

WELCOME TO TODAY'S VAP CLE ECHO SESSION

EXPUNGEMENT 101

June 17, 2025

Agenda



Introduction: Zac Addison, Director, New Mexico Legal Aid Volunteer Attorney Program



Announcements: Marissa Gonzalez, Paralegal, New Mexico Legal Aid Volunteer Attorney Program



Presentation: Expungement 101

Kate Thompson, Managing Attorney, Law Offices of the Public Defender Metro Division Metro Division



Case Analysis and Q&A: Zac Addison, Director, New Mexico Legal Aid Volunteer Attorney Program



Closing Remarks: New Mexico Legal Aid Volunteer Attorney Program

EXPUNGEMENT 101

June 17, 2025
VAP CLE ECHO

Presented by:
Kate Thompson
Managing Attorney, LOPD Metro Division



What is Expungement?

Criminal Record Expungement Act:
Section 29-3A-1 et seq.

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.

“...removal from access to the general public...”

EXPUNGEMENT

The proceedings “shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person.”

Why get a criminal record expunged?

A criminal record affects job applications, housing applications, reputation, etc.

GOVERNING LAWS AND RULES

- Section 29-3A-1 et seq.
- Rule 1-077.1 NMRA
- Rule 1-004 NMRA (Process) and 1-079 (Limits on Public Access)
- Expungement Forms 4-952 through 4-960.3

Note: There are some differences between the statute and the rule. The rule will control.

KEY POINTS

- Figure out the category for expungement and determine eligibility
- Use the appropriate forms for that category and follow Rule 1-077.1

FIRST STEP: DETERMINE ELIGIBILITY

Identify what category the charges fall under:

- Identity Theft
- Non-Convictions
- Convictions
- Automatic Expungement

A decorative graphic on the left side of the slide, consisting of numerous blue and green dots of varying sizes connected by thin, light blue lines, creating a network-like pattern.

FIRST STEP: DETERMINE ELIGIBILITY

Where to look:

- SOPA
- NM Case Lookup
- Request the pleadings
 - Criminal Complaint
 - Dismissal/Nolle Prosequi
 - Judgment and Sentence

FIRST STEP: DETERMINE ELIGIBILITY

What you are looking for:

- What is the offense?
- What is the disposition?
- Date of final disposition of the case
- End of sentence for any other criminal case

IDENTITY THEFT EXPUNGEMENT

- Identity theft that resulted in victim being wrongfully identified in arrest or public records are eligible
- No waiting period
- All offenses eligible

NON-CONVICTIONS

People charged with **any offense that was disposed of without a conviction:**

- Acquittal/finding of not guilty;
- Nolle, no-bill, or other dismissal;
- Referral to pre-prosecution diversion program;
- Penalty assessments under the Criminal Code;
- Deferred sentences under the Motor Vehicle Code;
- Conditional discharge order; OR
- Otherwise discharged.

Eligible after **one year** if no other charges pending.

CONVICTIONS

Some offenses are **NOT ELIGIBLE**:

- Offenses committed against a child;
- Offenses that caused great bodily harm or death to another person;
- Sex offenses as defined in SORNA, NMSA 1978, § 29-11A-3;
- Embezzlement under NMSA 1978, § 30-16-8; and
- DWI

CONVICTIONS

Because the statute doesn't list certain ineligible offenses by statute number, the DAs could look beyond the name of the offense to the actual complaint.

- Offenses committed against a child
- Offenses that caused great bodily harm or death to another person

What if they pled to Agg Batt with a Deadly Weapon but great bodily harm had resulted from a stabbing? A simple battery but the victim was a minor?

