

Administrative Office of the Courts

Supreme Court of New Mexico

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Judicial Information Division (JID)

CASE EXPUNGEMENT UNDER STATUTE 29-3A-1

Standard Operating Procedure

Version 1.9

Created: (12/2019)

Revised (12/2020)

CASE EXPUNGEMENT UNDER STATUTE

COURT / DEPARTMENT / DIVISION

District Courts

USER

District Court staff

PURPOSE

To provide instruction to the courts for the implementation of Statute 29-3A-1.

INTRODUCTION

The Criminal Record Expungement Act, effective January 1, 2020, authorizes persons with criminal arrest records and criminal court cases to petition district courts of the district where the charges originated to expunge the records. Petitions to expunge records can only address records from one court case. According to the Act, “expungement” means:

the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement internet website. NMSA 1978, Section 29-3A-2.

If the court grants a petition to expunge, court records will be sealed to ensure that they are removed from access to the general public. Petitioners can seek expungement of three types of records:

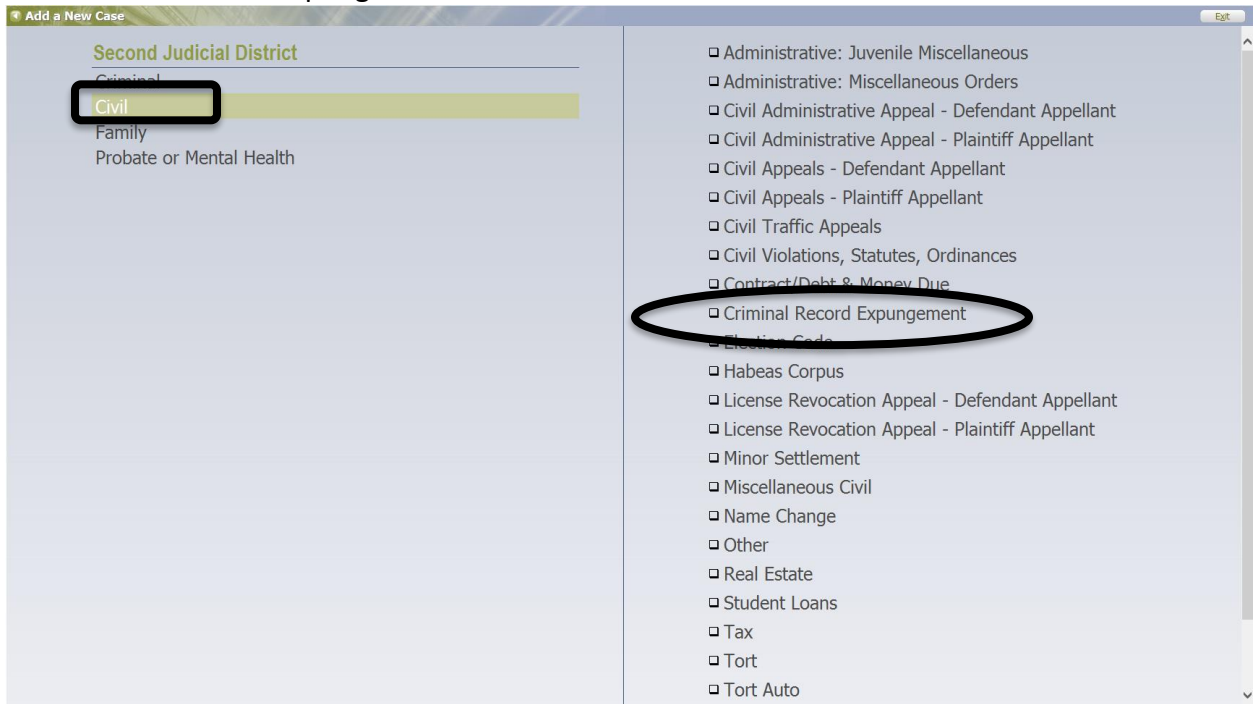
1. Arrest and court records that wrongly identify a person due to identity theft;
2. Arrest and court records in a case that does not result in a conviction; and
3. Arrest and court records that result in a conviction.

