

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 2 DEPARTMENT OF PUBLIC SAFETY
PART 2 EXPUNGEMENT OF ARREST RECORDS AND RELATED PUBLIC RECORDS

10.2.2.1 ISSUING AGENCY: Department of Public Safety.
[10.2.2.1 NMAC - N, 1/1/2020]

10.2.2.2 SCOPE: All persons who seek to expunge arrest and public records in accordance with the Criminal Records Expungement Act.
[10.2.2.2 NMAC - N, 1/1/2020]

10.2.2.3 STATUTORY AUTHORITY: Sections 29-3A-1 through 29-3A-7 NMSA 1978 of the Criminal Records Expungement Act require the Department to develop rules and procedures to implement the Criminal Record Expungement Act.
[10.2.2.3 NMAC - N, 1/1/2020]

10.2.2.4 DURATION: Permanent.
[10.2.2.4 NMAC - N, 1/1/2020]

10.2.2.5 EFFECTIVE DATE: January 1, 2020.
[10.2.2.5 NMAC - N, 1/1/2020]

10.2.2.6 OBJECTIVE: The objective of the rule is to provide a procedure whereby persons who seek to expunge arrest records and public records related thereto, may request a DPS RAP sheet, and be informed of the need to obtain the Petitioner's United States Department of Justice Federal Bureau of Investigations FBI RAP sheet.
[10.2.2.6 NMAC - N, 1/1/2020]

10.2.2.7 DEFINITIONS:

For purposes of this rule, the following terms have the following meaning:

A. Arrest records are records of identification of a person under arrest or under investigation for a crime taken or gathered by an official, including information gathered from the national crime information center or another criminal record database, photographs, fingerprints and booking sheets. Arrest records do not include: 1) citations for driving while intoxicated maintained by the New Mexico Department of Taxation and Revenue; 2) computer-aided dispatch information; or 3) log books relating to breath alcohol testing equipment.

B. Department is the Department of Public Safety.

C. DPS RAP sheet is the record of a Petitioner's arrests and prosecutions throughout the State of New Mexico, which is maintained by the Department.

D. Expungement is the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections, or law enforcement internet website.

E. FBI RAP sheet is the record of a person's fingerprint-based arrests maintained by the United States Department of Justice Federal Bureau of Investigation. The FBI RAP sheet includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. The FBI Rap sheet is also known as a person's Identity History Summary.

F. Petition to Expunge Arrest Records and Public Records or **Petition** officially begins the expungement of records process in state district court.

G. Petitioner is the person seeking to have his or her personal records expunged in the Petition to Expunge Arrest Records and Public Records.

H. Public records are documents relating to a person's arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law enforcement website, except those records excluded from the definition of public records in Section 29-3A-2C NMSA 1978.

[10.2.2.7 NMAC - N, 1/1/2020]

10.2.2.8 NEED FOR STATE AND FEDERAL RECORD OF ARRESTS AND PROSECUTIONS:

A. If in order to complete the Petition, or otherwise to obtain the expungement of records, a Petitioner is required by a court to obtain Petitioner's DPS RAP sheet or Petitioner's FBI RAP sheet, Petitioner may follow the procedure set forth herein.

B. The DPS RAP sheet may be obtained by completing the Authorization for Release of Information and signing it before a notary public, then submitting the completed and notarized original Authorization for Release of Information, together with the required fee, to the Department. The Authorization for Release of Information form and information regarding the appropriate fee are available on the Department's website at <https://www.dps.nm.gov/top-links-for-nm-residents/fingerprinting-and-background-checks> or by calling the Department Law Enforcement Records Bureau at (505) 827-9181.

C. The FBI RAP sheet must be obtained directly from the FBI. Instructions on how to obtain the FBI RAP Sheet may be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks> and <https://www.edo.cjis.gov/#/>.

[10.2.2.8 NMAC - N, 1/1/2020]

10.2.2.9 SERVICE ON DEPARTMENT:

A. Service of the Petition may be made on the Department by any method permitted by Rule 1-004 H of the New Mexico Rules of Civil Procedure.

B. Service by mail or commercial courier service shall be made by certified mail, return receipt requested or commercial courier service which requires delivery signature by a Department employee. Service is complete on the date of the required signature.

C. Service by mail or commercial courier service shall be addressed to "LERB, New Mexico Department of Public Safety" at either P.O. Box 1628 Santa Fe, N.M., 87504-1628 or 4491 Cerrillos Rd., Santa Fe, N.M., 87507.

[10.2.2.9 NMAC - N, 1/1/2020]

HISTORY OF 10.2.2 NMAC: [RESERVED]