

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 2 DEPARTMENT OF PUBLIC SAFETY
PART 3 PROCEDURE TO CONTEST SORNA EQUIVALENCY DETERMINATION

10.2.3.1 ISSUING AGENCY: Department of Public Safety.
[10.2.3.1 NMAC - N, 7/1/2021]

10.2.3.2 SCOPE: All individuals convicted in another jurisdiction pursuant to state, federal, tribal or martial law, of the equivalent of a “sex offense”, as defined in Section 29-11A-3 NMSA 1978, who seek to contest a determination that registration as a sex offender in New Mexico is required.
[10.2.3.2 NMAC - N, 7/1/2021]

10.2.3.3 STATUTORY AUTHORITY: Subsection G of Section 29-11A-5 NMSA 1978, requires the department to adopt rules necessary to carry out the provisions of the act.
[10.2.3.3 NMAC - N, 7/1/2021]

10.2.3.4 DURATION: Permanent.
[10.2.3.4 NMAC - N, 7/1/2021]

10.2.3.5 EFFECTIVE DATE: July 1, 2021.
[10.2.3.5 NMAC - N, 7/1/2021]

10.2.3.6 OBJECTIVE: The objective of this rule is to provide a procedure whereby an out-of-state registrant may contest a determination by the New Mexico department of public safety that the out-of-state registrant must register as a sex offender in New Mexico which procedure includes notice, an opportunity to be heard, and judicial review.
[10.2.3.6 NMAC - N, 7/1/2021]

10.2.3.7 DEFINITIONS:

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

- A. “Department”** means the New Mexico department of public safety.
- B. “Out-of-state registrant”** means any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory.
- C. “Translation”** means the comparison of a conviction rendered under state (other than New Mexico), international, federal, tribal, or military law with the sex offenses enumerated in Subsection I of Section 29-11A-3 NMSA, 1978, for the purpose of determining whether that conviction is the equivalent of a sex offense enumerated in Subsection I of Section 29-11A-3 NMSA 1978.

[10.2.3.7 NMAC - N, 7/1/2021]

10.2.3.8 NOTIFICATION TO COUNTY SHERIFF OF OUT-OF-STATE REGISTRANT:

A. Within 10 business days of receipt by the department of a letter or other notification from an out-of-state law enforcement or other agency that an individual required by that state to register as a sex offender intends to relocate to New Mexico, the department shall notify the county sheriff in the county in which the out-of-state registrant intends to reside and shall provide to the county sheriff copies of any and all documents that may accompany that notification. The initial notification by the department to the county sheriff will remind the county sheriff not to place the out-of-state registrant on any public facing local registry until notified by the department that it may do so.

B. When an out-of-state registrant presents himself or herself to the sheriff and prior to the translation, the sheriff shall make an entry into the investigative notes section of Offender Watch, noting that the out-of-state registrant presented himself or herself for registration and that the translation by the department is pending. The sheriff shall also notify the department of the need for the department to enter the same information into the miscellaneous notes in the National Crime Information Center [“NCIC”].

[10.2.3.8 NMAC - N, 7/1/2021]

10.2.3.9 DOCUMENTS PROVIDED BY OUT-OF-STATE REGISTRANT TO COUNTY SHERIFF:

In addition to the information set forth in Subsection B of Section 29-11A-4 NMSA 1978, an out-of-state registrant shall, at the time of the registrant's initial registration with the county sheriff in the county in which the registrant resides, provide copies of the following documents to the sheriff:

- A. the judgment and sentence entered by the court in the jurisdiction in which the out-of-state registrant is required to register as a sex offender; and
- B. the plea and disposition agreement entered by the court in the jurisdiction in which the out-of-state registrant is required to register as a sex offender.

[10.2.3.9 NMAC - N, 7/1/2021]

10.2.3.10 DETERMINATION BY DEPARTMENT OF NEED TO REGISTER:

A. Within forty-five calendar days after the department receives the initial registration information the out-of-state registrant is required under Section 29-11A-4 NMSA 1978 and Section 10.2.3.9 above to provide to the sheriff, the department shall complete a translation and advise the out-of-state registrant and the sheriff whether the out-of-state registrant was convicted in another jurisdiction of a sex offense equivalent to one or more of those sex offenses identified in Subsection I of Section 29-11A-3 NMSA 1978 and is required to register as a sex offender in New Mexico.

