

Petition to Expunge (automatic)

INSTRUCTIONS AND ALL FORMS

If you do not have a lawyer, you must use the forms in this packet to start your case for Expungement

THIS PACKET IS NOT A SUBSTITUTE FOR PROFESSIONAL LEGAL ADVICE

Inside are fill-in-the-blank forms for Self-Represented Litigants. They do not deal with every situation. **Expungement** can be complicated and using legal forms without a lawyer's help can harm your legal rights. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents.

In this packet you will find...

- ✓ Steps to Filing your Petition for Expungement (automatic)
(4 pages)
- ✓ Petition to Expunge New Mexico Arrest Records and
Public Records (automatic) (2 pages)
- ✓ Notice of Hearing (1 Page)
- ✓ Order on Petition for Request for Automatic Expungement
(4 pages)

STEPS TO FILING YOUR PETITION TO EXPUNGE (AUTOMATIC)

Step 1: Gather all of your arrest and court records

- Even though you can only ask for expungement of records in the county where they originated, you will need to provide records of any other convictions, sentences, or pending charges from other counties in New Mexico or from other states or from federal or tribal jurisdictions including:
 - Any pending charges or arrests (municipal ordinance violations, misdemeanors, or felonies);
 - Any sentences that were served and documentation detailing the completion of those sentences.
- **Obtain your New Mexico Arrest Record from the Department of Public Safety ("DPS")**
 - Print a DPS "Authorization for Release of Information" form found online at: <https://www.dps.nm.gov/index.php/top-links-for-nm-residents/fingerprinting-andbackground-checks>.
 - Available in Spanish at: https://www.dps.nm.gov/templates/g5_hydrogen/custom/PDFs/FingerprintingBackgroundChecks/Authorization-for-Release-of-Info-in-Spanish.pdf
 - Complete and have your signature notarized.
- Mail the form with your original, notarized signature to DPS with \$15.00 (money order or cashier 's check only — no personal check) to:

Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628
- **Obtain your Federal Arrest Record, or "RAP" sheet, from the FBI**
 - Follow the instructions online at either:
http://www.fbi.gov/services/cjis/identity-history_summary-checks or
<http://www.edo.cjis.gov/#/>
- **Obtain all of your criminal court records from any state, tribal or federal court**
 - For New Mexico courts, some records may be available online at: <http://www.nmcourts.gov>
 1. Click on **Find a Case** at the top right, enter your last name then first name (without a comma).
 2. Entering your birth date is helpful in case there is another person with the same name as you.

3. You will be able to view and print out information about your specific case(s).

- You will most likely need to contact the court(s) where your case was heard to get copies of court documents. The court(s) will charge to make copies.
- **For the arrest and court records you are seeking to expunge, make sure your records show:**
 - The date of your arrest
 - The date of the offense (may be the same as the arrest date)
 - The arrest number from your fingerprint card (if any)
 - The name of the crime(s) you are seeking to expunge
 - The statute or city ordinance number for the crime(s)
 - Whether the crime(s) is a municipal ordinance violation, misdemeanor or felony •
 - The court case number
 - The final disposition, verdict, sentence, etc.
 - The date of final disposition
 - The length of sentence, including any terms of probation and parole
 - Any fees or fines ordered
 - Any victim restitution ordered
 - Documentation detailing the date the sentence was completed, including completion of any term of probation or parole
 - Documentation showing you have paid all fees, fines or victim restitution owed.

Step 2: Prepare the *Petition to Expunge* to file in the District Court

- Your Petition to Expunge must be filed in the District Court in the county where the arrest took place even if your court case was in a municipal or magistrate court.
- You may request expungement of multiple court cases and arrest records in the Petition to Expunge.
- You are the "Petitioner." At the top left corner of the petition form, enter your full name as Petitioner in the In re space provided.
- A case number will be assigned to your Petition to Expunge by the court clerk when you file it at the District Court.

