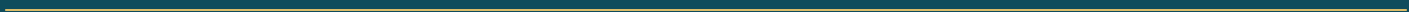

LAND OF ENCHANTMENT LAW | CONSUMER GUIDE

Non-Conviction Expungement

*Clearing a New Mexico Record After
a Dismissal, Acquittal, or Diversion*

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Why Non-Conviction Expungement Matters

An arrest without a conviction can still follow a person in New Mexico. It can show up on background checks for jobs, leases, professional licenses, and loans. New Mexico's Criminal Record Expungement Act (NMSA § 29-3A-4) gives people the right to petition the court to seal these records so they no longer appear on most background checks.

The Big Advantage Over Conviction Expungement

For non-conviction petitions, the statute says the court **shall** grant expungement if the basic requirements are met. There is no "justice will be served" balancing test, the waiting period is just **one year**, and a hearing is not always required. If the case ended without a conviction, the path is faster and the outcome is much more predictable.

Who Qualifies?

Eligibility under § 29-3A-4 is broader than many people expect. A petition can cover a release without conviction on a municipal ordinance violation, misdemeanor, or felony when any of the following outcomes apply:

- The charges were dismissed (the most common basis)
- The petitioner was acquitted or found not guilty
- The prosecution entered a nolle prosequi (declined to prosecute)
- The case was referred to a pre-prosecution diversion program
- The petitioner received a conditional discharge with no judgment of guilt
- The case involved penalty assessments under the Criminal Code or Motor Vehicle Code
- The petitioner received a deferred sentence under the Motor Vehicle Code

Two Basic Requirements at Filing

- At least **one year** has passed since the final disposition of the case.
- **No pending criminal charges** in any state, tribal, or federal jurisdiction.

Watch Out: Criminal Code Deferred Sentences Are Different

A deferred sentence under the criminal code (NMSA § 31-20-3) is **not** a non-conviction. Those cases are treated as convictions and must be filed under the separate conviction expungement process (§ 29-3A-5), with the longer waiting periods and discretionary standard. Only Motor Vehicle Code deferred sentences fall on this faster track.

DUI Arrest Records: A Special Carve-Out

Even when a DUI case is dismissed or ends in acquittal, certain DUI-related records are excluded from expungement by statute. Specifically, the following **cannot** be sealed:

- DUI citations
- Related police dispatch records
- Breathalyzer records

Other arrest records and court records related to a dismissed DUI case may still be eligible. Because the line between what can and cannot be removed is technical, a DUI-adjacent case is often where speaking with an expungement attorney pays off most.

Non-Conviction vs. Conviction Expungement

If a conviction is involved, the path is materially different. This brochure covers the non-conviction track only; here is how the two compare side by side:

| Element | Non-Conviction (§ 29-3A-4) | Conviction (§ 29-3A-5) |
|---------------------------|-------------------------------|--|
| Court's standard | Mandatory — court shall grant | Discretionary — "justice will be served" |
| Waiting period | 1 year from final disposition | 2–10 years depending on offense |
| Hearing required? | Only if objections are filed | Mandatory in every case |
| Objection window | 30 days after service | 60 days after service |
| Parties to notify | DA, DPS, arresting agency | DA, DPS, arresting agency |
| Court's order due | Within 30 days of decision | Within 60 days of hearing |
| Typical timeline | About 4–6 months | About 7–10 months |
| Main petition form | Form 4-952 | Form 4-953 |

Note: there is some variation between published guidance on whether the arresting agency must be served in non-conviction cases. Out of caution, this brochure follows the non-conviction guide's instruction to notify all three parties.

