

TITL: Compendium of State Privacy and Security Legislation: 1997
Overview - N.MEXICO; ARTICLE 2 Revised Statutes Annotated

AUTHOR: US Department of Justice, Bureau of Justice Statistics
Washington, DC 20531

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privacy and security of criminal justice information.

ARTICLE 2

Inspection of Public Records

Sec.

- 14-2-1. Right to inspect public records; exceptions.
- 14-2-2. Repealed.
- 14-2-3. Repealed.
- 14-2-4. Short title.
- 14-2-5. Purpose of act; declaration of public policy.
- 14-2-6. Definitions.
- 14-2-7. Designation of custodian; duties.

Sec.

- 14-2-8. Procedure for requesting records.
- 14-2-9. Procedure for inspection.
- 14-2-10. Procedure for excessively burdensome or broad requests.
- 14-2-11. Procedure for denied requests.
- 14-2-12. Enforcement.

14-2-1. Right to inspect public records; exceptions.

Every person has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

D. law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

E. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and

F. as otherwise provided by law.

14-2-2. Repealed.

Repeals. — Laws 1993, ch. 258, § 10 repeals 14-2-2 NMSA 1978, as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain records to

provide opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet.

14-2-3. Repealed.

Repeals. — Laws 1993, ch. 258, § 10 repeals 14-2-3 NMSA 1978, as amended by Laws 1983, ch. 141, § 1, providing a remedy for citizens who have been refused the right to inspect any public record. For provisions

of former section, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-2-11 NMSA 1978.

14-2-4. Short title.

Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".

14-2-5. Purpose of act; declaration of public policy.

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [this article] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

14-2-6. Definitions.

As used in the Inspection of Public Records Act [this article]:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

E. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

14-2-7. Designation of custodian; duties.

Each public body shall designate at least one custodian of public records who shall:

A. receive and respond to requests to inspect public records;

B. provide proper and reasonable opportunities to inspect public records; and

C. provide reasonable facilities to make or furnish copies of the public records during usual business hours.

14-2-8. Procedure for requesting records.

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.

B. Nothing in the Inspection of Public Records Act [this article] shall be construed to require a public body to create a public record.

C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or

when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.

14-2-9. Procedure for inspection.

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.

B. A custodian:

- (1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;**
- (2) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;**
- (3) may require advance payment of the fees before making copies of public records;**
- (4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and**
- (5) shall provide a receipt, upon request.**

14-2-10. Procedure for excessively burdensome or broad requests.

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [this article] if the custodian does not permit the records to be inspected in a reasonable period of time.

14-2-11. Procedure for denied requests.

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act [this article].

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

- (1) describe the records sought;**
- (2) set forth the names and titles or positions of each person responsible for the denial; and**
- (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.**

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

- (1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;**
- (2) not exceed one hundred dollars (\$100) per day;**
- (3) accrue from the day the public body is in noncompliance until a written denial is issued; and**
- (4) be payable from the funds of the public body.**

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act [this article] may be brought by:

- (1) the attorney general or the district attorney in the county of jurisdiction; or
- (2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.

ARTICLE 2A
[Use of Police Reports]

Sec.
14-2A-1. Protection of victims of crimes or accidents;
police reports; commercial solicitation
prohibited.

**14-2A-1. Protection of victims of crimes or accidents; police reports;
commercial solicitation prohibited.**

No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

ARTICLE 3

Public Records

Sec.

- 14-3-1. Short title.
- 14-3-2. Definitions.
- 14-3-3. State commission of public records; creation.
- 14-3-4. Duties and powers of commission.
- 14-3-5. Gifts, donations and loans.
- 14-3-6. Administrator; duties.
- 14-3-7. Inspection and survey of public records.
- 14-3-8. Records center.
- 14-3-9. Disposition of public records.
- 14-3-10. Disagreement as to value of records.
- 14-3-11. Destruction of records.
- 14-3-12. Transfer of records upon termination of state agencies.
- 14-3-13. Protection of records.
- 14-3-14. Advisory groups.
- 14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.
- 14-3-16. Attorney general may replevin state records.
- 14-3-17. Approval of existing state agency systems.
- 14-3-18. County and municipal records.