- Check the boxes that apply and fill in all the necessary information in the blanks. Be as specific as possible.
- Attach all relevant documents relating to the arrest records and public records you are seeking to expunge. The District Court does not need every document related to the arrest or court case. However, the documents provided must support what you state in your Petition to Expunge.
- One relevant document is the Judgment and Sentence or other court paperwork showing the convictions and sentences you are seeking to expunge.
- 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.
- Fill in your name on the In re line on the *Notice of Hearing*. The court will fill in the date of the hearing
- Fill in your name on the *Order on Petition for Automatic Expungement*. The court will fill out the rest
- Provide a self-addressed stamped envelope
-

Step 3: File the *Petition for Request for Automatic Expungement* in the District Court

- There is no cost to file your *Petition for Request for Automatic Expungement*
- Give to the Clerk:
 - *Petition*
 - *Notice of Hearing*
 - *Order on Petition for Request for Automatic Expungement*
 - Self-addressed stamped envelope
- Once your *Petition to Expunge* is filed, make a copy of the filed petition with all attachments for your records. (The court clerk can make copies for \$0.35 per page paid by cash, cashier's check or money order only. No checks, debit cards or credit cards are accepted. You can also make your own copies elsewhere.)

Step 4: The Court will now consider your *Petition*

- The Court may grant or deny your Petition without having a hearing. If this is the case, the Order will be sent to you in the envelope you provided. The court may also choose to hold a hearing. If this is the case, the hearing notice will be sent to you in the envelope you provided. You must attend the hearing.

Step 5: The hearing, if any

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 your Petition to Expunge and any objections to your Petition that may have been filed.
- The agencies may object to the expungement and may be present at the hearing.
- If you did not know that an agency objected or was going to object to your Petition, tell the Judge. Ask that you be provided with the reasons for the objections. The Judge may set another hearing. If so, the court will mail you a notice of hearing telling you when it will take place. You must go to the hearing.

Step 6: After the hearing

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

- The court has 60 days from the hearing date 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.

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

In re _____,
Petitioner. No. D-1116-EX-_____

**PETITION FOR REQUEST FOR AUTOMATIC EXPUNGEMENT UNDER
SECTION 29-3A-8 NMSA 1978
(Automatic Expungement of Arrest and Conviction Records;
Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978)**

Name _____
First Middle Last

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)

Petitioner claims an entitlement to automatic expungement of the following offense(s) involving cannabis that is(are) no longer a crime as of the effective date of the Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978, or would have resulted in a lesser offense if the Cannabis Regulation Act had been in effect at the time of the offense(s).

You may include more than one case if there are multiple cases with eligible offenses. (Include additional pages if necessary)

District Court case number: _____

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

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

District Court case number(s): _____

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

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

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.]

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

In re _____,
Petitioner. No.D-1116-EX-_____

4-960.1. Notice of hearing.

NOTICE OF HEARING

Petitioner may be entitled to expungement of arrest records or public records under the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978. A hearing in this matter is set before the Honorable _____ as follows:

1. *Date of Hearing:* _____
2. *Time of Hearing:* _____
3. *Length of Hearing:* _____
4. *Place of Hearing:* _____

5. *Matter(s) to be heard:* _____

HONORABLE _____
By _____
TCAA

PARTIES ENTITLED TO NOTICE:

Petitioner Name

Petitioner Address

Petitioner Telephone Number

Petitioner Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

USE NOTES

For the purpose of this form, the parties entitled to notice include the petitioner and any party that filed and served objections to the petition for expungement pursuant to Rule [1-077.1\(G\)\(1\)](#) NMRA no later than sixty-three (63) days from the date of service. See Rule [1-077.1\(G\)\(1\)](#) (providing sixty (60) days for a party entitled to notice to file an objection); Rule [1-077.1\(E\)\(3\)](#) NMRA (providing for service by mail for actions filed pursuant to Rule [1-077.1](#)); Rule [1-006\(C\)](#) (providing for three (3) additional days where service is made by mail).

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

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

In re _____,
Petitioner. No. D-1116-EX-_____

ORDER ON PETITION FOR REQUEST FOR AUTOMATIC
EXPUNGEMENT UNDER SECTION 29-3A-8 NMSA (1978)
*(Automatic Expungement of Arrest and Conviction Records;
Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978)*

THIS MATTER came before the Court on Petitioner's Petition for Request for Automatic Expungement pursuant to the Criminal Record Expungement Act, NMSA 1978 Sections 29-3A-8(2021). The Court, having reviewed the Petition with attachments, other papers filed in this case, and having considered any objections, now FINDS as follows:

1. Petitioner seeks to expunge New Mexico arrest records and public records of convictions in:

Name of Court: _____

Court case name: _____

Court case number: _____

Name of arresting law enforcement agency: _____

Law enforcement agency case number: _____

Arrest number from fingerprint card: _____

2. Venue is proper in this Court OR Venue is improper in this Court because the charges Petitioner seeks to expunge did not originate in this County.

