



23rd Navajo Nation Council

MEMORANDUM

To : Manuel Rico, Senior Programs and Projects Specialist
OFFICE OF LEGISLATIVE SERVICES

From : 1-711
Tom Platero, Executive Director
OFFICE OF LEGISLATIVE SERVICES

Date : January 9, 2019

Subject : ***23rd Navajo Nation Council Expired Legislation***

Pursuant to 2 N.N.C. § 164 (A) (1), "The last day for consideration of resolutions shall be December 31st of the year immediately preceding the swearing in of the new Council", the following legislation need to be closed out and labeled as "expired":

NAVAJO NATION COUNCIL:

| | | | |
|---------|---------|---------|---------|
| 0399-17 | 0424-17 | 0098-18 | 0136-18 |
| 0183-18 | 0224-18 | 0328-18 | 0344-18 |
| 0356-18 | 0358-18 | 0367-18 | 0373-18 |
| 0385-18 | 0393-18 | 0404-18 | 0416-18 |
| 0422-18 | | | |

NAABIK'YATI' COMMITTEE:

| | | | |
|---------|---------|---------|---------|
| 0224-15 | 0361-16 | 0341-18 | 0406-18 |
| 0418-18 | 0427-18 | | |

BUDGET AND FINANCE COMMITTEE:

| | | | |
|---------|---------|---------|---------|
| 0021-17 | 0392-17 | 0099-18 | 0261-18 |
| 0287-18 | 0398-18 | 0435-18 | 0436-18 |

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE:

| | | |
|---------|---------|---------|
| 0414-18 | 0419-18 | 0451-18 |
|---------|---------|---------|

LAW AND ORDER COMMITTEE:

| | | | |
|---------|---------|---------|---------|
| 0114-17 | 0031-18 | 0217-18 | 0307-18 |
| 0353-18 | 0360-18 | 0364-18 | 0437-18 |

RESOURCES AND DEVELOPMENT COMMITTEE:

| | | | |
|---------|---------|---------|---------|
| 0402-15 | 0104-16 | 0121-16 | 0183-16 |
| 0282-16 | 0296-16 | 0370-16 | 0384-16 |
| 0135-17 | 0176-17 | 0386-17 | 0400-17 |
| 0076-18 | 0395-18 | 0415-18 | 0443-18 |

Legislation need to be closed out as soon as possible. If you have any questions, please let me know.

CONCURRENCE:



Honorable LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

COPIES: Pete K. Atcitty, Chief of Staff, Office of the Speaker
Ed McCool, Acting Chief Legislative Counsel, Office of Legislative Counsel
Files

LEGISLATIVE SUMMARY SHEET

Tracking No. 0217-18

DATE: June 26, 2018

**TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER AND
NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL;
ENACTING THE NAVAJO NATION EXPUNGEMENT CODE**

PURPOSE: The purpose of this legislation is to enact the Navajo Nation Expungement Code.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 11:41 am 4/27/18
Posting End Date: 7/2/2018
Eligible for Action: 7/3/2018

Law & Order Committee
Thence
Naa'bik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL - FOURTH YEAR, 2018

INTRODUCED BY



(Primary Sponsor)

TRACKING NO. 0217-18

AN ACTION

RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND THE
NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION EXPUNGEMENT
CODE

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Navajo Nation Council established the Naabik'iyáti' Committee as a Navajo Nation standing committee and a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'iyáti' Committee. 2 N.N.C. § 700(A) and 2 N.N.C. § 164(A)(9).
- C. The Law and Order Committee is established as a standing committee of the Navajo Nation Council and has the power to make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. §§ 600(A), 601(B)(14).