Sec.

- 14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission for resale.
- 14-3-20. Interstate compacts; filing; index.
- 14-3-21. State publications; manuals of procedure; rules; reports; uniform style and form.
- 14-3-22. Public policy on certain publications; state commission of public records duties.
- 14-3-23. Manuals of procedure; preparation by state agencies; review by state records administrator; publication.
- 14-3-24. State publications for sale or issue by state agencies; listing by state records administrator.
- 14-3-25. Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.

14-3-1. Short title.

This act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978] may be cited as the "Public Records Act."

14-3-2. Definitions.

As used in the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978]:

- A. "commission" means the state commission of public records;
- B. "administrator" means the state records administrator;
- C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;
- D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;
- E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies, or materials obtained from other sources; and
- F. "microphotography system" means all microphotography equipment, services and supplies.

SENATE BILL 570

41ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1994

INTRODUCED BY

Mary Jane Garcia
Gen. W. Atkinson
Richard M. Pinner
Cynthia Neer

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO EDUCATION; AUTHORIZING BACKGROUND CHECKS FOR NEW APPLICANTS FOR CERTIFICATION; MAKING AN APPROPRIATION.

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

Section 1. A new section of Chapter 22, Article 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CERTIFICATE APPLICATIONS--AUTHORIZATION TO CONDUCT BACKGROUND CHECKS.--The department of education is authorized to conduct background checks, including fingerprint identification, of all new applicants for certification. The state board shall adopt regulations governing the procedure for conducting such investigations."

Section 2. APPROPRIATION.--One hundred fifty thousand dollars (\$150,000) is appropriated from the general fund to the state department of public education for expenditure in the eighty-third fiscal year for the purpose of conducting background checks of all new applicants for certification. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

28-2-1

HUMAN RIGHTS

28-2-3

ARTICLE 2**Criminal Offender Employment Act**

Sec.

- 28-2-1. Short title.
 28-2-2. Purpose of act.
 28-2-3. Employment eligibility determination.
 28-2-4. Power to refuse, renew, suspend or revoke public employment or license.

Sec.

- 28-2-5. Nonapplicability to law enforcement agencies.
 28-2-6. Applicability.

28-2-1. Short title.

Sections 1 through 6 [28-2-1 to 28-2-6 NMSA 1978] of this act may be cited as the "Criminal Offender Employment Act".

28-2-2. Purpose of act.

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

28-2-3. Employment eligibility determination.

A. Subject to the provisions of Subsection B of this section and Sections 3 and 4 [Sections 4 and 5 (28-2-4 and 28-2-5 NMSA 1978)] of the Criminal Offender Employment Act, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

- (1) records of arrest not followed by a valid conviction; and
- (2) misdemeanor convictions not involving moral turpitude.

28-2-4. Power to refuse, renew, suspend or revoke public employment or license.

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew, or may suspend or revoke, any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession; or

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines, after investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession, if the decision is based in whole or part on conviction of any crime described in Paragraph (1) of Subsection A of this section. Completion of probation or parole supervision, or of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction, shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

28-2-5. Nonapplicability to law enforcement agencies.

The Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

28-2-6. Applicability.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

ARTICLE 3**Identification of Criminals**

Sec.

29-3-1. New Mexico state police; identification and information.

29-3-2. New Mexico state police; cooperation; local and state.

29-3-3. New Mexico state police; cooperation; federal.

Sec.

29-3-4. State agencies; cooperation.

29-3-5 to 29-3-7. Repealed.

29-3-8. Fingerprinting of persons arrested; disposition.

29-3-9. Instruction.

29-3-1. New Mexico state police; identification and information.

