
LAND OF ENCHANTMENT LAW | CONSUMER GUIDE

Expungement in New Mexico

*A Step-by-Step Guide to Clearing
a Criminal Conviction*

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What Conviction Expungement Does

Under New Mexico's Criminal Record Expungement Act (NMSA § 29-3A-5), people with eligible convictions may petition the court to seal their criminal records from public view. Once a petition is granted, the conviction stops appearing on most background checks, and the petitioner may legally answer "no" to most questions about prior convictions.

Conviction expungement is **discretionary**. A judge must find that "justice will be served" by sealing the record. That is a meaningfully different standard than the non-conviction track, which a court must grant if the basic requirements are met.

Who Is Eligible?

To petition, a person must have:

- Completed all sentence components — prison time, probation, parole, and supervised release
- Paid all fines and fees owed to the state
- Satisfied any victim restitution obligations
- No pending criminal charges in any state, tribal, or federal court
- Stayed conviction-free for the required waiting period (see table)
- An offense that is not on the permanently excluded list

Important timing rule: the waiting-period clock begins on the last date *any* sentence ended in *any* jurisdiction — not just the sentence on the conviction being expunged.

Waiting Periods by Offense

Offense Category	Waiting Period
Municipal ordinance violation	2 years
Misdemeanor (general)	2 years
Aggravated battery misdemeanor (§ 30-3-5(B))	4 years
Fourth degree felony	4 years
Third degree felony	6 years
Second degree felony	8 years
First degree felony	10 years
Crimes Against Household Members Act (§§ 30-3-10 to 30-3-18)	10 years

Convictions That Cannot Be Expunged

Five categories are permanently excluded, regardless of how much time has passed:

- 1. Offenses against a child.** Read broadly by the courts and not limited to specific statutes.
- 2. Offenses causing great bodily harm or death.** Courts may look beyond the conviction itself to the underlying conduct, including actions of co-conspirators.
- 3. Sex offenses under SORNA (§ 29-11A-3).** Defined by the Sex Offender Registration and Notification Act.
- 4. Embezzlement.** All convictions for embezzlement are permanently barred.
- 5. DWI/DUI offenses.** Driving while intoxicated by alcohol or drugs cannot be expunged. However, a deferred sentence under the Motor Vehicle Code may qualify under the non-conviction track instead.

Deferred Sentences: A Common Source of Confusion

General rule: a deferred sentence under § 31-20-3 follows a guilty plea or finding and is treated as a conviction for expungement purposes — even after successful completion. File under the conviction track.

Motor Vehicle Code exception: a 2021 amendment added Motor Vehicle Code deferred sentences to the non-conviction expungement category. Some district courts have rejected this reading, and the issue is currently before the New Mexico Court of Appeals.

Conditional discharge (§ 31-20-13) involves no adjudication of guilt and qualifies as a non-conviction. Use the non-conviction process.

The "Justice Will Be Served" Standard

Because conviction expungement is discretionary, the petition must include a written narrative explaining why expungement is warranted. The court weighs five factors: the nature of the offense, the petitioner's history and rehabilitation, the time elapsed, the concrete consequences still being faced, and any objection from the district attorney.

A persuasive narrative is specific. Vague statements about deserving a second chance rarely succeed. Stronger petitions name jobs that were denied, describe rejected housing applications, identify professional licenses that are out of reach, and include affidavits from employers, family members, or community supporters.

The Filing Process, Step by Step

Every conviction expungement in New Mexico moves through the same eight stages, from gathering records to confirming the expungement is complete.