B. The standard to be used by the department in determining whether the out-of-state conviction is equivalent to a sex offense listed in Section 29-11A-4 NMSA 1978 is one of clear and convincing evidence.

C. If the department does not receive the statutorily required information and the documents the out-of-state registrant is required by this rule to provide to the sheriff, or if the statutorily required information and documents provided to the sheriff and forwarded to the department are insufficient to enable the department to complete the translation and render a decision on the equivalency of the non-New Mexico conviction based on clear and convincing evidence, the department shall advise the out-of-state registrant and the sheriff that additional time not to exceed forty-five days will be needed to complete the translation.

D. While the translation is pending, no information regarding the out-of-state registrant shall be entered in the public facing portion of the local or state central registry.

E. If the department determines that the non-New Mexico conviction of the out-of-state registrant is not the equivalent of a sex offense identified in Subsection I of Section 29-11A-3 NMSA 1978, the department shall notify the out-of-state registrant and sheriff in writing, of that decision and no information regarding the out-of-state registrant shall be placed on the public facing portion of either the local or central registry. In the event additional information is later brought to the department's attention, the department may revisit its original decision.

F. If the department determines that the non-New Mexico conviction of the out-of-state registrant is the equivalent of a sex offense identified in Section 29-11A-3 NMSA 1978, the department shall notify the out-of-state registrant, in writing, of that initial decision and shall serve the notification on the out-of-state registrant by certified mail, return receipt requested, and provide a copy to the sheriff. The initial determination shall include a list of all documents reviewed by the department in conducting the translation. The initial determination shall advise the out-of-state registrant that the registrant may request reconsideration of the department's decision, by requesting the same, in writing, within 14 calendar days of receipt of the initial determination. If no timely request for reconsideration is received, the department shall issue its final determination and post the statutorily required information regarding the out-of-state registrant on the public facing portion of the central registry of sex offenders maintained by the department and shall notify the sheriff that the statutorily required information regarding the out-of-state registrant may also be posted on the local directory, in accordance with Section 29-11A-5 NMSA 1978.

G. Upon receipt of a timely request for reconsideration of the department's initial determination, the department shall schedule a meeting with the out-of-state registrant, on a mutually agreeable date and time, at which meeting the out-of-state registrant may present any additional information, documents or argument that the out-of-state registrant believes supports the registrant's contention that the out-of-state conviction is not the equivalent of a sex offense identified in Subsection I of Section 29-11A-3 NMSA 1978 and that the registrant is not legally required to register in New Mexico. At the meeting, the out-of-state registrant may be represented by counsel, hired at the out-of-state registrant's expense.

H. Within 21 calendar days of the meeting described in Subsection G of Section 10.2.3.10 NMAC, the department shall issue its written final determination regarding the translation. This notice shall be served on the out-of-state registrant by certified mail, return receipt requested. The department shall send a copy of the final determination to the sheriff.

I. An out-of-state registrant who is aggrieved by the final determination of the department that the out-of-state conviction is the equivalent of a sex offense identified in Section 29-11A-3 NMSA 1978 and that the out-of-state registrant must register in New Mexico, may seek judicial review of the decision by filing a petition for writ of certiorari, in accordance with New Mexico Rule of Civil Procedure Rule 1-075 NMRA, in the district court in which the department is located, within 30 days of the date of the department's final determination.

J. Neither the sheriff nor the department shall post any information regarding the out-of-state registrant on the public facing portion of the local or central registry until the time for filing a petition for writ of certiorari has expired. If a petition is filed, neither the sheriff nor the department shall post any information regarding the out-of-state registrant on the public facing portion of the local or central registry until served with a court order advising that the out-of-state registrant must register in New Mexico.

K. If the department learns that information regarding an out-of-state registrant has been published on a public facing portion of a local or the central registry, prior to the department's final determination and the expiration of the period to seek judicial review, or, if judicial review has been sought, prior to the final resolution of those proceedings, the department shall remove any information on the public facing portion of the registry, pertaining to the out-of-state registrant, pending resolution of the equivalency determination.

[10.2.3.10 NMAC - N, 7/1/2021]

History of 10.2.3 NMAC: [RESERVED]