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HOUSE BILL 214

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joe Mhorvic

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING PROCEDURES REGARDING
FINGERPRINTING WHEN A PERSON IS ARRESTED OR CHARGED; PROVIDING
FOR EXPUNGEMENT OF ARREST INFORMATION.

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

Section 1. Section 29-3-8 NMSA 1978 (being Laws 1978,
Chapter 87, Section 1, as amended) is amended to read:

"29-3-8. FINGERPRINTING OF PERSONS ARRESTED--
DISPOSITION. --

A. Any person arrested or charged 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 or the jail to make
fingerprint impressions prior to his release. The arresting
peace officer or the jail shall obtain a photograph each time

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1 a person is arrested. At the time of fingerprinting, a state
2 tracking number shall be assigned to the fingerprint cards and
3 the booking sheet.

4 B. Any person arrested or charged for the
5 commission of any criminal offense not amounting to a felony
6 but punishable by imprisonment for more than six months under
7 the laws of this state or any political subdivision shall be
8 required [~~to make fingerprint impressions~~] by the arresting
9 peace officer or the jail to make fingerprint impressions
10 prior to his release. The arresting peace officer or the jail
11 shall obtain a photograph each time a person is arrested. At
12 the time of fingerprinting, a state tracking number shall be
13 assigned to the fingerprint cards and the booking sheet.

14 C. A person arrested or charged for violating a
15 provision of Section 66-8-102 NMSA 1978 or committing a
16 violation of a municipal or county ordinance prescribing
17 criminal penalties for driving while under the influence of
18 intoxicating liquor or drugs shall be required by the
19 arresting peace officer or the jail to make fingerprint
20 impressions prior to his release. The arresting peace officer
21 or the jail shall obtain a photograph each time a person is
22 arrested. At the time of fingerprinting, a state tracking
23 number shall be assigned to the fingerprint cards and the
24 booking sheet.

25 D. Fingerprint impressions shall be made pursuant

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1 to rules adopted by the ~~[New Mexico state police board and]~~
2 department. Fingerprint card submission policies and a state
3 tracking number system for fingerprint cards shall be
4 implemented pursuant to rules adopted by the department. All
5 felony, misdeemeanor and DWI arrest fingerprints shall be made
6 in duplicate ~~[one copy]~~. Both copies shall be forwarded to
7 the ~~[New Mexico state police and one copy shall be forwarded]~~
8 department within five days following the date of arrest or
9 the date that charges were filed. The department shall
10 forward one copy to the federal bureau of investigation in
11 Washington, D. C.

12 ~~[E. One copy of the fingerprint impressions of~~
13 ~~each person arrested under the provisions of Subsection B of~~
14 ~~this section shall be forwarded to the New Mexico state~~
15 ~~police. A copy may be sent to the federal bureau of~~
16 ~~investigation in Washington, D. C. if:~~

17 ~~(1) there is a question of identity;~~

18 ~~(2) a check of federal bureau of~~
19 ~~investigation files is considered necessary for investigative~~
20 ~~purposes; or~~

21 ~~(3) the individual is suspected of being a~~
22 ~~fugitive.]~~

23 E. An inmate who is charged with a felony or
24 misdeemeanor offense while incarcerated shall be fingerprinted,
25 and the jail or corrections facility shall forward the

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1 offender's fingerprint card to the department.

2 F. The administrative office of the courts and the
3 administrative office of the district attorneys shall
4 electronically provide information regarding a final
5 disposition to the department no later than five days
6 following a final disposition.

7 G. Law enforcement agencies, the administrative
8 office of the courts and the administrative office of the
9 district attorneys shall allow the department access to their
10 records for the purpose of auditing those records to ensure
11 compliance with the provisions of this section."

12 Section 2. A new section of Chapter 29, Article 3 NMSA
13 1978 is enacted to read:

14 "[NEW MATERIAL] PETITION TO EXPUNGE ARREST INFORMATION. --

15 A. A person may petition the department to expunge
16 arrest information on the person's state record or federal
17 bureau of investigation record, if the arrest was for a
18 misdemeanor or petty misdemeanor offense and the arrest was
19 not for a crime of moral turpitude. If the department cannot
20 locate a final disposition after contacting the arresting law
21 enforcement agency, the administrative office of the courts
22 and the administrative office of the district attorneys, the
23 department may expunge the arrest information.

24 B. As used in this section:

25 (1) "expunge" means to remove a notation of

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1 an arrest placed on a person's state record or federal bureau
2 of investigation record and to return the fingerprint card to
3 the arresting law enforcement agency; and

4 (2) "final disposition" means a final
5 outcome following arrest, including nolle prosequi, a
6 dismissal, a decision to not file charges, a referral to a
7 pre-prosecution diversion program, placement on probation or
8 imposition of a fine."

9 Section 3. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 2001.

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