1 **Section Two. Findings**

- 2 A. The Navajo Nation recognizes the importance of forgiveness and rehabilitation as a goal
3 of the criminal justice system and recognizes the criminal justice system should
4 rehabilitate criminal offenders and allow them to re-enter Navajo society.
- 5 B. Many Navajo individuals maintain a lifelong criminal record for less serious and non-
6 violent offenses which prevents these individuals from becoming gainfully employed by
7 the Navajo Nation and without the prospect of productive and gainful employment
8 former offenders are more likely to leave the Navajo Nation to seek out employment.
- 9 C. Many Navajo individuals with a criminal record are prevented from qualifying for
10 Navajo government assistance programs and without employment or an opportunity to
11 receive benefits former offenders may not have a source of income, and will be forced to
12 choose between a life of poverty or relocation off the Navajo Nation.
- 13
14

15 **Section Three. Amending Navajo Nation Code Title 17**

16 The Navajo Nation amends the Navajo Nation Code, Title 17, as follows:

17

18 Title 17. Law and Order

19 Chapter 2. General Provisions

20 Subchapter 4. Navajo Nation Expungement Act

21

22 § 250. Purpose

23 It is declared that the general purposes of this Code are:

- 24 i. To assist in the rehabilitation of non-violent criminal offenders.
- 25 ii. To ensure that after completing a criminal sentence, a criminal offender may be forgiven
26 for his actions and have another chance to be a productive member of Navajo society.
- 27 iii. To offer a second chance to offenders who have changed their lives.
- 28

29 § 251. Definitions

30

- 1 A. "Arrest record" means a recorded documentation of an incident where a person was taken
2 into police custody.
- 3 B. "Conviction record" means a record of any instance where a finding of guilt was made by
4 the court.
- 5 C. "Court or courts" means the Navajo Nation court.
- 6 D. "Expungement" means the removal of a particular record from a person's criminal record.
- 7 E. "Finding of guilt" means a plea-bargain whereby the defendant pled guilty, a finding of
8 guilt by the district court judge, and the finding of guilt by a jury.
- 9 F. "In-favor records" means a finding of not guilty by the court.
- 10 G. "Seal" means the court prevents access to court documents.

11

12 § 252. Eligibility

- 13 A. A person who has an arrest record, an in-favor record, or a conviction record in the Navajo
14 Nation may petition the court to have one or more of such records expunged.
- 15 B. **Arrest records.**
- 16 1. A person may petition for expungement of one or more arrest record:
17 a. after six (6) months of the arrest;
18 b. that led to no formal charges or prosecution; and
19 c. the petitioner has had no more arrests or charges filed against him since the arrest that is
20 sought to be expunged.
- 21 2. A petition for expungement of an arrest record shall be automatically granted if all of the
22 elements in § 252 B(1)(a – c) are met.
- 23 3. The court shall not consider the nature or reason for the arrest. No nature or reason
24 disqualifies an arrest record from being eligible for expungement.
- 25 C. **In-favor records.**
- 26 1. A person may petition for expungement of an in-favor record at any time after the
27 proceedings leading to the in-favor judgment are complete.
- 28 2. A petition for expungement of an in-favor record shall be automatically granted by the
29 court if the elements of § 252 C(1) are met.
- 30

- 1 3. The court shall not consider the nature, indictment or charge that led to the in-favor record.
2 No nature or reason disqualifies an in-favor record from being eligible for expungement.

3 D. Conviction records.

- 4 1. A person may petition for expungement of a conviction record:
5 a. after the completion of the sentence, with the exception of payment of restitution and/or
6 finest; and
7 b. at minimum, two years after the date of arrest for the offense sought to be expunged.
8 2. Disqualifications for expungement of conviction records.
9 a. The following offenses may not be expunged:
10 i. Criminal homicide
11 ii. Kidnapping
12 iii. Aggravated kidnapping
13 iv. Child kidnapping
14 v. Aggravated arson
15 vi. Aggravated assault
16 vii. Battery
17 viii. Aggravated battery
18 ix. Dangerous use of explosives
19 x. Theft by extortion
20 xi. Trespass with force or violence
21 xii. Bribery in official and political matters
22 xiii. Improper influence in official and political matters
23 xiv. Paying or receiving Navajo Nation Government funds for services not rendered
24 xv. Making or permitting false Navajo Nation voucher
25 xvi. Desecration of religious or traditional artifacts
26 xvii. Delivery of marijuana to minors
27 xviii. Manufacture of delivery of liquor
28 xix. Sexual assault
29 xx. Aggravated sexual assault
30 xxi. Incest