Certain restrictions apply, such as waiting periods following a criminal conviction, and not all convictions are eligible for expungement. Petitioners must not be the subject of a recent arrest to be eligible for expungement.

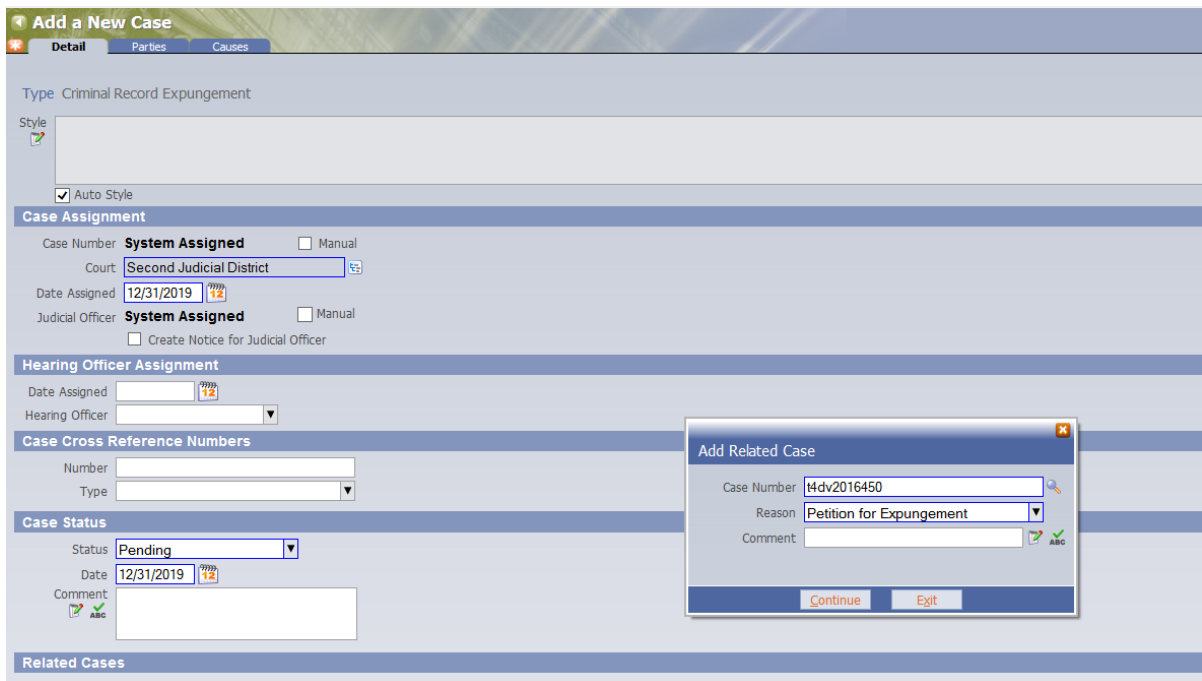
STEPS

1. The party filing the case will provide a petition, Notice of Hearing forms and a Form order on Petition to Expunge either through e-filing or by hand delivering them to the courthouse.

2. Initiate a case of the type Criminal Record Expungement by clicking on Add a Case, Civil and Criminal Record Expungement.

