

GENERAL INFORMATION ABOUT EXPUNGING ARREST RECORDS AND COURT RECORDS 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 you were convicted of a crime, 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: CONVICTION

In order to request expungement of records related to a criminal conviction of a violation of a municipal ordinance, misdemeanor or felony, you must *have completed your sentence and the paid any fines or fees owed to the state for the conviction*. You will **also** have to demonstrate (1) there are no other charges or proceedings pending against you anywhere; (2) justice will be served by an order to expunge; (3) you have fulfilled any victim restitution ordered by the court in connection with your conviction; and (4) you were not convicted of any other crime during the required Waiting Period discussed below.

WAITING PERIOD TO FILE

- If you have been **convicted of a violation of a municipal ordinance, misdemeanor or felony**, you may file your petition in the district court after:
 - (a) **Two years** if the petition relates to a conviction for a violation of a municipal ordinance or a misdemeanor not otherwise described in this list;
 - (b) **Four years** if the petition relates to a misdemeanor conviction for aggravated battery as provided in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction for a fourth degree felony not otherwise described in this list;
 - (c) **Six years** if the petition relates to a conviction for a third degree felony not otherwise described in this list;
 - (d) **Eight years** if the petition relates to a conviction for a second degree felony not otherwise described in this list; or
 - (e) **Ten years** if the petition relates to a first degree felony or for any offense provided in the Crimes Against Household Members Act, Section 30-3-10 through 30-3-18 NMSA 1978.

****For the purposes of determining the time since a criminal conviction, time is measured from the last date on which a person completed a sentence for a conviction in any jurisdiction.**

CONVICTIONS INELIGIBLE FOR EXPUNGEMENT

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

- Civil Cases. The expungement process applies only to criminal records;
- You were convicted of an offense against a child;
- You were convicted of an offense that caused great bodily harm or death to another person;
- You were convicted of a sex offense as defined in Section 29-11A-3 NMSA 1978;
- You were convicted of embezzlement pursuant to Section 30-16-8 NMSA 1978; or
- You were convicted of an offense involving driving while under the influence of intoxicating liquor or drugs.

EFFECT OF EXPUNGEMENT

The courts, law enforcement agencies, and other criminal justice agencies will always have access to your records, even after expungement. The records are **not destroyed**. However, if anyone else asks about records that have been expunged, all agencies must respond that *“no such record exists with respect to such person.”*

- Arrest or conviction records may still be available for use in any future criminal proceedings.

- Arrest or conviction records will also be disclosed in connection with any application for or query regarding employment or association with any financial institution regulated by the financial industry regulatory authority or Securities and Exchange Commission.
- Once records are expunged, the following documents will no longer be available to the general public:
 - a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement 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 includes 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 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

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 29-3A-2(C) NMSA 1978.

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/FingerprintingBackgroundChecks/Authorization-for-Release-of-Info-in-Spanish.pdf. Once completed and notarized, submit it to DPS for processing. There is a \$15.00 fee per record check, made payable to the Department of Public Safety. Payment must be made by money order or cashiers' check. The DPS must receive the authorization form with the "original" signature. With the required release and proper payment, all adult arrest records are released.

There may be other fees associated with getting copies of your records from courts and various law enforcement agencies. Contact those entities for further information about fees.

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 -7 (2019).

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 any offense 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 may 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;
 - 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;

EXPUNGEMENT INSTRUCTIONS (CONVICTION)

- 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 detailing fulfillment of any fines, fees, or victim restitution owed.
- 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 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 the above information can be obtained from law enforcement records related to your arrest 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>

- 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 \$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 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 a criminal 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 (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.

EXPUNGEMENT INSTRUCTIONS (CONVICTION)

- 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), 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.

- 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 (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.