- 1 Obtain Your DPS and FBI Criminal Records**

Both records must be dated within 90 days of filing. Request a New Mexico DPS record (notarized release form + \$15 fee, mailed to the LERB in Santa Fe) at the same time as the FBI Identity History Summary (\$18, fingerprints submitted through the FBI's electronic site). Pull court records showing the conviction, sentence, and proof of completion.
- 2 Complete the Required Forms**

Use the New Mexico Courts approved forms: Form 4-953 (petition), 4-956 (certificate of service), 4-960.1 (notice of hearing), 4-960.3 (affirmation), 4-960 (notice of completion of briefing), and 4-222 (free process affidavit, if applicable). All expungement forms were overhauled effective December 31, 2025 — confirm the latest versions before filing. One case number per petition.
- 3 Write the Justice-Will-Be-Served Narrative**

This is where conviction petitions are won or lost. Address each statutory factor directly: acknowledge the offense, describe employment and education, explain how time has been used, list the concrete harms the conviction continues to cause, and attach supporting affidavits.
- 4 File at the District Court**

File in the judicial district where the conviction occurred — even if the original case was in magistrate or metropolitan court. Filing fee is \$132.00 (waived with approved Form 4-222). Albuquerque cases go to the Second Judicial District; Las Cruces to the Third; Santa Fe to the First.

The Filing Process, continued

- 5** **Serve the DA, DPS, and Arresting Agency**

Send a copy of the court-stamped petition by first-class mail to three parties: the District Attorney for the originating district, the New Mexico Department of Public Safety (LERB), and the law enforcement agency that made the arrest. Note the third party — the arresting agency — is required for conviction petitions but not for non-conviction petitions. The objection window is 60 days from service.

- 6** **Attend the Mandatory Hearing**

A hearing is required for every conviction petition. The petitioner carries the burden of showing justice will be served. The judge reviews the petition, narrative, and supporting documents, and may ask questions about the conviction, rehabilitation, and ongoing barriers. The DA may appear to argue against expungement. Phone or video appearances are allowed with prior notice.

- 7** **Receive the Court's Order**

The court has 60 days after the hearing to issue a written order. A grant directs all record-holding agencies to complete the expungement within at least 60 days. Denials may be appealed to the New Mexico Court of Appeals under a rule created specifically for expungement appeals.

- 8** **Confirm Records Are Cleared**

Do not assume agencies act on their own. Follow up with the court, DPS, and the arresting agency to verify the records are no longer publicly accessible. The court can also be asked to expunge the expungement proceedings themselves, leaving no public trace of the petition.

Realistic Timeline

Conviction expungement typically runs **seven to ten months** from the first records request to a fully completed expungement — meaningfully longer than non-conviction expungement, which usually finishes in four to six months.

Stage	Estimated Time
Gather DPS and FBI records	2–6 weeks
Draft petition and narrative	1–2 weeks
File and serve agencies	About 1 week
Objection period after service	60 days (+3 for mailing)
Court scheduling and hearing	1–3 months after Notice of Completion
Court's written order	Up to 60 days after hearing

Agencies complete expungement	At least 60 days after order
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After the Conviction Is Expunged

What changes:

- Records are removed from public court websites and from law enforcement and corrections databases
- The petitioner may legally answer "no" to most questions about prior convictions
- Most employers, landlords, and licensing boards will not see the conviction on a background check
- State law bars public employers and licensing boards from considering expunged records in hiring or licensing decisions

What does *not* change:

- Expungement does not erase the record entirely — law enforcement, courts, and other criminal-justice agencies retain full access for future proceedings, NCIC inquiries, and firearms background checks
- Firearm rights are not restored under either state or federal law; a governor's pardon remains the most reliable path to gun-rights restoration after a felony
- Disclosure is still required when applying for employment with a financial institution regulated by FINRA or the SEC
- Already-public information — news articles, social media posts, third-party websites — is not reached by expungement

When an Attorney Helps Most

- Eligibility is unclear, especially for cases involving a deferred sentence, a DWI, or conduct that caused bodily harm
- The justice-will-be-served narrative needs to be written and supporting documentation gathered
- The district attorney files an objection that has to be answered at the hearing
- There are multiple convictions across different judicial districts
- Getting it right the first time matters — a denial means starting over and possibly waiting longer to refile

Free Expungement Consultation

Johnn Osborn has spent over a decade in New Mexico's criminal justice system — first as a prosecutor and now as a defense and expungement attorney serving Albuquerque, Las Cruces, Santa Fe, and the rest of the state.

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