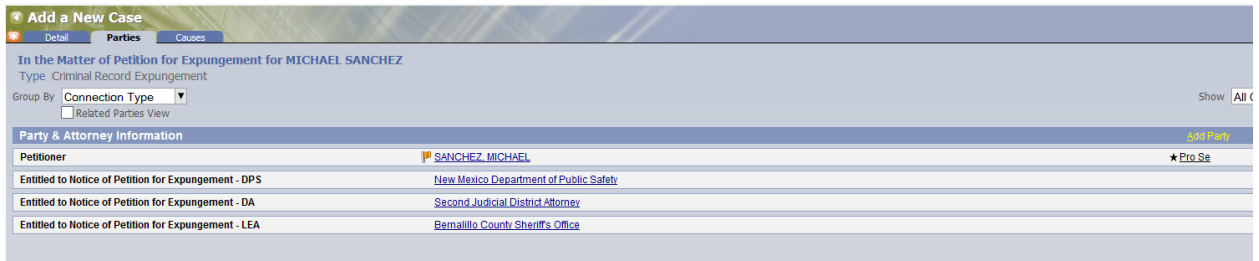


3. Scan the petition for the numbers of the cases whose expungement is being requested. Add them as related cases.

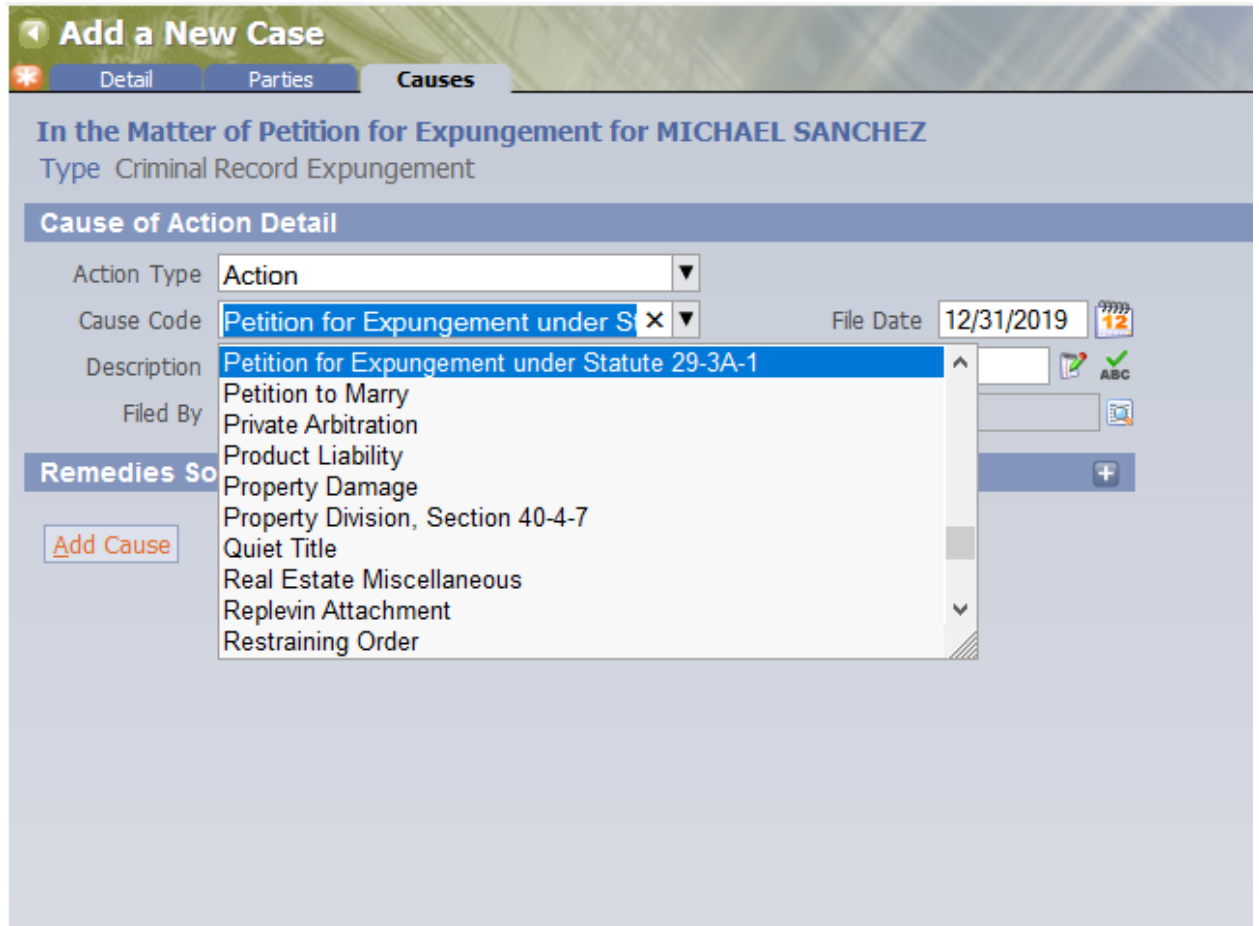


4. Add the petitioner to the Parties tab and add their attorney or mark the petitioner Pro Se when appropriate. Also, add the law enforcement agency that made the arrest involved in the incident the petitioner is attempting to have expunged. This information

can be located within the petition. The Entitled to Notice of Petition for Expungement – DPS and Entitled to Notice of Petition for Expungement – DA will default based on court location.