A. It shall be the duty of the New Mexico state police to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The New Mexico state police shall obtain from whatever source procurable, and shall file and preserve for record, such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall hereafter be convicted of a felony or who shall attempt to commit a felony within this state, or who are well-known and habitual criminals, or who have been convicted of any of the following felonies or misdemeanors: illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny; and unlawfully possessing or distributing habit-forming narcotic drugs.

B. The New Mexico state police may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who have been convicted of a crime in any other state, country, district or province, which, if committed within this state, would be a felony.

C. The New Mexico state police shall make a complete and systematic record and index [of] all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison.

29-3-2. New Mexico state police; cooperation; local and state.

The New Mexico state police shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of this state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the chief of the New Mexico state police, governor or attorney general, conduct such investigations as may be deemed necessary to obtain and secure evidence which may be considered necessary or essential for the conviction of alleged violators of the criminal laws of this state, and the chief is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may in his judgment require such cooperation. All expenses such as travel, meals and lodging involved in such assistance shall be paid from the court fund of the county in which the trial is held or to be held.

29-3-3. New Mexico state police; cooperation; federal.

It shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States.

29-3-4. State agencies; cooperation.

It shall be the duty of the university of New Mexico, the human services department, the health and environment department and all other state departments, bureaus, boards, commissions, institutions and officials, free of charge or reward, to cooperate with the law enforcement officers of the state and the New Mexico state police, and to render to them such services and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime and the detection, apprehension, identification and prosecution of criminals.

29-3-5 to 29-3-7. Repealed.

Repeals. — Laws 1979, ch. 202, § 53, repeals 29-3-5 to 29-3-7 NMSA 1978, relating to supplies, quarters and reports of the technical services bureau

of the criminal justice support division, criminal justice department, effective July 1, 1979. For provisions of former sections, see 1978 original pamphlet.

29-3-8. Fingerprinting of persons arrested; disposition.

A. Any person arrested for the commission of any criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer to make fingerprint impressions.

B. Any person arrested for the commission of any criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required to make fingerprint impressions.

C. Fingerprint impressions shall be made pursuant to rules adopted by the New Mexico state police board, and all felony arrest fingerprints shall be made in duplicate, one copy shall be forwarded to the New Mexico state police and one copy shall be forwarded to the federal bureau of investigation in Washington, D.C.

D. One copy of the fingerprint impressions of each person arrested under the provisions of Subsection B of this section shall be forwarded to the New Mexico state police. A copy may be sent to the FBI in Washington, D.C., if:

- (1) there is a question of identity;
- (2) a check of FBI files is considered necessary for investigative purposes; or
- (3) the individual is suspected of being a fugitive.

ARTICLE 10

Arrest Record Information Act

Sec.
29-10-1. Short title.
29-10-3. Definition.

Sec.
29-10-4. Confidentiality of arrest records.
29-10-7. Application.

29-10-1. Short title.

Chapter 29, Article 10 NMSA 1978 may be cited as the "Arrest Record Information Act".

29-10-2. Purpose of act.

The legislature finds and declares that the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement. Individual rights, however, may be infringed if information is inaccurate, incomplete or is disseminated irresponsibly. The Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] is for the purpose of protecting those rights.

29-10-3. Definition.

As used in the Arrest Record Information Act [this article], "arrest record information" means notations of the arrest or detention or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency.

29-10-4. Confidentiality of arrest records.

Arrest record information that reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime is confidential and dissemination or revealing the contents of the record, except as provided in the Arrest Record Information Act [this article] or any other law, is unlawful.

29-10-5. Exchange of information.

A law enforcement agency may disseminate arrest record information to a federal, state or local government law enforcement agency, provided that when the arrest record information is disseminated to a law enforcement agency situated outside this state, the information shall be accompanied by a statement substantially embodying the intent set forth in Section 29-10-4 NMSA 1978. Nothing in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] prohibits direct access by the attorney general, the district attorney, the crime victims reparation commission or the courts to such information where it is deemed necessary in the performance of their functions under law. Nothing in that act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property information.

29-10-6. Access by individuals.

A. Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by [a] law enforcement agency concerning him.