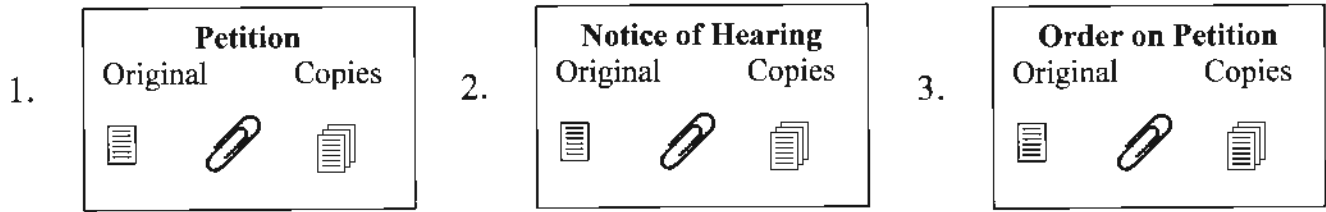
Step 3: Attach arrest records, public records, and sentencing records to your petition

After you have located 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 (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.

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 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*.



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* and associated records, the *Notice of Hearing*, and the *Order on the Petition to Expunge* and copies that you have prepared along with the self-addressed, stamped envelope to the district court 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:

1. The district attorney for that district;
2. The Department of Public Safety; and
3. 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.
- 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 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.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the filed Petition to Expunge New Mexico Arrest Records and Public Records pursuant to NMSA 1978, Section 29-3A-1 to 29-3A-7 (2019) which I filed on _____ (*date*) was mailed via certified mail, return receipt requested, to the following:

☐ District Attorney

(address found at <http://www.nmdas.gov>)]

☐ New Mexico Department of Public Safety

ATTN: Law Enforcement Records Bureau

P.O. Box 1628

Santa Fe, NM 87504

☐ Arresting Agency _____

I hereby also certify that I have received the requested return receipts, copies of which are attached.

Signature of Petitioner

Date of signature

STATE OF NEW MEXICO
COUNTY OF _____

JUDICIAL DISTRICT COURT

In re _____, No.
Petitioner.

NOTICE OF HEARING (EXPUNGEMENT OF RECORDS)

1. Petitioner has certified to this Court that Petitioner mailed copies of the filed Petition to Expunge to the District Attorney, the Department of Public Safety, and the law enforcement agency that arrested Petitioner by certified mail, return receipt requested, in accordance with the Criminal Record Expungement Act, NMSA 1978 Section 29-3A-5 (B) (2019);
2. It appears that the above agencies have received adequate notice and **20 days** have passed for the filing of any written objections to the Petition;
3. Petitioner may be entitled to expungement of arrest records or public records pursuant to the Criminal Record Expungement Act.
4. Pursuant to Section 29-3A-5(C), a hearing on this matter has been set as follows:

Location: _____

Date: _____ **Time:** _____

5. Agencies entitled to notice are those listed above at the addresses indicated on Petitioner's Certificate of Mailing Copies of the filed Petition to Expunge. **Agencies that do not file an objection are not required to attend the hearing.**

Date: _____

District Court Judge

CERTIFICATE OF SERVICE

This is to certify that this Notice of Hearing was provided to Petitioner and counsel of record, if applicable.

District Court Clerk

Date

JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

In re _____,

No.

Petitioner.

**OBJECTION TO PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS
PURSUANT TO NMSA 1978, SECTION (All cases)**

_____ (name and agency, if applicable), pursuant to
NMSA 1978, Section 20-3A-1 to -7 (2019), objects to the Petitioner's Petition to Expunge Arrest Records
and Public Records, which was filed on _____ and respectfully asks this Court to deny the
Petition on the following grounds:

☐ Check if additional pages attached

Date

Agency

Printed Name

Mailing Address

Signature

Telephone #

Email

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

**ORDER ON PETITION TO EXPUNGE ARREST RECORDS AND
PUBLIC RECORDS PURSUANT TO NMSA 1978, SECTION 29-3A-5 (2019) (Conviction)**

