

STEPS TO FILING YOUR PETITION FOR EXPUNGEMENT (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 -9 (2021).

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 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:

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;

Four years if the petition relates to a misdemeanor conviction for aggravated battery as provided in NMSA 1978, Section 30-3-5(B) or to a conviction for a fourth degree felony not otherwise described in this list;

Six years if the petition relates to a conviction for a third degree felony not otherwise described in this list;

Eight years if the petition relates to a conviction for a second degree felony not otherwise described in this list; or

Ten years if the petition relates to a first-degree felony or for any offense provided in the Crimes Against Household Members Act, NMSA 1978, Section 30-3-10 through 30-3-18.

If you believe your arrest and court records related to a criminal conviction are eligible for expungement, 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 will need to gather the following information to include with your petition:

- 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 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.
- Records related to any sentence received for the charge(s) you are seeking to expunge including:
 - The length of sentence, including any terms of probation and parole;
 - Any fees or fines ordered;

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- Any victim restitution ordered;
 - Documentation detailing the date the sentence was completed, including completion of any term of probation or parole;
 - Documentation detailing fulfillment of any fines, fees, or victim restitution owed.
- Even though you can only ask for expungement of records 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 including:
 - Any pending charges (municipal ordinance violations, misdemeanors, or felonies);
 - Any sentences that were served and documentation detailing the completion of those sentences.

Most of this information can be obtained from law enforcement records related to your arrest and court records. The New Mexico Department of Public Safety (DPS) arrest records and FBI arrest records both contain information necessary for the Court to rule on your petition and both must be included with your petition. All law enforcement records (DPS and FBI) must be current and dated no later than ninety (90) days prior to the date you file 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) DPS, and (2) the 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>

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 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.

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- 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.

****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.**

- 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), including the statute or ordinance number; and information related to sentences and fines; and date of the final disposition.

- Indicate the amount of time that has passed since your last conviction. This time is counted from when you finished serving your sentence. If you have been convicted of other charges in separate cases, including cases in other states, include those sentences in the determination about how much time has passed.
- Include information about sentence completion and payment of fees and fines.
- Provide specific information regarding why justice will be served by an order to expunge, including any hardships you have suffered as a result of the records and any efforts you may have made toward rehabilitation.
- You may include any affidavits from persons who can support your assertion that justice will be served by expungement of the records.
- All documents relating to the charges you are seeking to expunge, including documentation detailing sentence completion, should be attached.
- If you served a sentence in any other jurisdiction, include documentation related to the completion of the other sentences.
- Specify the agencies that may hold the records which you want expunged:
 1. The district attorney for that district;
 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.

- 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.

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- Indicate which documents are attached to the petition. *Note that although you may include additional documentation related to the charges you are seeking to expunge, both your DPS and FBI arrest records are required to be provided with 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.

 **Form 4-960.1 Notice of Hearing (Expungement of Records)**

- In the same way as the previous form, complete the caption section with any missing information including the written number of the district court where your case was filed (Second Judicial District Court); the name of the county; and your full name as Petitioner in the *In re* space provided.
- The rest of the information will be completed by the court when a hearing is scheduled.

 **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. If you think you may qualify for free process, contact the Second Judicial District Court Self-Help Center for assistance.

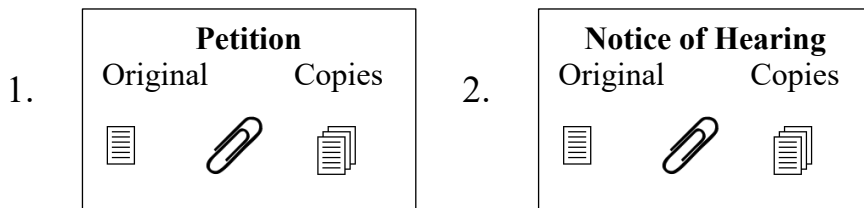
Step 3: Attach arrest records, public records, and sentencing records to your petition

After you have located the relevant records, attach 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, DPS and FBI arrest records, 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. Keep in mind that you will also need to send copies of the signed petition to the interested agencies.