B. Personnel assigned to contractual research for a state or federally approved criminal justice project shall be permitted access to arrest record information. Approval personnel shall not further disseminate such information except as statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

29-10-7. Application.

A. Information contained in the following documents shall be available for public inspection:

- (1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if the records are organized on a chronological basis;
- (3) court records of public judicial proceedings;
- (4) published court or administrative opinions or public judicial, administrative or legislative proceedings;
- (5) records of traffic offenses and accident reports;
- (6) announcements of executive clemency; and
- (7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. A law enforcement agency is not prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted or whether an information or other formal charge was filed on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section.

29-10-8. Review of arrest record information.

Am. Jur. 2d, A.L.R. and C.J.S. references. —
Expunction of federal arrest records in absence of conviction, 97 A.L.R. Fed. 652.
Effect of expungement of conviction on § 241(a)(4),

(11) of Immigration and Nationality Act of 1952 (8 USC § 1251(a)(4), (11)), making aliens deportable for crimes involving moral turpitude or drugs, 98 A.L.R. Fed. 750.

30-31-28. Conditional discharge for possession as first offense.

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

32A-2-25. Parole revocation; procedures.

A. A child on parole from an agency that has legal custody who violates a term of parole may be proceeded against in a parole revocation proceeding conducted by the department or the supervising agency in accordance with procedures established by the department in cooperation with the juvenile parole board. A juvenile probation and parole officer may detain a child on parole status who is alleged to have violated a term or condition of parole until the completion and review of a preliminary parole revocation hearing.

B. If a retake warrant is issued by the department upon the completion of the preliminary parole revocation hearing, the juvenile institution to which the warrant is issued shall promptly transport the child to that institution at the expense of the department. If a child absconds from parole supervision and is apprehended in another state after the issuance of a retake warrant by the department, the juvenile justice services division of the department shall cause the return of the child to this state at the expense of the department.

32A-2-26. Sealing of records.

A. On motion by or on behalf of an individual who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, probation services and any other agency in the case sealed, and if requested in the motion the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

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

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

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

(1) the children's court attorney;

(2) the authority granting the release;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

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

C. Upon the entry of the sealing order the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court, law enforcement officers and departments and agencies shall reply, and the individual may reply, to an inquiry that no record exists with respect to such person. Copies of the sealing order shall be sent to each agency or official named in the order.

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

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

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

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

F. A person who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act [this article] shall be notified in writing by the juvenile probation and parole officer of the right to have records sealed at the expiration of the disposition.

32A-2-27. Injury to person or destruction of property; liability; costs and attorneys' fees; restitution.

A. Any person may recover damages not to exceed four thousand dollars (\$4,000) in a civil action in a court or tribunal of competent jurisdiction from the parent, guardian or custodian having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action.

32A-2-31. Child adjudicated delinquent; victim restitution; compensation; deductions.

A. A delinquent child may be ordered by the court to pay restitution to the victim of the child's delinquent act.

B. The department may provide compensation to a delinquent child engaged in a rehabilitative work program and shall promulgate necessary rules and regulations to provide deductions from that compensation for:

- (1) victim restitution ordered by the court and for transmitting those deductions to the clerk of that court;
- (2) the crime victims reparation fund and for transmitting those deductions to the state treasurer for credit to that fund; and
- (3) the reasonable costs incident to the confinement of the delinquent child.

C. The deductions provided by Subsection B of this section shall not exceed fifty percent of the compensation earned by the child and shall not be less than five percent of that compensation.

32A-2-32. Confidentiality; records.

A. All social records, including diagnostic evaluation, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories obtained by the juvenile probation office, parole officers and parole board or in possession of the department are privileged and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (6) corrections department personnel;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) any state government social services agency in any state;
- (10) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (11) tribal juvenile justice system and social service representatives;
- (12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the records concern the social, medical, psychological or educational needs of the child;
- (13) school personnel involved with the child if the records concern the child's social or educational needs;

(14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardians, custodian or other family members;

(15) representatives of the protection and advocacy system, pursuant to the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor.