- 1 xxii. Sexual conduct with a foster child or stepchild
2 xxiii. Perjury
3 xxiv. Robbery
4 xxv. Armed Robbery
5 xxvi. Driving Under the Influence
6 xxvii. Homicide by Vehicle while Under the Influence
7 xxviii. Homicide by Vehicle while Reckless Driving
8

9 § 253. Petition Requirements

- 10 A. Petition; filing fee. An individual who is the subject of a criminal or arrest record and who
11 is seeking expungement of the record shall file a petition under this section and pay a filing
12 fee of \$35.00. The filing fee may be waived in cases of indigence, as determined by the
13 court.
14 B. Venue. The petition shall be filed in the district where the offense or incident occurred. If
15 the petitioner is petitioning for more than one offense to be expunged and the offenses took
16 place in different districts, the petitioner may file for expungement of both offenses in one
17 of the districts where an offense took place.
18 C. Number of petitions allowed. There is no limit to the number of petitions for expungement
19 a petitioner may file.
20 D. Contents of petition for expungement of an arrest record.
21 1. the petitioner's full name and all other legal names or aliases by which the petitioner
22 has been known at any time;
23 2. the petitioner's date of birth;
24 3. the petitioner's last four digits of his social security number;
25 4. the petitioner's valid physical and mailing address and all of the addresses where
26 petitioner has lived since the offense to be expunged was entered;
27 5. a statement of how the petitioner meets eligibility under Section V;
28 6. the date of arrest;
29 7. a copy of the arrest record to be expunged; and
30 8. a sworn statement signed by the petitioner.

1 E. Contents of petition for expungement of an in-favor record.

- 2 1. the petitioner's full name and all other legal names or aliases by which the petitioner
3 has been known at any time;
4 2. the petitioner's date of birth;
5 3. the petitioner's last four digits of his social security number;
6 4. the petitioner's valid physical and mailing address and all of the addresses where
7 petitioner has lived since the offense to be expunged was entered;
8 5. a statement of how the petitioner meets eligibility under Section V;
9 6. a copy of the in-favor record to be expunged; and
10 7. a sworn statement signed by the petitioner.

11 F. Contents of petition for expungement of a conviction record.

- 12 1. the petitioner's full name and all other legal names or aliases by which the petitioner
13 has been known at any time;
14 2. the petitioner's date of birth;
15 3. the petitioner's last four digits of his social security number;
16 4. the petitioner's valid physical and mailing address and all of the addresses where
17 petitioner has lived since the offense to be expunged was entered;
18 5. a statement of how the petitioner meets eligibility under Section V;
19 6. the date of the offense(s) to be expunged;
20 7. the details of the offense for which expungement is sought, including:
21 a. the date and jurisdiction of the occurrence;
22 b. either the names of any victims or that there were no identifiable victims;
23 c. whether there is a current domestic abuse protection order or other no contact order
24 or whether there was a prior domestic abuse protection order or no contact order
25 preventing contact from the victims;
26 d. the court file number; and
27 e. the date of the conviction or of dismissal;
28 8. a copy of the criminal judgment(s) that are sought to be expunged;
29 9. proof of completion of sentence including probation reports(s), completion of
30 treatment, proof of jail time served, and fines paid;

10. if the petitioner has not paid all of the fines due according to his sentence, an explanation as to why fines have not been paid;
11. a statement as to whether the petitioner has had any other expungements granted by the court, and if so, a copy of the order of expungement and the case number of the case with the court;
12. a statement regarding the petitioner's prior and pending criminal charges in the Navajo Nation and any other jurisdiction;
13. a statement of facts as to why the petition should be granted; and
14. a sworn statement signed by the petitioner.

G. Sealed File. When a petition for expungement for any type of record is filed with the court, the court must keep the entire file sealed. No part of the case file shall be publically available.

