



Expungement in New Mexico

A Quick-Reference Guide to Clearing a Criminal Record

New Mexico's Criminal Record Expungement Act (NMSA § 29-3A) offers **two paths** to seal a criminal record. The right one depends on how the case ended.

Find Your Path

NON-CONVICTION TRACK

NMSA § 29-3A-4 | Court **SHALL** grant

QUALIFIES IF CASE ENDED IN:

- Charges **dismissed / acquitted**
- **Nolle prosequi** (declined to prosecute)
- **Pre-prosecution diversion**
- **Conditional discharge** (no judgment of guilt)
- Penalty assessments (Criminal/MV Code)
- **Motor Vehicle Code** deferred sentence

KEY RULES:

Wait: **1 year** from final disposition
 Standard: **Mandatory** grant
 Hearing: **Only if objections filed**
 Objection window: **30 days**
 Order due: **30 days**
 Timeline: **4–6 months** total
 Petition form: **4-952** • Fee: **\$132** (waivable)

CONVICTION TRACK

NMSA § 29-3A-5 | Discretionary review

QUALIFIES IF YOU HAVE:

- A conviction (guilty plea or verdict)
- **Sentence fully completed** (incl. probation/parole)
- **All fines, fees, restitution paid**
- **No pending** charges in any jurisdiction
- **Waiting period satisfied** (see below)
- Offense **not** on the never-eligible list (red bar)

WAIT BY OFFENSE:

Misdemeanor: **2 yrs** • Agg. battery misd: **4 yrs** • 4th deg felony: **4 yrs** • 3rd: **6 yrs** • 2nd: **8 yrs** • 1st: **10 yrs** • Domestic violence: **10 yrs**

KEY RULES:

Standard: **"Justice will be served"** (discretionary)
 Hearing: **Mandatory** in every case
 Objection window: **60 days**
 Order due: **60 days after hearing**
 Timeline: **7–10 months** total
 Petition form: **4-953** • Fee: **\$132** (waivable)

5 OFFENSES NEVER ELIGIBLE FOR EXPUNGEMENT (Conviction Track):

Crimes against children • Causing great bodily harm or death • Sex offenses (under SORNA) • Embezzlement • DWI / DUI

■ Watch Out: Deferred Sentences

A deferred sentence under § 31-20-3 is treated as a **conviction** even after successful completion. Only Motor Vehicle Code deferred sentences qualify for the faster non-conviction track.

■ DUI Carve-Out

Even when a DUI case is dismissed, **DUI citations, police dispatch records, and breathalyzer records cannot be sealed**. Other DUI-related arrest and court records may still qualify.

The 8-Step Process (Both Tracks)

1 Get Records

Pull DPS arrest record + FBI RAP sheet (must be <90 days at filing) + court records of disposition.

2 Complete Forms

Non-conv: 4-952, 4-960.1, 4-222 (free process if needed). **Conv:** 4-953, 4-956, 4-960.1, 4-960.3, 4-960.

3 Conviction-Only: Justice Narrative

Address each statutory factor — what's changed, your rehabilitation, concrete harms the conviction still causes. Add affidavits.

4 File at District Court

\$132 fee (waivable). File where the case originated, even if the original case was in metro/magistrate court.

5 Serve 3 Agencies

Mail the stamped petition to the DA, NM DPS (LERB), and the arresting agency. Non-conviction: certified mail, return receipt.

6 Hearing

Non-conv: only if objections (court may decide on paperwork). **Conv:** mandatory in every case.

7 Court's Order

Non-conv: within 30 days. **Conv:** within 60 days after the hearing. Agencies then have 60+ days to comply.

8 Confirm Cleared

Don't assume. Follow up with the court, DPS, and the arresting agency to verify records are no longer publicly accessible.

✓ WHAT EXPUNGEMENT DOES

- Removes records from public databases and court websites
- Lets you legally answer "no" on most background checks
- Bars public employers and licensing boards from considering it

✗ WHAT IT DOESN'T DO

- Doesn't restore **gun rights** after a felony — pardon needed
- Law enforcement and courts retain access for future cases
- **FINRA / SEC** employers must still see it
- Doesn't reach news articles, social media, or third-party sites

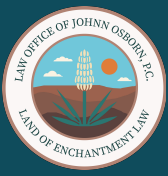
Free Consultation
505.585.1235

Land of Enchantment Law | Law Office of Johnn Osborn, P.C.
landofenchantment.law

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CONSUMER GUIDE

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Source: guides by Johnn Osborn at Land of Enchantment Law (landofenchantment.law). This pamphlet is general information, not legal advice. Eligibility depends on the facts of each case. Consult a New Mexico attorney about your specific situation.

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