32A-3B-20. Parental responsibility.

A. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be a child of a family in need of court-ordered services and the court orders the child placed with an agency or individual other than the parent. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

B. The court may enforce any of its orders issued pursuant to this section by use of its contempt power.

32A-3B-21. Expungement of records.

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code [this chapter], or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, the department and any other agency in the case expunged, and if requested in the motion the court shall also order law enforcement files and records expunged. An order expunging records and files shall be entered if the court finds that:

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

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

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

(1) the children's court attorney;

(2) the authority granting the release if the final release was from an agency, parole or probation;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

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

C. Upon the entry of the expungement order, the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court, law enforcement officers and departments and agencies shall reply, and the individual may reply, to an inquiry that no record exists with respect to such person. Copies of the expungement order shall be sent to each agency or official named in the order.

D. Any finding of delinquency or conviction of a crime, subsequent to the expungement order may at the court's discretion be used by the court as a basis to set aside the expungement order.

E. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records expunged.

32A-3B-22. Confidentiality; records; penalty.

A. All records concerning a family in need of services, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports, that are in the possession of the court or the department or that were produced or obtained by the department during an investigation in anticipation of or incident to a family in need of court-ordered services proceeding, shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (6) law enforcement officials;
- (7) district attorneys;
- (8) any state government social services agency in any state;
- (9) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (10) tribal juvenile justice system and social service representatives;
- (11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;
- (12) school personnel involved with the child, if the records concern the child's social or educational needs;
- (13) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;
- (14) protection and advocacy representatives, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991; and
- (15) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records that are closed to the public pursuant to the provisions of the Children's Code [this chapter] or releases or makes other unlawful use of records in violation of that code is guilty of a petty misdemeanor.

32A-15-3. Criminal records check.

Nationwide criminal record checks shall be conducted of all operators, staff and employees, and prospective operators, staff and employees of child care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or program.

32A-15-4. Procedures.

By December 31, 1993, procedures shall be established by regulation to provide for employment history and background checks for all present and prospective personnel identified in Section 32-9-3 [32A-15-3] NMSA 1978:

- A. by the secretary of children, youth and families for child care facilities and juvenile detention and correction facilities; and
- B. by the secretary of health for health and treatment facilities.

32A-16-1. Office created; director appointed.

The "office of child development" is created within the children, youth and families department. The executive and administrative head of the office of child development is the "director of child development". The director shall be appointed by the secretary of children, youth and families based upon the recommendations of the child development board.

32A-20-1. Uniform case numbering system.

A. As used in this section, "uniform case numbering system" means a system of referring to cases of alleged child abuse or neglect, including child sexual abuse, to allow only one numerical designation to be assigned to each case of child abuse or neglect. The uniform case numbering system shall provide for uniform reference to each case by all state agencies and organizations supported by state funds.

B. In any investigation, intervention or disposition of a case involving child abuse or neglect, including child sexual abuse, a uniform case number shall be assigned to the investigation and shall be maintained and referred to by all persons or agencies having occasion to become involved in any way in the investigation, intervention or disposition of the case.

C. A uniform case numbering system shall be devised, proposed and, after opportunity for public input, adopted by:

- (1) the department;
- (2) the secretary of public safety or his designee;
- (3) the secretary of the department or his designee;
- (4) the secretary of health or his designee;
- (5) the superintendent of public instruction or his designee;
- (6) the chief justice of the supreme court or his designee; and
- (7) a representative of the elected or appointed district attorneys.

D. The data collected in connection with the uniform case numbering system shall be limited to the names of the alleged offender and alleged victim, the date of the alleged occurrence and a unique case number which encodes the county of the alleged offense, the type of alleged offense and the case disposition, if known. The names of the alleged offender and alleged victim shall be purged as soon as the uniform case number is disseminated to all agencies involved in investigation and rehabilitative service provision in that case, or within six months of the date the uniform case number is assigned, whichever is first.