H. Criminal Background Check. Upon receiving a petition for expungement, the court shall order the Navajo Nation Police Department in the jurisdiction where the petition was filed to conduct a nationwide criminal background check on the petitioner, specifically to verify whether the petitioner has pending criminal charges in any other jurisdiction. The Navajo Nation Police Department shall conduct a search in every location where the petitioner has lived since the judgment of the offense to be expunged.

§ 254. Service of Petition and Proposed Order.

A. Service on Prosecutorial Office. The petitioner shall serve by certified mail the petition for expungement and the proposed expungement order on the prosecutorial office in the district where the petition for expungement was filed.

B. Petition for Expungement of Conviction Record; Service on Victim. The prosecutorial office in the district where the petition for expungement of a conviction record was filed may serve the petition for expungement and the proposed expungement order on any victims of the offense for which the expungement is sought. Service under this paragraph does not constitute a violation of an existing domestic abuse protection order or other no contact order.

- 1 1. The prosecutorial office's notice to the victims of the offense shall specifically state
2 that the victim may be present for the hearing and may submit an oral or written
3 statement at the expungement hearing.

4
5 § 255. Hearing.

6 A. A hearing on the petition shall be held.

7 B. For a hearing regarding a Petition for Expungement of a Conviction Record, the victims of
8 the offense for which expungement is sought have a right to submit an oral or written
9 statement to the court. The judge shall consider a victim's statement when making a
10 decision.

11
12 § 256. Standard.

13 A. **Expungement of conviction record.** The petition for expungement of a conviction record
14 shall be granted upon clear and convincing evidence that the advantages of the
15 expungement to the petitioner are greater than then disadvantages to the public. When
16 making a determination on the petition for expungement, the court shall consider the
17 following:

- 18 1. the petitioner's interest in being free from whatever disabilities the record(s) create;
19 2. the petitioner's completion of the sentence for the offense sought to be expunged;
20 3. the amount, if any, of restitution or fines outstanding, past efforts by the petitioner toward
21 payment, and the measures in place to help ensure completion of restitution and/or fine
22 payment after expungement of the record if granted;
23 4. the seriousness and nature of the offense sought to be expunged;
24 5. the Navajo Nation's interest in retaining the record(s);
25 6. the potential risk that the petitioner poses to the public and how this affects the public's
26 right to access the records;
27 7. any victim's statement;
28 8. any additional offenses or rehabilitative efforts of the petitioner since the offense;
29 9. the number of petitions for expungement the petitioner has previously filed, the nature of
30 the offenses petitioned for expungement, and whether those petitions were granted; and

10. any other factors deemed relevant by the court.

§ 257. Prohibition on Further Disclosure.

- A. Once a petition for expungement for an arrest record, an in-favor record, and/or a conviction record is granted, the criminal record that was expunged shall be permanently sealed and segregated from other criminal files.
- B. Only an expunged conviction record may be reopened for purposes of criminal investigation, prosecution, or sentencing, upon an ex parte court order. The expunged conviction record may also be reopened for the court that is considering another petition for expungement by the same petitioner.
- C. Any record that is expunged shall not be available for use for impeachment.
- D. It shall be a violation of 17 N.N.C. _____ if a person with knowledge of another person's expungement order discloses or divulges such information to anyone without a specific order from the court.

§ 258. Legal Effect of Expungement.

- A. The legal effect of expungement of any record is that the offense expunged never occurred. A petitioner whose petition for expungement is granted may deny any inquiry regarding the offense expunged, including arrests, in-favor records, and/or convictions, whether the inquiry is under oath or not.
- B. Once a criminal record is expunged, the record shall not be found by a criminal record search or background check unless a law supreme to this law allows it.

