

CHAPTER 46

CHAPTER 46, LAWS 2002

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING PROCEDURES REGARDING THE FINGERPRINTING OF A PERSON WHO IS ARRESTED; PROVIDING FOR EXPUNGEMENT OF ARREST INFORMATION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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. A person arrested for the commission of a 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 the person's release. The arresting peace officer or the jail shall obtain fingerprint impressions and a photograph each time a person is arrested.

At the time of fingerprinting, a state tracking number shall be assigned to the fingerprint records and the booking sheet.

B. A person arrested for the commission of a 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 by the arresting peace officer or the jail to make fingerprint impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint impressions and a photograph each time a person is arrested.

At the time of fingerprinting, a state tracking number shall be assigned to the fingerprint records and the booking sheet.

C. A person arrested for violating a provision of Section 66-8-102 NMSA 1978 or committing a violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs shall be required by the arresting peace officer or the jail to make fingerprint impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint impressions and a photograph each time a person is arrested. At the time of fingerprinting, a state tracking number shall be assigned to the fingerprint records and the booking sheet.

D. Fingerprint impressions shall be made pursuant to rules adopted by the department. Fingerprint record submission policies and a state tracking number system for fingerprint records shall be implemented pursuant to rules adopted by the department. All felony, misdemeanor and DWI arrest fingerprints shall be made in duplicate. Both copies and a photograph of the person arrested shall be forwarded to the department within five days following the date of arrest. The department shall forward one copy to the federal bureau of investigation in Washington, D. C.

E. An inmate who is charged with a felony or misdemeanor offense while incarcerated shall be fingerprinted and photographed, and the jail or corrections facility shall forward the offender's fingerprint records and photograph to the department.

F. The administrative office of the courts shall provide to the department the disposition of all criminal cases assigned a state tracking number. The disposition shall be provided in electronic format, promptly upon the conclusion of the case.

G. The administrative office of the district attorneys shall provide to the department the disposition of all criminal cases assigned a state tracking number, when the district attorney decides not to file charges in the case. The disposition shall be provided in electronic format, promptly upon a district attorney's decision not to file charges in the case.

H. Law enforcement agencies, the administrative office of the courts and the administrative office of the district attorneys may allow the department access to their records for the purpose of auditing those records to ensure compliance with the provisions of this section."

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

"PETITION TO EXPUNGE ARREST INFORMATION.--

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

B. As used in this section:

(1) "expunge" means to remove a notation of an arrest placed on a person's state record or federal bureau of investigation record; and

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

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2002.

HOUSE BILL 297, AS AMENDED
WITH CERTIFICATE OF CORRECTION