5. Add the Cause of Action Petition for Expungement to the Causes tab.



6. Save the case.

Add a New Case

Detail Parties Causes

In the Matter of Petition for Expungement for MICHAEL SANCHEZ
Type Criminal Record Expungement

Cause of Action Detail

Action Type: Action
Cause Code: Petition for Expungement under Stat
File Date: 12/31/2019
Description: [Empty]
Filed By: Petitioner
Filed Against: [Empty]

Remedies Sought

Add Cause

Add a Payment

Transaction Detail

Receipt #: System Assigned
Date: 12/31/2019
Type: Counter Payme
Amount to be Applied: 132.00

Tender Detail

Method: Cash
Amount: 132.00

Payor: SANCHEZ, MICHAEL
TI: JID Test Till

Balance	Tendered	Tender
132.00	132.00	132.00
132.00	Applied	132.00
0.00	Change	0.00

Transaction Balances

For Party / Fee	Balance
SANCHEZ, MICHAEL	132.00
D-202-EX-2019-00001	132.00
12/31/2019 Civil Filing Fee With Arbitration	132.00

Totals for this Transaction: 132.00

Save Exit Save/Print

7. Receipt the filing fee.

Case Filed

D-202-EX-2019-00001

civil

Criminal Record Expungement
Filed On 12/31/2019

In the Matter of Petition for Expungement for MICHAEL SANCHEZ

assignment

Second Judicial District
Brickhouse, Beatrice J.

