

<b>LFC Requester:</b>	<b>FELIX CHAVEZ</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 20 FEB 25 *Check all that apply:*  
**Bill Number:** SB 407 Original  Correction   
 Amendment  Substitute

**Sponsor:** Linda M. Lopez **Agency Name and Code:** 790 – Department of Public Safety  
Antoinette Sedillo Lopez **Number:** \_\_\_\_\_  
**Short Title:** WRONGFUL CONVICTION **Person Writing:** H. L. LOVATO  
COMPENSATION & SERVICES **Phone:** 5058273316 **Email:** HERMAN.LOVATO@DPS.NM.GOV

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0.0	\$0.0	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0.0	\$0.0	\$0.0	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$621.3	\$540.8	\$1,162.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

Senate Bill 407 establishes a framework for compensating individuals who were wrongfully convicted in New Mexico. The legislation creates a Wrongful Conviction Compensation Fund to provide monetary relief to eligible petitioners who prove their innocence post-conviction. The bill mandates record expungement and ensures access to reintegration services such as public assistance, healthcare, and housing for exonerees. If passed, the bill would require that the Law Enforcement Records Bureau (LERB) within the New Mexico Department of Public Safety (NM DPS) facilitate record expungement and provide criminal history records upon request. The bill aligns with existing federal policies such as the Innocence Protection Act of 2004 (Title IV of the Justice for All Act) and New Mexico's Expungement Act (2019) under NMSA 1978, Section 29-3A-1, which authorizes record sealing for wrongful convictions.

### **FISCAL IMPLICATIONS**

The bill appropriates \$9 million from the state's general fund for fiscal year 2026 and beyond to finance compensation claims. However, the bill does not allocate funding directly for the New Mexico Department of Public Safety (NM DPS) to cover the administrative costs associated with the new requirements.

If the bill becomes law, the Law Enforcement Records Bureau (LERB) would experience a significant workload increase due to the increased volume of expungement requests and the requirement to provide petitioners with expungement "upon court order" and criminal history records upon request. To manage this increase effectively, LERB would need to expand its workforce to include two additional expungement personnel, reclassify three existing personnel, convert our existing dedicated law clerk and an in-house attorney from LERB fee revenue to general fund, a continued funding for a contract attorney to oversee compliance and address legal complexities related to record clearance.

### **SIGNIFICANT ISSUES**

This bill places new demands on DPS to process expungement orders in a timely manner. Existing federal requirements under the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division mandate that expunged records be removed from national databases, which adds procedural complexity. LERB must synchronize its expungement processes with state and federal systems, ensuring compliance with 28 CFR Part 20, which governs the privacy and security of criminal history record information. Additionally, failure to execute expungement orders properly could result in civil liability for DPS under the federal Privacy Act of 1974 (5 U.S.C. §552a), which requires correction or deletion of inaccurate government records.

### **PERFORMANCE IMPLICATIONS**

The increased workload on LERB staff requires additional analysts, a law clerk, an attorney, and funding for a contract attorney to assist in ensuring compliance with statutory deadlines, and thus, upon court order. Current expungement requests under the New Mexico Expungement Act take up to six months to process due to backlog. To meet the bill's requirements, DPS would need to streamline expungement workflows, invest in electronic record management systems, and allocate additional personnel to handle new demands. Failing to do so may result in compliance violations under NMSA 1978, Section 29-3-8, which mandates accurate and complete criminal history recordkeeping.

### **ADMINISTRATIVE IMPLICATIONS**

If passed, SB 407 would require DPS to process record expungements upon court order, necessitating

adjustments to individuals records once the DPS Legal has completed their review. LERB would then need to coordinate with the New Mexico Administrative Office of the Courts (AOC) and the FBI to ensure synchronized record updates. LERB, which maintains arrest records, would need to adapt its procedures to prevent records from being disseminated after expungement orders. Staff training on record disposition policies would be essential to maintain compliance.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 407 relates to New Mexico's Expungement Act (NMSA 1978, Section 29-3A-1 to 29-3A-9), which already provides a mechanism for clearing wrongful convictions. However, unlike SB 407, the Expungement Act requires petitioners to wait one-year post-exoneration to request record clearance. If passed, SB 407 would mandate immediate expungement, necessitating procedural modifications to prevent conflicting interpretations of record retention laws.

Page 11 of the bill states: enter an order of expungement pursuant to Section 29-3A-4 NMSA 1978 or an order sealing records and files pursuant to Section 32A-2-26 NMSA 1978, as applicable to the petition. The expungement or sealing order shall provide that the petitioner is entitled to, upon request to the DPS LERB, copies of the arrest and other criminal records related to the conviction at issue in the petition.

In New Mexico, as referenced in NMSA 1978, Section 29-3A-4, individuals seeking to expunge their records may be allowed to file their petition under seal (keeping their identity and records private). A seal is not the same as a permanent deletion of a record. When a record is sealed, it is hidden from public access but still exists in legal and government databases. It can only be accessed under specific circumstances, such as by the parties, pursuant to a court order, or for law enforcement purposes. A permanent deletion, also known as expungement, means that the record is completely erased as if it never existed. These records are typically removed from all official databases and cannot be accessed even with a court order (except in rare cases). These rare cases can include the following:

-Law Enforcement and Criminal Investigations: Courts, law enforcement agencies, and other criminal justice agencies retain access to expunged records for purposes such as criminal investigations, persecutions, and sentencing considerations.

-Employers Requiring Security Clearance: Employers in sectors that require security clearances, such as financial institutions regulated by the Securities and Exchange Commission (SEC) may have access to expunged records during background checks.

It is important to note that while expunged records are removed from public access and background checks, they are not destroyed. The records remain accessible to specified entities under the conditions outlined above. *See the Criminal Records Expungement Act found at NMSA 1978, Sections 29-3A-1 through 29-3A-7..*

## **TECHNICAL ISSUES**

The bill lacks detailed guidance on how DPS should coordinate record omission with the FBI and other federal repositories.

## **OTHER SUBSTANTIVE ISSUES**

The expungements outlined in SB 407 are for civil purposes only. Current expungement laws focus on conviction records, but arrest records associated with wrongful convictions may still be accessible under NMSA 1978, Section 29-10-1, which governs arrest record retention. This article does not grant the court's authority to expunge or seal criminal records. All arrest record information is subject to conditional or limited disclosure.

Neither the Arrest Record Information Act nor Inspection of Public Records Act authorizes law enforcement agencies to protect the identity of persons who have been arrested or charged with a crime. The Arrest Records Act does not prohibit the release of timely, accurate information when a juvenile is arrested for a criminal act.

**ALTERNATIVES**

No proposed alternatives have been identified.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

None noted.

**AMENDMENTS**

No proposed amendments have been identified.