THIS MATTER came before the Court on Petitioner's Motion to Expunge Arrest Records and Public Records Pursuant to Section 29-3A-5 (*Conviction*). The Court having reviewed the Petition, examined the record, considered any objections filed by the District Attorney, the Department of Public Safety (DPS), the law enforcement agency that arrested Petitioner, and any other person or agency, **FINDS and ORDERS** as follows:

1. ☐ Petitioner was convicted and Petitioner completed any sentence and payment of any fines or fees owed to the state for the conviction; no other charge or proceeding is pending against Petitioner; justice will be served by an order to expunge arrest records and public records; Petitioner has fulfilled any victim restitution ordered by the court in connection with Petitioner's conviction; and no other criminal conviction has occurred for a period of:

(check applicable time period based upon charges expunged)

- ☐ **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) (1969) 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 to -18 (2009).

2. ☐ Petitioner's request is denied for all charges sought to be expunged.¹

OR

- ☐ Petitioner's request to expunge is denied for the following offenses:²

3. Petitioner is not entitled to relief under Section 29-3A-5 because³

- ☐ Petitioner has failed to provide the required information and the petition is summarily dismissed WITHOUT PREJUDICE.

- ☐ Petitioner's records are not legally eligible for expungement because

☐ There is a charge or proceedings pending against Petitioner;

☐ Petitioner has not fulfilled victim restitution ordered by the court in connection with Petitioner's conviction;

☐ Petitioner has had another criminal conviction within the time period for the charges sought to be expunged.

- ☐ Venue is improper because the charges did not originate in this district.

- ☐ Taking into consideration the nature and gravity of the offense; Petitioner's age, criminal history, and employment history; the length of time that has passed since the offense was committed and sentence completed; the specific consequences to Petitioner if the Petition is denied; and more specifically _____

the Court finds that justice will not be served by an order to expunge.

- ☐ Other: _____

4. ☐ Petitioner's request to expunge is granted for all charges requested.⁴

OR

¹ For use when the petition is denied in whole.

² For use when petition will be granted in part, and denied in part.

³ To be completed when any portion of the petition is denied.

⁴ For use when the petition will be granted in whole.

☐ Petitioner's request to expunge is granted only for the following charges⁵:

(Select from the following, as applicable)

IT IS THEREFORE ORDERED that Petitioner's Petition to Expunge Arrest Records and Public Records Pursuant to Section 29-3A-5 is

☐ **DENIED.**

☐ **GRANTED.**

☐ **GRANTED IN PART AND DENIED IN PART.**

(select as applicable for petitions granted in whole or in part)

☐ **IT IS FURTHER ORDERED** that, in accordance with Section 29-3A-5, the arrest records and public records specifically relating to

☐ all the charges requested in the Petition

☐ the following charges:

and contained in:

District Court case number: _____

Metropolitan Court case number: _____

Appellate Court case number: _____

Magistrate/Municipal Court case number: _____

Law Enforcement Agency case number: _____

Arrest number (from fingerprint card): _____ Date: _____

Including information posted on a court or law enforcement website

⁵ For use when the petition will be granted in part and denied in part.

SHALL BE EXPUNGED.

☐ **IT IS FURTHER ORDERED** that the following agencies shall expunge the necessary records within _____ days of the date of this Order, the proceedings shall be treated as if they never occurred, and upon inquiry in the matter, Petitioner and officials to whom this Order is directed may properly reply that “no such records exist with respect to such person.”

- ☐ District Attorney for the _____ district
- ☐ New Mexico Department of Public Safety
- ☐ Arresting agency _____
- ☐ Other: _____
- ☐ Other: _____
- ☐ Other: _____

☐ **IT IS FURTHER ORDERED** that the court clerk for the *(indicate the court that originally disposed of the charges)* ☐ District Court for the _____ Judicial District, ☐ Metropolitan Court in _____ *(location)*, ☐ Magistrate Court in _____ *(location)*, or ☐ Municipal Court in _____ *(location)* shall expunge the necessary records within _____ days of the date of this Order, the proceedings shall be treated as if they never occurred, and upon inquiry in the matter, Petitioner and officials to whom this Order is directed may properly reply that no such records exist with respect to such person.