3. A hearing was convened in this Court on (date) _____

4. The Petition to Expunge New Mexico Arrest Records and Public Records relates to an arrest or conviction for an offense involving cannabis that is no longer a crime as of the effective date of the Cannabis Regulation Act [26-2C-1 to 26-2C-42 NMSA 1978] or that would have resulted in a lesser offense if that act had been in effect at the time of the offense OR The Petition to Expunge New Mexico Arrest Records and Public Records does NOT relate to an arrest or conviction for an offense involving cannabis that is no longer a crime as of the effective date of the Cannabis Regulation Act [26-2C-1 to 26-2C-42 NMSA 1978] or that would have resulted in a lesser offense if that act had been in effect at the time of the offense.

5. Two years have passed since the date of the conviction or the date of the arrest if there was no conviction. OR Two years have NOT passed since the date of the conviction or the date of the arrest if there was no conviction.

6. Section 29-3A-8 NMSA (1978) 2021 requires that “if a person was charged with an offense involving cannabis that is no longer a crime on the effective date of the Cannabis Regulation Act [26-2C-1 to 26-2C-42 NMSA 1978] or that would have resulted in a lesser offense if that act had been in effect at the time of the offense, whether or not the person is convicted, all public records held by a court or an agency of the state or a local jurisdiction that relate to the person's arrest or conviction shall be automatically expunged two years after the date of the person's conviction or the date of the person's arrest if there was no conviction; provided that if the arrest or conviction included multiple charges, only the portions of the public records related to the cannabis charge shall be expunged.”

7. The arrest records and/or convictions that are the subject of this position have not been automatically expunged, as required by statute.

This Court CONCLUDES:

1. Taking into consideration the evidence presented as to the nature of the arrest records and convictions sought to be expunged; the length of time that has passed since the offense was committed and sentence completed; and the fact that Petitioner’s charges have not been expunged:

- Petitioner's Petition is inadequate under the law because:
 - The offenses charged still exist as violations of the criminal code.
 - The offenses charged would not be lesser offenses after the effective date of the Cannabis Regulation Act.
 - Two years have not passed since the date of conviction or arrest

OR

The Petition adequately states grounds that automatic expungement should have occurred in whole or in part.

IT IS THEREFORE HEREBY ADJUDGED, ORDERED AND DECREED that, as to the arrest records and public records identified in the Petition and in Finding of Fact #1 of this Order:

1. Petitioner's Petition is summarily denied WITHOUT PREJUDICE.
2. Petitioner's Petition is DENIED as to the following convictions sought to be expunged. These convictions are not expunged:

Name of offense: _____
Statute/ordinance number of offense: _____

Name of offense: _____
Statute/ordinance number of offense: _____

Name of offense: _____
Statute/ordinance number of offense: _____

3. Petitioner's Petition is GRANTED as to the following convictions sought to be expunged. These convictions are expunged:

Name of offense: _____
Statute/ordinance number of offense: _____

Name of offense: _____
Statute/ordinance number of offense: _____

Name of offense: _____
Statute/ordinance number of offense: _____

5. Petitioner's Petition is GRANTED as to all convictions sought to be expunged.

IT IS SO ORDERED. (District Court Judge's signature appears below)

IT IS THEREFORE THE FURTHER ORDER OF THE COURT that:

4. All arrest records and public records held by any New Mexico state or local governmental entity, whether executive, legislative or judicial, related to the charges identified above as expunged are hereby expunged.

5. With the following exception, all New Mexico state or local governmental entities may properly reply to an inquiry from the public concerning the expunged records that "no such records exist with respect to" the Petitioner. They shall not release copies of any expunged records to any person except upon order of this Court.

6. Exception to expungement: New Mexico state or local governmental entities shall disclose arrest and conviction records in response to a public query regarding Petitioner's qualification for employment or association with any regulated financial institution or the securities and exchange commission.

7. The Court shall cause a copy of this Order to be delivered to:

a) Office of the San Juan County District Attorney
335 S. Miller Ave.
Farmington, NM 87401-4205

b) New Mexico Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628

c) Name and address of arresting law enforcement agency:

d) Name and address of the court where convictions were prosecuted

8. The above New Mexico governmental entities shall expunge the necessary records within _____ days of the date of this Order.

Date

District Court Judge