Section Four. Codification

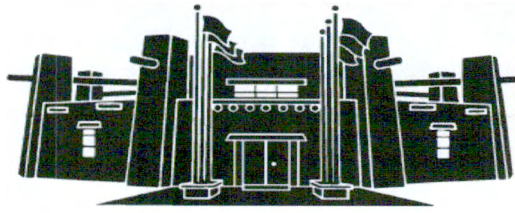
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Five. Saving Clause

1 Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or
2 the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court,
3 the remainder of the Act shall remain the law of the Navajo Nation.
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5 **Section Six. Effective Date**

6 The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).
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MEMORANDUM

TO: Honorable Jonathan Hale
23rd Navajo Nation Council Delegate

FROM: 
Candace French, Attorney
Office of Legislative Counsel

DATE: June 26, 2018

RE: AN ACTION RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI'
COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING
THE NAVAJO NATION EXPUNGEMENT CODE

Per your request, attached is the above-reference proposed resolution and associated legislative summary sheet. Based on existing law and the available information, the resolution as drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel recommends the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601, and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration. 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If you approve, please sign as "Primary Sponsor" and submit it to the Office of Legislative Services where the proposed resolution will be given a tracking number and referred to the Office of the Speaker. If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0217-18_____ SPONSOR: Jonathan Hale

TITLE: An Action Relating to Law and Order and Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Navajo Nation Expungement Code

Date posted: June 27, 2018 at 11:41am

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0217-18

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating to Law and Order and Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Navajo Nation Expungement Code

Posted: June 27, 2018 at 11:41am

5 DAY Comment Period Ended: July 2, 2018

Digital Comments received:

| | |
|------------------------------|-------------|
| Comments Supporting | <i>None</i> |
| Comments Opposing | <i>None</i> |
| Inconclusive Comments | <i>None</i> |



**Legislative Secretary II
Office of Legislative Services**

7/3/2018 8:17am

Date/Time

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0217-18

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating to Law and Order and Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Navajo Nation Expungement Code

Posted: June 27, 2018 at 11:41am

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Digital Comments received:

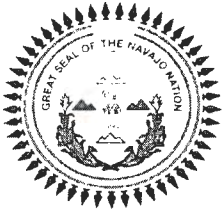
| | |
|--------------------------------------|--|
| Comments Supporting | <i>None</i> |
| Comments Opposing | <i>None</i> |
| Inconclusive Comments (1) | 1. Gertrude Lee, Chief Prosecutor; Office of the Prosecutor |



**Legislative Secretary II
Office of Legislative Services**

7/27/2018 10:14am

Date/Time



THE NAVAJO NATION

RUSSELL BEGAYE
JONATHAN NEZ

To: Navajo Nation 23rd Council Delegates

From: Gertrude Lee
Gertrude Lee, Chief Prosecutor
Office of the Prosecutor

Date: July 23, 2018

Re: Proposed Navajo Nation Council Resolution, Tracking No. 0217-18: An Action Relating to Law and Order Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Navajo Nation Expungement Code

-
- 1. Findings. (C) "Many Navajo individuals with a criminal record are prevented from qualifying for Navajo government assistance programs and without employment or an opportunity to receive benefits former offender may not have a source of income, and will be forced to choose between a life of poverty or relocation off the Navajo Nation."**

Comment: The Office of the Prosecutor does not doubt this finding, but is deeply troubled by it. Arrest records and/or in-favor records should not be used by any government assistance programs or any other entity to measure eligibility. By their very nature, arrest records and in-favor records are not proof of criminality; all individuals are presumed innocent until convicted by a Court upon proof beyond a reasonable doubt presented by the Office of the Prosecutor. For any entity to use arrest records and/or in-favor records to determine eligibility for any services is a direct violation of that fundamental principle within our criminal justice system. The inappropriate use of certain records by assistance programs and other entities should not be a driving force behind enacting an expungement statute; instead, the Office of the Prosecutor urges that any entities that use such records to determine eligibility or as punitive records be directed to cease doing so.

2. §252(B) Eligibility to Expunge Arrest Records

Comment: This section is in conflict with all statutes of limitation within Titles 17, 14, and other statutory sections with arrestable offenses. For example, Title 17 currently provides for a 3-year statute of limitation, within which the Office of the Prosecutor may pursue a criminal complaint based on an arrest and/or police report. While many complaints are filed within six months of an arrest, some are not due to necessary investigation or other issues with witnesses, interviews, etc. This is especially true for serious offenses, although the proposed legislation requires no consideration of the "nature or reason for the arrest." The 6-month timeframe for expungement

NAVAJO NATION OFFICE OF THE CHIEF PROSECUTOR
PO BOX 3779, WINDOW ROCK, NAVAJO NATION (AZ)
PHONE: (928) 871-6622 / FAX: (928) 871-6633
EMAIL: GERTRUDELEE@NAVAJO-NSN.GOV

eligibility significantly detracts from the Navajo Nation's discretion in pursuing complaints within its statute of limitations. Similarly, this may deter the Criminal Investigators, Police Officers and the Office of the Prosecutor from fully investigating reports prior to filing criminal complaints.