Date: _____

District Court Judge

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, No.
Petitioner.

**PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS PURSUANT
TO NMSA 1978, SECTION 29-3A-5 (2019) (Conviction)**

Petitioner, ☐ unrepresented by counsel/☐ represented by counsel (*select one*), pursuant to Section 29-3A-5, respectfully moves the Court to expunge the arrest records and public records related to the case and conviction 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. The following case and records are the subject of Petitioner's Petition to Expunge (*separate petitions must be filed to expunge charges in separate cases*):

District Court case number: _____
Metropolitan/Magistrate/Municipal Court case number: _____
Law Enforcement Agency case number: _____
Arrest number: _____

3. Petitioner was convicted of the following charges: (*Complete for each offense that you are seeking to expunge. Include additional pages if necessary.*)

(1) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

(2) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

(3) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

(4) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

(5) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

☐ Check if additional pages attached.

4. ☐ 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.)
5. _____

OR

- ☐ There are no related cases involving the charges Petitioner seeks to expunge.
6. ☐ There is currently no other charge or proceeding pending against Petitioner.
7. Petitioner has had no other criminal convictions (measured from the date of completion of a sentence for a conviction in *any jurisdiction*) for a period of:
- ☐ Two years
 - ☐ Four years
 - ☐ Six years
 - ☐ Eight Years

☐ Ten or more years

8. ☐ Petitioner has paid all fines and fees and has fulfilled all victim restitution ordered for the charges Petitioner seeks to expunge.

9. ☐ Petitioner is not seeking to expunge convictions pertaining to any of the following:

- An offense committed against a child;
- An offense causing great bodily harm or death;
- An sex offense as defined in NMSA 1978, Section 29-11A-3 (2013);
- An offense for embezzlement pursuant to NMSA 1978, Section 30-16-8 (2007); or
- An offense involving driving while under the influence of intoxicating liquor or drugs.

10. Petitioner believes justice will be served by the Court granting the Petition and states the following in support: (*Explain why expungement is being sought, i.e. employment, licensure, housing, and any adverse consequences that have been suffered by Petitioner or will be suffered if the Petition is not granted. Attach additional pages if necessary.*)

☐ Check if additional pages attached.

11. Petitioner asks this Court for an Order to Expunge arrest records and court records in the custody of the following below:

- ☐ 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*);
- ☐ Investigations Bureau, NM State Police;
- ☐ Other: _____

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

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

13. ☐ Petitioner will send Order/Notice of Petition to:

- (1) the district attorney;
- (2) the Department of Public Safety; and
- (3) the law enforcement agency that arrested Petitioner.

14. Petitioner has included the following documentation related to Petitioner's criminal history:
(*The Petitioner should attach the documentation detailing the sentences for the charges Petitioner is seeking to expunge. If there have been additional convictions, additional paperwork may be required.*)

- ☐ Documentation showing completion of Petitioner's sentences for the convictions Petitioner is seeking to expunge;
- ☐ Documentation showing completion of sentences for any other convictions that Petitioner has served;
- ☐ Documentation showing final payment of any fines and fees owed related to the convictions Petitioner is seeking to expunge;
- ☐ Documentation showing completion of any victim restitution ordered as a result of the convictions Petitioner is seeking to expunge;
- ☐ Petitioner's State of New Mexico, Department of Public Safety, Record of Arrest and Prosecution (RAP) sheet;
- ☐ Petitioner's FBI Record of Arrest and Prosecution (RAP) sheet;
- ☐ Other: _____
(*list any other documentation provided with the petition.*)

SIGNATURE SECTION

Printed name of Petitioner

Attorney Name (*if applicable*)

Signature of Petitioner

Attorney Signature

Date

Mailing Address

Telephone #

Email