

1 SENATE BILL 178

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Daniel A. Ivey-Soto and Kathleen Cates and Debra M. Sariñana

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10 AN ACT

11 RELATING TO SEALING OF RECORDS; PROVIDING THAT THE SEALING OF
12 RECORDS DOES NOT APPLY TO CRIMES RELATED TO FIREARMS FOR
13 PURPOSES OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 32A-2-26 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 55, as amended) is amended to read:

18 "32A-2-26. SEALING OF RECORDS.--

19 A. On motion by or on behalf of a person who has
20 been the subject of a delinquency petition or on the court's
21 own motion, the court shall vacate its findings, orders and
22 judgments on the petition and order the legal and social files
23 and records of the court, probation services and any other
24 agency in the case sealed. If requested in the motion, the
25 court shall also order law enforcement files and records

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1 sealed. An order sealing records and files shall be entered if
2 the court finds that:

3 (1) two years have elapsed since the final
4 release of the person from legal custody and supervision or two
5 years have elapsed since the entry of any other judgment not
6 involving legal custody or supervision;

7 (2) the person has not, within the two years
8 immediately prior to filing the motion, been convicted of a
9 felony or of a misdemeanor involving moral turpitude or been
10 found delinquent by a court and no proceeding is pending
11 seeking such a conviction or finding; and

12 (3) the person is eighteen years of age or
13 older or the court finds that good cause exists to seal the
14 records prior to the child's eighteenth birthday.

15 B. Reasonable notice of the motion shall be given
16 to:

17 (1) the children's court attorney;
18 (2) the authority granting the release;
19 (3) the law enforcement officer, department
20 and central depository having custody of the law enforcement
21 files and records; and

22 (4) any other agency having custody of records
23 or files subject to the sealing order.

24 C. Upon the entry of the sealing order, the
25 proceedings in the case shall be treated as if they never

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1 occurred and all index references shall be deleted. The court,
2 law enforcement officers and departments and agencies shall
3 reply, and the person may reply, to an inquiry that no record
4 exists with respect to the person. Copies of the sealing order
5 shall be sent to each agency or official named in the order.
6 The provisions of this subsection shall not apply to records
7 involving the unlawful use or possession of a firearm when the
8 inquiry is made pursuant to a federal instant background check.

9 D. Inspection of the files and records or the
10 release of information in the records included in the sealing
11 order may thereafter be permitted by the court only:

12 (1) upon motion by the person who is the
13 subject of the records and only to those persons named in the
14 motion; and

15 (2) in its discretion, in an individual case,
16 to any clinic, hospital or agency that has the person under
17 care or treatment or to other persons engaged in fact finding
18 or research.

19 E. Any finding of delinquency or need of services
20 or conviction of a crime subsequent to the sealing order may at
21 the court's discretion be used by the court as a basis to set
22 aside the sealing order.

23 F. A court may set aside a sealing order for the
24 juvenile disposition of a youthful offender and any evidence
25 given in a hearing in court for a youthful offender for the

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1 purpose of considering the setting of bail or other conditions
2 of release of a person charged with a felony whether charged as
3 an adult or a juvenile.

4 G. A child who has been the subject of a petition
5 filed pursuant to the provisions of the Delinquency Act shall
6 be notified in writing by the department when the child reaches
7 the age of eighteen or at the expiration of legal custody and
8 supervision, whichever occurs later, that the department's
9 records have been sealed and that the court, the children's
10 court attorney, the child's attorney and the referring law
11 enforcement agency have been notified that the child's records
12 are subject to sealing.

13 H. The department shall seal the child's files and
14 records when the child reaches the age of eighteen or at the
15 expiration of the disposition, whichever occurs later. The
16 department shall notify the children's court attorney, the
17 child's attorney and the referring law enforcement agency that
18 the child's records are subject to sealing.

19 I. Youthful offender records sealed pursuant to
20 Subsection H of this section may be unsealed by the court along
21 with any evidence given in a hearing in court for a youthful
22 offender for the purpose of considering the setting of bail or
23 other conditions of release of a person charged with a felony,
24 whether charged as an adult or juvenile.

25 J. A child who is determined by the court not to be

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1 a delinquent offender shall have the child's files and records
2 in the instant proceeding automatically sealed by the court
3 upon motion by the children's court attorney at the conclusion
4 of the proceedings.

5 K. After sealing, the department may store and use
6 a person's records for research and reporting purposes, subject
7 to the confidentiality provisions of Section 32A-2-32 NMSA 1978
8 and other applicable federal and state laws."