CONVICTIONS

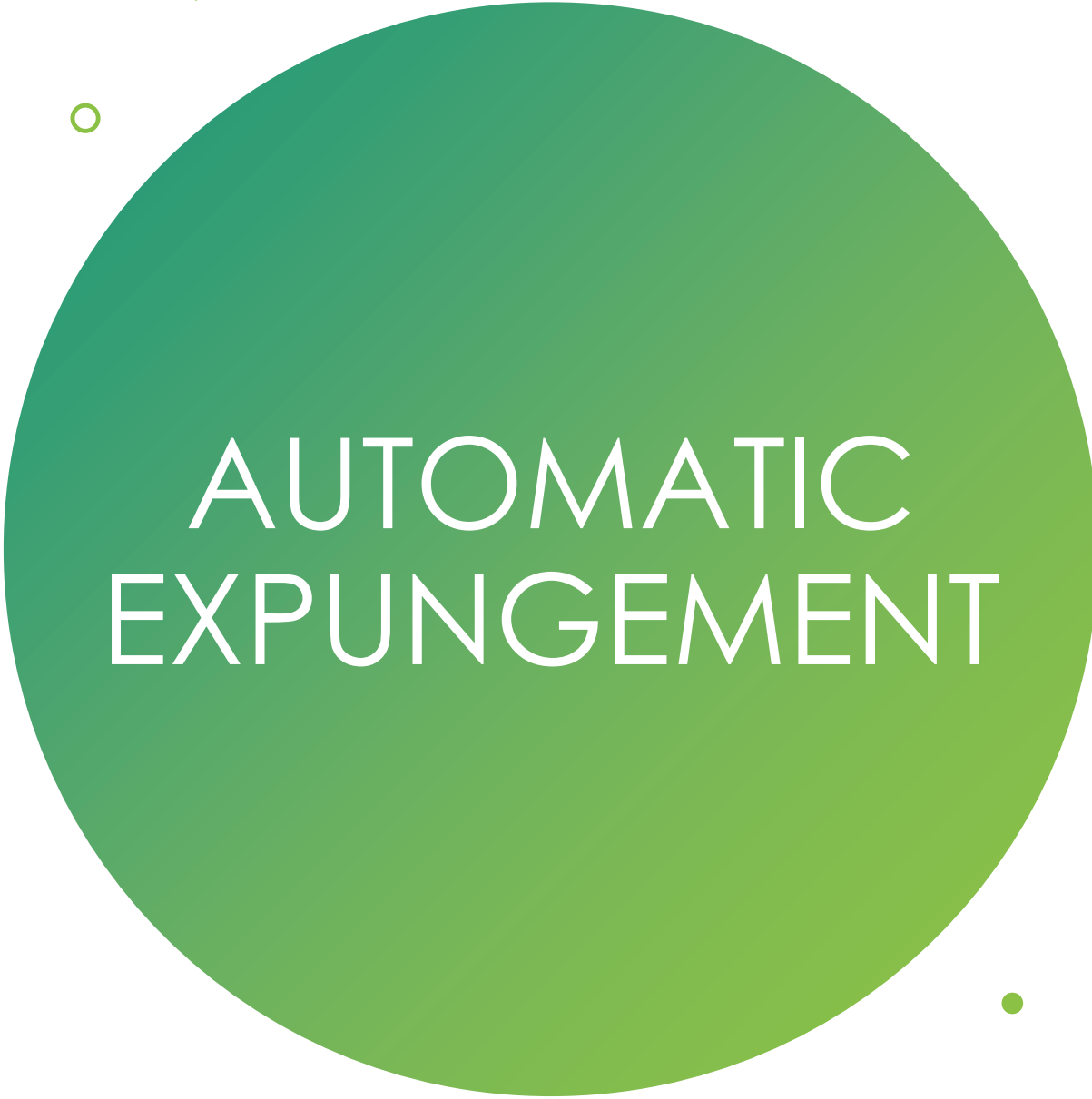
If the offense is eligible for expungement, petitioner must also show the court that:

- Expungement serves the interests of justice
- Completed sentence and payment of all fines/fees
- Met requisite waiting period without conviction
 - *Waiting periods are measured from the last date of serving a sentence for any conviction in any jurisdiction*

CONVICTIONS

Waiting periods – no other conviction for period of time.
Depend on the charge/degree of charge:

Misdemeanor or Municipal Ordinance	Two Years
Fourth Degree Felony or Misdemeanor Aggravated Battery	Four Years
Third Degree Felony	Six Years
Second Degree Felony	Eight Years
First Degree Felony or Any Offense Under the Crimes Against Household Members Act	Ten Years



AUTOMATIC EXPUNGEMENT

Offenses now legally invalid under the Cannabis Regulation Act now eligible for *automatic* expungement under Section 29-3A-8.

AUTOMATIC EXPUNGEMENT

Automatic expungement of cannabis offenses– 2 years after date of conviction or arrest:

- If offense no longer a crime under the CRA
- If multiple offenses – only cannabis offense will be expunged

If eligible but has not yet been expunged, can request it.