The Filing Process, Step by Step

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

- 1 Gather Records From Three Sources**

Pull (a) the New Mexico DPS arrest record — request via a notarized DPS Authorization for Release of Information form with payment by money order or cashier's check; (b) the FBI RAP sheet through the FBI's CJIS division; and (c) court records showing the date, case number, charges, and final disposition. The DPS arrest record must be dated within 90 days of filing, so request the FBI sheet at the same time and avoid pulling either too early.
- 2 Complete the Required Forms**

Use the New Mexico Courts approved forms: **Form 4-952** (the petition itself), **Form 4-960.1** (notice of hearing — fill in caption only; the court assigns the date and time), and **Form 4-222** (affidavit for free process if the filing fee cannot be afforded). Only one case number per petition. A single petition can include multiple arrests or charges within the same case.
- 3 Attach Records and Make Copies**

Attach the DPS record, FBI RAP sheet, and supporting court records. Prepare one set of originals for the court, a copy for the judge, a copy for the petitioner's own files, and additional copies of the signed petition (not the attachments) for each agency that must be notified. Include one self-addressed, stamped envelope so the court can mail back the hearing notice.
- 4 File at the District Court**

File at the district court in the judicial district where the charges originated — even if the original case was in magistrate or metropolitan court. Filing fee is **\$132.00**, paid by cash, cashier's check, or money order (some courts also accept credit and debit cards; personal checks are not accepted). The fee is waived for petitioners approved for free process under Form 4-222.

The Filing Process, continued

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

Send a copy of the court-stamped petition by **certified mail, return receipt requested** to the District Attorney for the originating district, the New Mexico Department of Public Safety (LERB, Santa Fe), and the law enforcement agency that made the arrest. These parties have **30 days** to file objections. Once all certified mail receipts are back, file a Certificate of Service with the court — without it, the court will not move the case forward.

- 6 Hearing (Sometimes)**

If no objections are filed, the court may decide the petition on the paperwork alone — no hearing required. If a hearing is set, arrive early (multiple cases are often scheduled at the same time), be prepared to answer questions about the case, and expect any objecting party to appear with arguments. Phone or video appearances are allowed with prior notice to the court.

- 7 Receive the Court's Order**

The court must issue a written order within **30 days** of the hearing or decision. For a non-conviction case with no pending charges and a release without conviction, the statute directs the court to grant the petition — this is mandatory, not discretionary. The order will give agencies at least 60 days to complete the expungement. Denials may be appealed to the New Mexico Court of 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 confirm the records are no longer publicly accessible. The court can also be asked to expunge the expungement proceedings themselves, leaving no public trace that a petition was ever filed.

Realistic Timeline

Non-conviction expungement typically runs **four to six months** from the first records request to a fully completed expungement — meaningfully faster than the conviction track, which usually takes seven to ten months.

| Stage | Estimated Time |
|--|---|
| Gather DPS and FBI records | 2–6 weeks |
| File petition and send notice | About 1 week |
| Objection period after service | 30 days |
| Court scheduling (and hearing, if any) | 30–60 days after objections close |
| Court's written order | Up to 30 days after the hearing or decision |

| | |
|-------------------------------|----------------------------------|
| Agencies complete expungement | At least 60 days after the order |
|-------------------------------|----------------------------------|

After the Record Is Expunged

What changes:

- Records are removed from public court websites and from law enforcement and corrections databases
- The petitioner may legally answer "no" when asked about prior arrests or charges, in most circumstances
- Most employers and landlords will not see the expunged record on a background check

What does *not* change:

- Law enforcement, courts, and other criminal-justice agencies retain access to expunged records for use in future criminal proceedings
- 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; it removes official government records, not the rest of the internet

When an Attorney Helps Most

Many people file non-conviction petitions on their own and succeed. The forms are public, the procedure is documented by the courts, and the legal standard favors the petitioner. Outside help tends to make the biggest difference in these situations:

- Eligibility is unclear — particularly with deferred sentences, conditional discharges, or plea agreements in related matters
- The case involved a DUI arrest and clarity is needed on which specific records can be removed
- There are multiple cases across different judicial districts
- The DA or another party files an objection
- Getting it right the first time matters, because a dismissed petition creates delay and rework

Why It Matters

Even without a conviction, a New Mexico criminal record can cost real opportunities. Employers run background checks during hiring. Landlords screen rental applicants. Licensing boards review criminal histories before granting professional licenses. A dismissed charge or an arrest that went nowhere can still block a job, an apartment, or a license. Expungement removes that obstacle, so an old arrest stops shaping the future.

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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