3. §252(D) Eligibility to Expunge Conviction Records

Comment: The Office of the Prosecutor does not disagree with authorizing courts to expunge criminal records in certain situations. However, the timing for the expungement and the offenses excepted in the proposed legislation raise the following concerns:

Timing comment #1: Two years after an arrest is still within the Navajo Nation's statute of limitation to *file* a criminal complaint and initiate criminal proceedings. Therefore, the comments in ¶2 above apply here, and the Office of the Prosecutor would urge that the timeframe be increased before a conviction record can be expunged.

Timing comment #2: Many criminal offenses include increasing sentencing guidelines for a 2nd subsequent offense. For example, if someone has been convicted of solicitation of a minor for prostitution (17 N.N.C. §436), and is subsequently convicted a second time, the sentence for the subsequent conviction is higher than that for the first conviction. Expunging that first conviction record would mean that any subsequent conviction would be treated as a first conviction. There are many other examples, and another salient one is Persons Under Influence of Intoxicating Liquor or Drugs (DUI; 14 N.N.C. §707); a second conviction within 24 months of a first conviction carries a mandatory 30-day jail sentence. A third or subsequent conviction within 24 months carries a 180-day jail sentence. If the first conviction is expunged after 6 months, a second or subsequent conviction would be treated as a first conviction. The timing in the proposed legislation negates the increased accountability and sentencing guidelines for repeat offenders for many offenses.

Excepted offenses comment: The Office of the Prosecutor agrees that there should be exceptions to expungement, but it is unclear why or how the offenses in the enumerated list in the proposed legislation were picked. The list contains some – *but not all* – violent offenses. For example, none of the offenses in the Violence Against Family Act are included in this list, although family violence is an increasing problem within the Navajo Nation. Also, none of the offenses against our peace officers (17 N.N.C. §§314.01, 315.01, 316.01 and 317.01) are included as exceptions, although they carry mandatory jail sentences; DUI is also not included in the list of excepted offenses, although it has repeatedly been identified as a significant problem within our Nation. Last, by creating a list of specific excepted offenses, it means that whenever the Council creates a new offense that it feels needs to be included in the list, this statute would have to be amended as well. At a minimum, the Office of the Prosecutor recommends a thorough review of the list of excepted offenses. Perhaps instead of excepting specific offenses, the proposed legislation should be amended to include a list of factors (such as physical violence, death, serious bodily injury, significant risk to a specific class [children, elders, the general public], a

crime of moral turpitude, etc.) that, if a part of the Defendant's offense, would make that Conviction Record ineligible for expungement.

4. §253(A) Petition; filing fee

Comment: Rather than setting the filing fee within the statute, it may be more effective to state that the filing fee for a petition will be the same as that for the filing of an initial civil complaint or petition. The filing fees in the Navajo Nation are currently set by the Navajo Rules of Court. While those rules have not been amended since 1978, \$35.00 is the filing fee to initiate a civil petition or complaint; if those fees are ever amended, setting the fee within this statute would preclude the fee from being changed along with the other filing fees when the Rules are amended.

5. §253(B) Venue

Comment: Authorizing one district court to expunge offenses that occurred in another district poses potential problems. First, victims of the offense are likely to reside within the district in which the offense was committed; although the expungement statute is intended to favor the defendant, it is important not to discourage victims from participating in hearings regarding those expungements, should they wish to participate. Second, all of the records regarding an offense will be in the district in which the offense occurred, as are the prosecutor(s) who pursued the case and may wish to have input into the expungement. To create an avenue for expungement is reasonable and we encourage it, but to make it difficult for victims, witnesses, officers, record keepers or the Navajo Nation prosecutors to respond/participate in the hearings is disconcerting.