Online form for requesting cannabis offense expungement:

<https://nmcourts.gov/court-administration/office-of-general-counsel/expungement/>

EXPUNGEMENT PETITION

Must follow the forms adopted by
Supreme Court Order:

- Form 4-951 (Identity Theft)
- Form 4-952 (Without Conviction)
- Form 4-953 (Upon Conviction)
- Form 4-954 (Automatic)

NON-CONVICTION PETITION

Supporting documentation required:

- Record detailing offenses (docket sheet, criminal complaint)
- Documentation showing final disposition of offense
- DPS Record of Arrest and Prosecution (RAP) sheets, dated no later than 90 days prior to filing

CONVICTION PETITION

Supporting documentation required for conviction petition:

- FBI and DPS RAP sheets, dated no later than 90 days prior to filing
 - DPS - <https://www.dps.nm.gov/index.php/top-links-for-nm-residents/fingerprinting-and-background-checks>
 - Complete and notarize form, submit to DPS with fee
 - FBI - <http://www.fbi.gov/services/cjis/identity-history-summary-checks>
 - Electronic fingerprinting or fingerprint card
- Documentation showing completion of sentences for convictions to be expunged
- Documentation showing completion of any other sentences
- Documentation showing final payment of any fines and fees, victim restitution

CONVICTION PETITION

Specify agencies that may hold the records you want to expunge:

- District Attorney for that district;
- Department of Public Safety; and
- The law enforcement agency that arrested petitioner.

CONVICTION PETITION

Demonstrating “justice will be served by an order to expunge”:

- Nature and gravity of offense or conduct
- Petitioner’s age, criminal history, employment history
- Length of time since offense and completion of sentence
- Adverse consequences if petition denied
- Any objections from district attorney

MULTIPLE CASES?

Rule 1-077.1(B)(5):

“A petition to expunge may contain a request to expunge arrest records and public records pertaining to any number of arrests, criminal charges filed without arrest, and/or convictions in a single judicial district.”

WHERE TO FILE

Rule 1-077.1(B)

Expungement petitions must be filed in the district court of the county where the charges originated, the arrest occurred, or in which the conviction was entered.

SEALING OF PETITION

Rule 1-077.1 (C)

Non-conviction expungement petitions shall be filed under seal and subject to requirements of Rule 1-079 NMRA.

SERVICE OF PETITION

Rule 1-077.1 (E)

Must be made by first-class United States mail

Non-conviction petitions:

- District Attorney
- New Mexico Department of Public Safety

Conviction petitions:

- District Attorney
- New Mexico Department of Public Safety
- Law enforcement agency that arrested petitioner

Don't forget to file a Certificate of Service!

Forms 4-955 and 4-956

Affidavit for Free Process

Form 4-222

Affidavit for Free Process and Affidavit of Indigency

- Complete this form and provide the necessary paperwork if client is indigent and unable to pay the filing fee.

You've filed your petition... now what?

60 days for any objections to be filed

- Agencies entitled to notice shall file either specific objections or a Notice of Non-Objection
- If a Notice of Non-Objection is filed, that party is excused from further participation
- If there is an objection based on contents of FBI RAP sheet, that party must provide a copy of the FBI RAP sheet to petitioner for free when objection is filed



You've filed your petition... now what?

Once 63 days has passed...

- File a Notice of Completion of Briefing (Form 4-959 or 4-960)
- Serve on any parties who filed an objection
- Attach Affirmation in Support of Expungement (Form 4-960.2 or 4-960.3)
 - Signed by Petitioner
 - Affirms whether there are any pending charges against Petitioner
 - If there are new charges after petition, parties have 20 more days to file objections



HEARING ON EXPUNGEMENT PETITION

Timing

- Only after filing and service of Notice of Completion of briefing

Hearing required?

- Required for petitions to expunge a conviction
- Not required for other petitions unless an objection is filed

Telephonic/Virtual

- Provide notice in petition if want hearing to be telephonic/virtual



HEARING ON EXPUNGEMENT PETITION

- Burden is on the petitioner
- Prepare to address any objections
- Conviction petitions require establishing that justice will be served by the expungement
 - Petitioner testimony
 - Witness testimony
 - Keep in mind the factors under Section 29-3A-5(E)
- Judge must issue an order within 60 days



EXPUNGEMENT ORDERS

- Court has 60 days to issue order
- Expungement proceeding will be expunged as well
- Court will cause a copy of an order on a petition for expungement to be delivered to all relevant law enforcement agencies and courts
- Order shall prohibit all relevant law enforcement agencies and courts from releasing copies of the records to any persons, except as authorized by the Criminal Records Expungement Act, or on order of the court
- **CHECK!** Look up the case to make sure you do not see it anymore.



Questions?

Kate Thompson
Kate.Thompson@lopdm.us

CASE PRESENTATION

CASE STUDY #1

Client: Daffy Duck

Date of Arrest: June 15, 2021

Charge: Larceny (Shoplifting), §30-16-1
NMSA 1978 – misdemeanor charge,
value under \$250

Case Outcome: Charges dismissed
without prejudice on October 4, 2021.
No further action taken. No refiled
charges. No other arrests or
convictions.