quick links

- Edit Case
- Add Fees
- Print Label

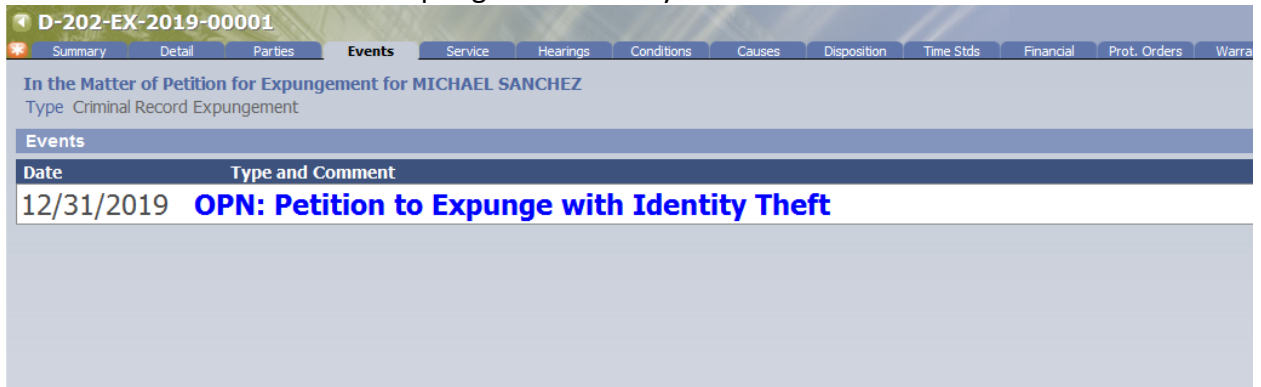
add another case

- Same Type
- Same Party
- New Type

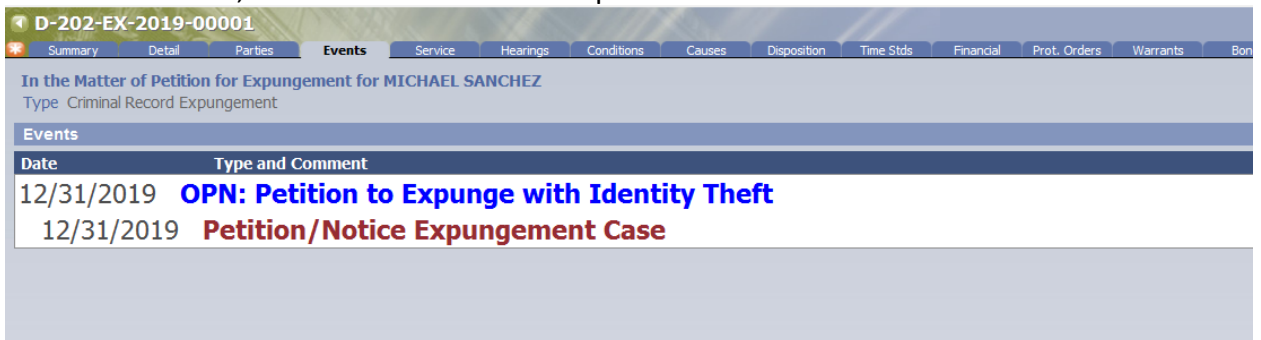
Done

8. Click the Edit Case hyperlink.

9. When the case comes up, navigate to the Events tab and docket one of the following opening events depending on the pleading that is being filed:
- 1543 OPN: Petition to Expunge with No Conviction
 - 1544 OPN: Petition to Expunge with Conviction
 - 1545 OPN: Petition to Expunge with Identity Theft



10. On the Events tab, Add related service to the petition event.



11. In absence of a locally established court process:

a. SRL hand delivery/mail process:

The party shall include with the petition

- A form Notice of Hearing, filling out only the caption information and leaving the rest blank
- A form Order on Petition to Expunge, filling out only the caption information and leaving the rest the form blank and
- one self-addressed, stamped envelope.

The court shall fill in the date, time and location of the hearing and return the notices to the petitioner through the mail using the envelope provided. The petitioner is responsible for serving the notices by certified mail to:

- The District Attorney's Office in the appropriate district
- The New Mexico Department of Public Safety; and
- The law enforcement agency that arrested the petitioner.

b. Attorney e-filing process:

The filing attorney shall submit the Petition for filing through File & Serve (attorney must attach themselves to the service contact list, in order to receive the notice of hearing or order). Once the case is accepted, the attorney shall submit a form Notice of

Hearing and a form Order on Petition to Expunge, filling out only the caption information and leaving the rest of the Notice and Order forms blank to the assigned judges proposed text email. Once the hearing has been set or the order signed, the court shall submit the document for filing through File and Serve.

The petitioning attorney is responsible for serving the notices by certified mail to:

- The District Attorney’s Office in the appropriate district
- The New Mexico Department of Public Safety; and
- The law enforcement agency that arrested the petitioner.

12. After serving the notices by certified mail, the petitioner/petitioning attorney is responsible for filing the Certificate of Service form certifying that service has taken place for each of the agencies listed above.

The screenshot displays a web-based interface for managing legal cases. The main window shows a case titled "In the Matter of Petition for Expungement for MICHAEL SANCHEZ" with a type of "Criminal Record Expungement". A "Modify Service Tracking" dialog box is open, showing details for a service event on 12/31/2019. The service details include the name "New Mexico Department of Public Safety" and the address "4491 Cerrillos Rd, Santa Fe, NM 87507". The tracking details section contains various input fields for service information, including dates, times, and methods. The "How Served?" field is set to "Certified Mail".

13. Upon receiving the Certificate of Service, record the service on the Service tab and docket the Certificate of Service on the Events tab.

14. The District Attorney’s Office in the appropriate district, New Mexico Department of Public Safety and/or the law enforcement agency that arrested the petitioner have the right to file an objection to the expungement of the case(s). If an objection is filed, use the event code 8758 Objection/Opposition to docket the pleading.