2. 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 document that go with it) on top with the stapled copies underneath, and paper-clip them together. Repeat the procedure for the Notice of Hearing.



3. 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, associated records, the Notice of Hearing, and copies that you have prepared along with the self-addressed, stamped envelope to the Second Judicial District Court. 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, credit/debit card, cashier's check or money order only. No checks will be 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 **immediately** send them to the parties entitled to notice *via first-class United States mail*. Once you have mailed the petition to all the parties entitled to notice, **immediately** complete the Certificate of Service, and file it with the court to certify you have provided notice to the appropriate parties.

It is important to complete this step as soon as possible:

Form 4-956 Certificate of Service

- In the same way as the previous forms, complete the caption section. You, the petitioner, are responsible for delivering (serving) a copy of the petition to these parties, as instructed above. You do not need to file a separate certificate of service for each party entitled to notice, only complete and file one certificate of service for all the parties entitled to notice.

Parties entitled to notice

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:

1. The district attorney for your district;

Second Judicial District, District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102

2. The Department of Public Safety

LERB, New Mexico Department of Public Safety
PO Box 1628
Santa Fe, NM 87504-1628

3. The law enforcement agency that arrested you which may include the following agencies (**if you were arrested by an agency other than one listed below, contact that entity for information on how to send notice of the petition*):

New Mexico Department of Public Safety-District 5 (Albuquerque)
2501 Carlisle Blvd. N.E.
Albuquerque, NM 87110

Bernalillo County Sheriff's Office
400 Roma NW
Albuquerque, NM 87102

Albuquerque Police Department

P.O. Box 1293

One Civic Plaza

Room 7057

Albuquerque, NM 87103

Step 6: Complete Notice of Completion of Briefing and Affirmation in Support of Petition for Expungement

The parties to whom you provided notice of the petition have sixty (60) days after receipt of the petition to file an objection or Notice of Non-Objection. After sixty-three (63) days from the date you mail out the petition to the parties entitled to notice, which includes three (3) days of mailing time, complete the Notice of Completion of Briefing and the Affirmation in Support of Petition for Expungement. The Court will not set a hearing or proceed forward with ruling on the petition until both of these documents are filed.

 **Form 4-960 Notice of Completion of Briefing**

- This will inform the court that the petition is ready for a hearing or decision (that all parties were provided notice and the time period for objections has passed) and will inform the court whether any objections have been filed.
- Provide a copy of the form and Affirmation in Support to the parties entitled to notice.

 **Form 4-960.3 Affirmation in support of expungement; upon conviction**

- This will provide the court with information about whether you have any new criminal history since the filing of your DPS and FBI RAP sheets and whether you still remain eligible for expungement since the filing of your petition.
- If you have had no new arrests or charges since you filed your petition, check the box marked “no charge or criminal proceeding is pending”. If you have had an arrest or charge since the petition was filed, provide the information to the court. Finally, include information on your most recent criminal conviction if it occurred within the last ten years.
- It is important to honestly and accurately complete this form as it is filed under the penalty of perjury.
- This form must be provided with your Notice of Completion of Briefing and provided to the parties entitled to notice.
- Parties entitled to notice will have twenty (20) additional days to object based on any information provided in the Affirmation in Support of Expungement.

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.

The Court will Set the Hearing Date

After the Notice of Completion of Briefing and Affirmation in Support of Expungement are filed, 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. The hearing will not be set before the Notice of Completion of Briefing is filed, so it is important you send notice of the petition and file your certificate of service as soon as possible.

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.
- If you have not gotten notice of an objection being filed, your hearing may be cancelled. The court will send you notice if your hearing is cancelled.

Step 8: After the hearing

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

- The court has sixty (60) 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.

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.

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- 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.