FACTS

Daffy was shopping at a department store in Albuquerque when she was detained by store security on suspicion of shoplifting. Police were called, and she was arrested. A criminal complaint was filed, but after reviewing surveillance footage and statements, the Bernalillo County District Attorney's Office voluntarily dismissed the charge prior to arraignment, citing insufficient evidence.

Daffy is now applying for a job with APS and is concerned that the arrest record, though it resulted in no conviction, is showing up on background checks. She seeks to expunge the arrest record under New Mexico's expungement statute.

1. Does this charge qualify for expungement under New Mexico law?

OVERVIEW

Client: Daffy Duck

Date of Arrest: June 15, 2021

Charge: Larceny (Shoplifting), §30-16-1 NMSA 1978 – misdemeanor charge, value under \$250

Case Outcome: Charges dismissed without prejudice on October 4, 2021. No further action taken. No refiled charges. No other arrests or convictions.

YES.

- Daffy was charged with misdemeanor larceny, but the case was dismissed without prejudice before the arraignment.
- She was not convicted of the charge, and there is no other criminal case pending against her.
- Under §29-3A-3 NMSA 1978, a person may petition for expungement of arrest and public records if one year has passed since final disposition and there have been no new charges.

Daffy qualifies under the statute for expungement of this non-conviction.

2. What is the date this record qualifies for expungement?

OVERVIEW

Client: Daffy Duck

Date of Arrest: June 15, 2021

Charge: Larceny (Shoplifting), §30-16-1 NMSA 1978 – misdemeanor charge, value under \$250

Case Outcome: Charges dismissed without prejudice on October 4, 2021. No further action taken. No refiled charges. No other arrests or convictions.

October 4, 2022

- The criminal complaint was dismissed on October 4, 2021.
- The one-year waiting period required by §29-3A-3 begins from the date of final disposition of the case.
- Since there were no refiled charges or pending proceedings, the waiting period concluded on October 4, 2022.

Daffy has been eligible to file a petition for expungement since October 4, 2022.

3. Do you think a hearing would be required?

OVERVIEW

Client: Daffy Duck

Date of Arrest: June 15, 2021

Charge: Larceny (Shoplifting), §30-16-1 NMSA 1978 – misdemeanor charge, value under \$250

Case Outcome: Charges dismissed without prejudice on October 4, 2021. No further action taken. No refiled charges. No other arrests or convictions.

Probably not, but it depends.

- A hearing is not mandatory by default in non-conviction expungement cases. It is only required if one of the notified parties files a timely objection (District Attorney, DPS, or the arresting agency).
- In Daffy's case:
 - The DA voluntarily dismissed the case.
 - There were no allegations of violence or repeat behavior.
 - DPS typically does not object to straightforward, first-time, low-level non-conviction expungements.
- However, notice must still be provided to all relevant parties under §29-3A-3.

A hearing will only be required if an objection is raised. Daffy's attorney should be prepared to attend, but in most cases like this, expungement will be granted without hearing.

CASE STUDY #2

Client: Bugs Bunny

Date of Arrest: June 1, 2021

Charge: Aggravated Battery Against a Household Member (with Great Bodily Harm, 3rd Degree Felony), §30-3-16 NMSA 1978

Disposition: Dismissed without prejudice by the District Attorney on October 15, 2021

**No refiled charges. No convictions.
No other pending matters.**



Background

Bugs was arrested after an altercation with his partner and charged with Aggravated Battery Against a Household Member, a felony offense under the Crimes Against Household Members Act. The DA later dismissed the charge due to insufficient evidence. Bugs now seeks to expunge the arrest from his record. He has no other criminal history and is concerned about how this affects employment and housing.

1. Does this charge qualify for expungement under New Mexico law?

OVERVIEW

Client: Bugs Bunny

Date of Arrest: June 1, 2021

Charge: Aggravated Battery Against a Household Member (with Great Bodily Harm, 3rd Degree Felony), §30-3-16 NMSA 1978

Disposition: Dismissed without prejudice by the District Attorney on October 15, 2021

No refiled charges. No convictions. No other pending matters.

Yes, Bugs will be eligible for expungement on October 15, 2022.

- Under §29-3A-4 (non-convictions), all dismissed charges may become eligible **one year** after final disposition.
- If this were a conviction, this charge would not be eligible.

