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HOUSE BILL 297

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Joe Mohorovic

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. ~~[Any]~~ A person arrested for the commission of ~~[any]~~ 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

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 peace officer or the jail shall obtain fingerprint impressions
2 and a photograph each time a person is arrested. At the time
3 of fingerprinting, a state tracking number shall be assigned
4 to the fingerprint cards and the booking sheet.

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

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

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1 booking sheet.

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

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

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

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

23 (3) ~~the individual is suspected of being a~~
24 ~~fugitive.]~~

25 E. An inmate who is charged with a felony or

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[bracketed material] = delete

1 misdemeanor offense while incarcerated shall be fingerprinted
2 and photographed, and the jail or corrections facility shall
3 forward the offender's fingerprint cards and photograph to the
4 department.

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

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

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

22 Section 2. A new section of Chapter 29, Article 3 NMSA
23 1978 is enacted to read:

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

25 A. A person may petition the department to expunge

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1 arrest information on the person's state record or federal
2 bureau of investigation record if the arrest was for a
3 misdemeanor or petty misdemeanor offense and the arrest was
4 not for a crime of moral turpitude. If the department cannot
5 locate a final disposition after contacting the arresting law
6 enforcement agency, the administrative office of the courts
7 and the administrative office of the district attorneys, the
8 department shall expunge the arrest information.

9 B. As used in this section:

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

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

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