6. §253(H) Criminal Background Check

Comment: The Office of the Prosecutor appreciates the consideration of a national criminal background check being conducted during an expungement proceeding. However, it raises the following questions and/or concerns:

- A. Rather than laying the burden on the Navajo Nation Police Department to obtain a national background check, we suggest that the burden to obtain, pay for and submit a national criminal background check lie with the petitioner who wishes to have his/her record expunged. This is especially true for Conviction Records.
- B. How will the results of the national criminal background check be used in the proceeding? The purpose is to "verify whether the petitioner has pending criminal charges in any other jurisdiction," but that condition is not included in proposed §252 eligibility requirements. If pending criminal charges in other jurisdictions are intended to prohibit expungement of Navajo Nation records, the proposed legislation should be clarified to implement that intention.

- C. The requirement that the Navajo Nation Police Department conduct a search in “every location where the petitioner has lived since the judgment of the offense to be expunged” is seemingly in conflict with the requirement of a *nationwide* criminal history background check. Does this section mean only within the Navajo Nation and/or other tribal Nations and Pueblos? How will it be determined where the petitioner has lived since the judgment?
- D. Any Navajo Nation agency using national criminal justice information databases has an agreement with a state or federal government to obtain access and to have the ability to run criminal background checks. At present, with the Tribal Access Program, there are agency agreements with the federal government. It is the understanding of the Office of the Prosecutor that these criminal background checks can only be done, pursuant to agreement, for criminal justice purposes (e.g. investigation, arrest, criminal justice employment, etc.). It is also the understanding of the Office of the Prosecutor that agencies cannot run criminal background checks for other non-criminal justice entities. The use of criminal justice information databases is regularly audited by the federal government and unauthorized use of the databases can result in the agency losing access to the databases. It is recommended that the Navajo Nation Police Department review its agreement to ensure that a request to run a criminal background check pursuant to this statute would not run afoul of their agreement(s) giving NPD access to federal criminal justice information databases or put their access to such databases in jeopardy.

7. §254 Service of Petition and Proposed Order

Comment: The Office of the Prosecutor is willing to provide victims notice of the petition for expungement of a conviction record when it knows the location and mailing address of the victim(s). The Office of the Prosecutor does have victim advocates who maintain contact information of victims and often does not know their location/residence following an alleged offense or judgment. Protecting victims of crime (including when the victim is the general public) should remain a paramount concern within our criminal justice system, however, it will be impossible for the Office of the Prosecutor to serve victims of crime pursuant to this proposed legislation with additional funding for process servers. At present the Office of the Prosecutor is *severely* understaffed and does not have the staff or resources to provide service as the legislation contemplates. Therefore the Office of the Prosecutor recommends that rather than requiring “service” upon victims, that “notice” be provided via mail or electronic means at the victim’s last known address and or that the petitioner be required to post notice of the petition in conspicuous places such as post offices, chapter houses, etc., and show proof of that posting for a certain amount of time prior to a hearing on the petition. Expungement of a public criminal record should not be a private and confidential affair, and the communities have a right to be aware that the proceedings are filed. Such public posting strikes a balance between transparency to the community without requiring a petitioner to spend hundreds of dollars on publication, and also increases the chance that a victim will be notified of the requested expungement.

8. §255 Hearing

Comment: The proposed language limits participation in the hearing to “the victims of the offense.” The Office of the Prosecutor recommends that the language be expanded to allow any interested person (including police officers, probation officers, prosecutors, or any community members) to participate in the hearing and to make written or oral comment. Crime is of concern to everyone, and expungement of public records should be subject to as much transparency as possible within our communities. Criminal convictions are not private but public record, so the expungement of those records, especially Conviction Records, should also be public.

9. Other/General Comments:

Comment #1: The Office of the Prosecutor assumes that petitions pursuant to this proposed legislation are civil, but recommends that that be clarified, so that the parties and the Courts know what rules apply to these proceedings.