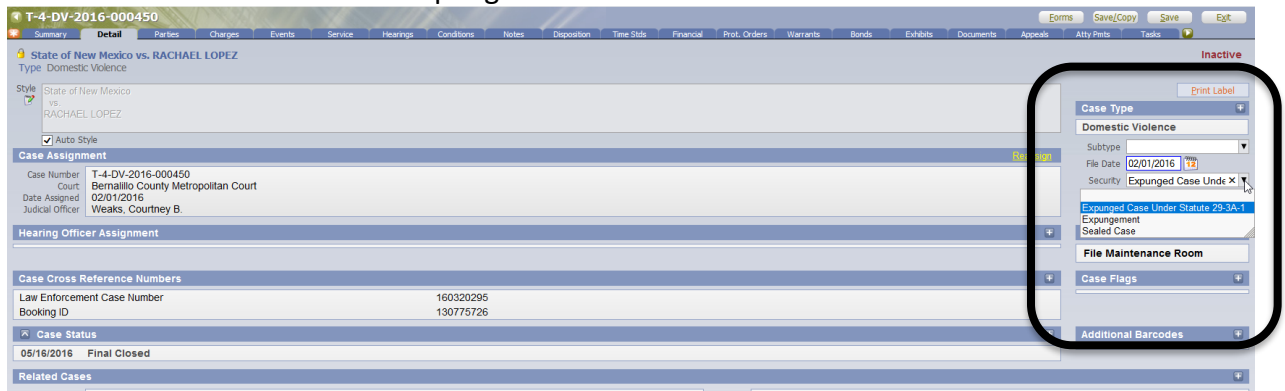
15. After the hearing has been held, the court has 30 days to file an order. The order may grant the expungement, deny the expungement or grant the expungement in part.

When the order is filed, navigate to the Disposition tab of the case and enter the appropriate judgment code from the following choices:

- a. ED - Expungement Denied
- b. EG - Expungement Granted
- c. EGP - Expungement Granted in Part

Check the causes box and click save. Then use the Case Close button on the Disposition tab to docket the appropriate event code from the following to close the case:

- d. 3607 CLS: Petition to Expunge Granted
- e. 3608 CLS: Petition to Expunge Denied
- f. 3609 CLS: Petition to Expunge Granted in Part



16. If the order grants the expungement of **court records**, the related cases must be expunged by adding a case security code of Expunged Case Under Statute 29-3A-1 to the Detail tab of the case.

17. If the petition is **granted in part**, the court order should state the specific charges for which expungement is granted. Review the order carefully to identify the case records listed in the order that must be expunged.

NOTE: the District Court clerk will only be adding the case security code of Expunged Case Under Statute 29-3A-1 to the cases from their court.

18. If the case is a Magistrate Court, Bernalillo County Metropolitan Court, Court of Appeals or Supreme Court case then a copy of the order must be sent to the appropriate court within 30 days so **that court** can add the case security code of Expunged Case Under Statute 29-3A-1 to their case. In the Supreme Court, the order is to be docketed using event code 7579S NTC: NTC: Order To Expunge Case Under Statute 29-3A-1. In the Court of Appeals, the order is to be docketed using event code 7508C NTC: Order To Expunge Case Under Statute 29-3A-1. In the Magistrate Courts, District Courts and Bernalillo County Metropolitan Court the order is to be docketed using the event code 9562 NTC: Order To Expunge Case Under Statute 29-3A-1. Docketing these event codes will automatically apply the case security code of Expunged Case Under Statute 29-3A-1 and case flag of EXPUNGED Case Under Statute 29-3A-1. The Magistrate and Metro Courts should also change the case styling and add '***EXPUNGED***' after the Defendant's name.



19. The AOC will electronically send a copy of the order to DPS and DPS will be responsible for the removal from access to the general public of a notation of the arrest that corresponds to the case(s) that has been ordered expunged.
20. When inquiries concerning the expunged cases are made at the clerks' office window or by phone or by mail, if the case has the security code of Expunged Case Under Statute 29-3A-1 answer as if the case does not exist. The exception to this is if the inquiry comes from law enforcement or the defendant/petitioner.