

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;

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- 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.

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- 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.

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- 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.

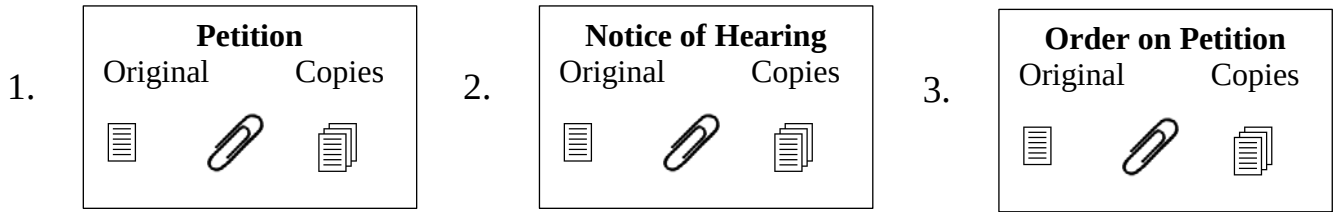
Step 3: Attach arrest records, public records, and sentencing records to your petition

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.