

STEPS TO FILING YOUR PETITION FOR EXPUNGEMENT RELEASE WITHOUT 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).

If you believe your records are eligible for expungement because you were released without a conviction, 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:

- 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 (if applicable):
 - not guilty verdict, dismissal, etc.
- 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.

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 arrest records and FBI arrest records both contain information necessary for the Court to rule on your petition and both should be included with your petition. All law enforcement records (DPS and FBI) must be current and dated no later than thirty (30) 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) 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.

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

- **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 to DPS for processing.
- There is a fee per record check, made payable to the DPS.
Payment must be made by money order or cashiers' check.
- DPS must receive the authorization form with an original signature.
- Once DPS receives the required release and proper payment, they will release all your adult arrest records to you.

- **Federal Arrest Record from the FBI:** The FBI RAP sheet may be obtained directly from the FBI.

- Instructions on how to obtain the FBI RAP Sheet may be found at either

<http://www.fbi.gov/services/cjis/identity-history-summary-checks>

<http://www.edo.cjis.gov/#/>.

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

Court Records

Some records may be available on the New Mexico Judiciary's website:

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 or was dismissed before any court case was filed.

Step 2: Complete the Appropriate Forms

Complete the appropriate forms for Expungement Without Conviction, including the Petition to Expunge, and the information in the upper left corner of the Notice of Hearing.



**Petition to Expunge Arrest Records and Public Records
(Release Without Conviction)**

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

Complete the Petition to Expunge when seeking to expunge charges where there was no conviction and at least one year has passed since the final disposition.

- 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 Santa Fe
First JUDICIAL DISTRICT COURT

In re John T. Doe, Case No.
Petitioner.

- A case number for your Petition to Expunge will be assigned when you file it at the court.
- Fill in all of the requested information being sure to include:
 - Your current contact information.
 - Any aliases or any other names you have used.
 - Provide any case numbers for any other expungement matters you may have pending before the Second Judicial District Court. For example, if you filed for expungement of another case you would include the *expungement case number* (e.g. D-202-EX-20XX-XXXX).
 - Provide the case number containing the charges you are seeking to expunge.

****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), outcome of the case, and date of the final disposition.

- Specify the agencies that may hold the records which you want expunged:

EXPUNGEMENT INSTRUCTIONS (RELEASE WITHOUT CONVICTION)

1. The district attorney;
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.

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.

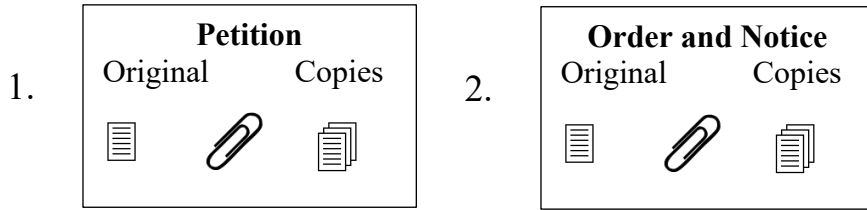
Step 3: Attach arrest records, public records, and sentencing records to your petition

After you have located your records, attached them to your petition. The district court does not need every document related to 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 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 and the Notice of Hearing, and copies that you have prepared along with the self-addressed, stamped envelope to the district court located in the district 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 **immediately** send them to the parties entitled to notice *via certified mail return receipt requested*. When the copies have been delivered to the parties entitled to notice you will receive proof of mailing and delivery. Make copies of these receipts, front **and** back, and attach the copies to your Certificate of Service. Keep the original receipts for your records. Once you have received all the receipts from 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:

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. You, the petitioner, are responsible for delivering (serving) a copy of the petition to these parties and attaching the proof of service for each party, 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 the Second Judicial District;

Office of the Bernalillo County District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102

2. The Department of Public Safety

LERB, New Mexico Department of Public Safety
4491 Cerrillos Rd.
Santa Fe, NM 87507

Or

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 a different agency, 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: 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. After receiving notice of the filed petition, 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 so it is important you send notice of the petition and file your certificate of service as soon as possible. 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.

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; 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.