form to DPS for processing.
- There is a 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, they 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 and may be obtained by following the steps below.

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.**

### **Step 2: Complete the Appropriate Forms**

Complete the appropriate forms for expungement associated with automatic expungement. Pursuant to Rule 1-077.1, approved forms are required to be used when filing a petition pursuant to the Criminal Record Expungement Act.

 **Form 4-954 Petition to Expunge Arrest Records and Public Records (*Automatic Expungement*)**

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

<b>[Caption Section]</b>	
STATE OF NEW MEXICO	
COUNTY OF <u>Bernalillo</u>	
<u>Second</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 name and current contact information.
  - Any aliases or any other names you have used.
  - Provide any case numbers for any other expungement matters you may have pending before the Second Judicial District Court. For example, if you filed for expungement of another case you would include the *expungement case number* (e.g. D-202-EX-20XX-XXXX).
  - Provide the case number containing the charges you are seeking to expunge or specify the charges.

**\*\*You may include a request to include multiple arrest records and multiple cases in a single petition as long as all the cases originated in the same district court. Under Section 29-3A-8 only the portions of the records related to the cannabis charge will be expunged. If you are including cases and charges for expungement that are unrelated to cannabis offenses, it is recommended to follow the rule for Section 29-3A-4 or 20-3A-5 expungement.**

- Indicate that you are not seeking to reopen the underlying criminal matter. ***If you are seeking to reopen the underlying criminal matter your case will not be considered for expungement under Section 29-3A-8.***
- Any documents you are including should be 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.

**Filing Fee:** There is no filing fee for petitions brought pursuant to Section 29-3A-8.

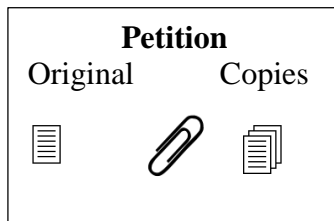
### **Step 3: Attach any desired records to your petition**

After you have located any relevant records you believe may be helpful to the court, attach them to your petition.

1. Make a copy of the 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, credit/debit card, cashier's check, or money order only. No checks are accepted.*

2. 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.



### **Step 4: File the Petition with the district court**

Take the Petition, associated records, and copies that you have prepared to the Second Judicial District Court and provide them to the court clerk for filing.

### **Order upon insufficient petition**

If the petition is incomplete, or fails to comply with the required forms, the court may order you to provide an amended petition or to provide additional information or documents to the court. If you do not comply with the court's order, the petition will be summarily dismissed and no further action will be taken.

### **Step 5: The court will review the petition**

Once your petition has been filed, the court will review the charges to determine if they are eligible for automatic expungement. If the charges are eligible for automatic expungement, the court will grant expungement of the charges without a hearing. The order will set forth the time period in which the records must be expunged. If the charges are not eligible under Section 29-3A-8, the petition will be denied and 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.

**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, and the expungement matter
- 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 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 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.