CASE STUDY #3

Client: Donald Duck

Date of Arrest: June 1, 2014

Charge: Fourth-Degree Felony –
Possession of a Controlled Substance
(NMSA 1978, §30-31-23)

Disposition: Convicted by plea,
sentenced on October 1, 2014

Sentence: 18 months probation,
substance abuse treatment, all fines and
fees paid

Sentence Completed: April 1, 2016

No new convictions or pending charges



Background

Donald Duck was arrested in 2014 after being found in possession of a small quantity of methamphetamine. At the time, he struggled with substance use but later sought help, successfully completing a rehabilitation program as part of his probation. Donald has been sober for over eight years, holds steady employment, and volunteers at a recovery center. He now seeks expungement to eliminate barriers to better employment and housing.

1. Does this charge qualify for expungement under New Mexico law?

Client: Donald Duck

Date of Arrest: June 1, 2014

Charge: Fourth-Degree Felony – Possession of a Controlled Substance (NMSA 1978, §30-31-23)

Disposition: Convicted by plea, sentenced on October 1, 2014

Sentence: 18 months probation, substance abuse treatment, all fines and fees paid

Sentence Completed: April 1, 2016

No new convictions or pending charges

Yes, the charge qualifies for expungement.

- Possession of a controlled substance is a fourth-degree felony, but it is not excluded under §29-3A-5(G).
- The offense did not involve violence, a child, great bodily harm, death, DWI, embezzlement, or a sex offense.

This conviction qualifies for expungement if the waiting period is met and other requirements are satisfied.

2. What is the date it qualifies for expungement?

Client: Donald Duck

Date of Arrest: June 1, 2014

Charge: Fourth-Degree Felony – Possession of a Controlled Substance (NMSA 1978, §30-31-23)

Disposition: Convicted by plea, sentenced on October 1, 2014

Sentence: 18 months probation, substance abuse treatment, all fines and fees paid

Sentence Completed: April 1, 2016

No new convictions or pending charges

April 1, 2020

- Under §29-3A-5(C)(4)(b), expungement is allowed for fourth-degree felony convictions after four years from completion of the sentence.
- Donald completed his sentence on April 1, 2016.
- He became eligible on April 1, 2020, assuming no other convictions.

The qualifying date was April 1, 2020.

3. Do you think a hearing would be required in this case?

Client: Donald Duck

Date of Arrest: June 1, 2014

Charge: Fourth-Degree Felony – Possession of a Controlled Substance (NMSA 1978, §30-31-23)

Disposition: Convicted by plea, sentenced on October 1, 2014

Sentence: 18 months probation, substance abuse treatment, all fines and fees paid

Sentence Completed: April 1, 2016

No new convictions or pending charges

Yes, a hearing is required for expungements of convictions.

- Per §29-3A-5(B), DPS and the District Attorney must receive notice and may object.
- At the hearing, the judge will make findings as to whether the conviction is eligible for expungement and whether justice will be served by the expungement.

A hearing is required. Donald will need to establish justice will be served by the expungement at the hearing. Donald should present evidence of his sobriety, employment, and volunteer work at the hearing.

**ADDITIONAL
QUESTIONS?**



Your pro bono pledge will aid in making a fresh start possible for many low-income New Mexicans.

**Monitor your email for
expungement matters needing
your assistance.**

Additional Volunteer Opportunities

Upcoming Events:

In-Person Consultations:

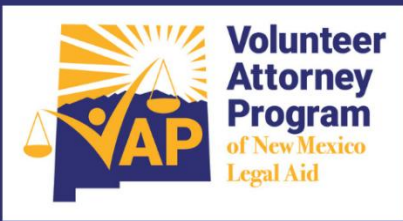
- 7/10, Roswell Legal Fair
- 7/11, Hobbs Legal Fair
- 7/25, Gallup Legal Fair
- 8/8, Albuquerque Law-La-Palooza

Telephonic Consultations:

- 8/28, Statewide Teleclinic

Email andoea@nmlegalaid.org for additional information or scan the QR code to express interest in volunteering at upcoming events!





**THANK YOU FOR
JOINING TODAY'S
VAP CLE ECHO SESSION!**
June 17, 2025

***To Receive CLE Credit for This
Course:
Please submit your post-
session survey before
the end of the day***

PRESENTER:

Kate Thompson

Managing Attorney

Law Offices of the Public Defender Metro Division

Kate.Thompson@lopdnm.us

FACILITATED BY:

Zac Addison

Director

New Mexico Legal Aid Volunteer Attorney Program

Marissa Gonzalez

Paralegal

New Mexico Legal Aid Volunteer Attorney Program

vapecho@nmlegalaid.org