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HOUSE BILL 568

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE DNA IDENTIFICATION ACT;  
PROVIDING FOR COLLECTION OF DNA SAMPLES FROM CONVICTED FELONS;  
PROVIDING A PENALTY; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE. -- This act may be cited as the "DNA  
Identification Act".

Section 2. PURPOSE OF ACT. -- The purpose of the DNA  
Identification Act is to:

A. establish a DNA identification system for covered  
offenders;

B. facilitate the use of DNA records by law  
enforcement agencies in the identification, detection or  
exclusion of persons in connection with criminal investigations,  
prosecutions and other purposes; and

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1 C. assist in humanitarian endeavors, including  
2 identification of deceased persons, missing persons, close  
3 biological relatives of missing persons and disaster victims.

4 Section 3. DEFINITIONS.--As used in the DNA Identification  
5 Act:

6 A. "administrative center" means the law enforcement  
7 agency or unit that administers and operates the DNA  
8 identification system;

9 B. "advisory committee" means the DNA identification  
10 system advisory committee;

11 C. "CODIS" means the federal bureau of  
12 investigation's national DNA index system for storage and  
13 exchange of DNA records submitted by forensic DNA laboratories;

14 D. "covered offender" means any person convicted of  
15 a felony offense under the Criminal Code or adjudicated pursuant  
16 to youthful offender or serious youthful offender proceedings  
17 under the Children's Code;

18 E. "department" means the department of public  
19 safety;

20 F. "DNA" means deoxyribonucleic acid as the basis of  
21 human heredity;

22 G. "DNA identification system" means the DNA  
23 identification system established pursuant to the DNA  
24 Identification Act;

25 H. "DNA record" means the results of DNA testing and

1 related information;

2 I. "DNA testing" means a forensic DNA analysis that  
3 includes restriction fragment length polymorphism, polymerase  
4 chain reaction or other valid methods of DNA typing performed to  
5 obtain identification characteristics of samples;

6 J. "fund" means the DNA identification system fund;  
7 and

8 K. "sample" means a sample of biological material  
9 sufficient for DNA testing.

10 Section 4. ADMINISTRATIVE CENTER-- POWERS AND DUTIES--  
11 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

12 A. The administrative center shall be an appropriate  
13 unit of the department or such other qualified New Mexico law  
14 enforcement agency as the secretary of public safety may  
15 designate in accordance with this section.

16 B. The administrative center shall:

17 (1) establish and administer the DNA  
18 identification system. The DNA identification system shall  
19 provide for collection, storage, DNA testing, maintenance and  
20 comparison of samples and DNA records for forensic purposes.  
21 Such purposes shall include generation of investigative leads  
22 and statistical analysis of DNA profiles, as well as  
23 humanitarian purposes. Procedures used for DNA testing shall be  
24 compatible with the procedures the federal bureau of  
25 investigation has specified, including comparable test

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1 procedures, laboratory equipment, supplies and computer  
2 software. Procedures used shall meet or exceed CODIS' minimum  
3 standards for acceptance of DNA records;

- 4 (2) coordinate sample collection activities;
- 5 (3) perform or contract for DNA testing;
- 6 (4) serve as a repository for samples and DNA  
7 records;
- 8 (5) act as liaison with the federal bureau of  
9 investigation for purposes of CODIS; and
- 10 (6) adopt regulations and procedures governing:
  - 11 (a) sample collection;
  - 12 (b) DNA testing; and
  - 13 (c) the DNA identification system and DNA  
14 records.

15 C. The secretary of public safety may designate,  
16 pursuant to a joint powers agreement, the crime laboratory of  
17 the police department for the largest municipality in a class A  
18 county having a population of more than two hundred fifty  
19 thousand at the most recent federal decennial census to act as  
20 the administrative center.

21 D. The secretary of public safety may designate,  
22 pursuant to a joint powers agreement, any other law enforcement  
23 agency to act as administrative center upon recommendation of  
24 four voting members of the advisory committee.

25 Section 5. ADVISORY COMMITTEE--CREATED--POWERS AND

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1 DUTIES. --

2 A. The "DNA identification system advisory  
3 committee" is created. The advisory committee shall be composed  
4 of five voting members and one nonvoting member as follows:

5 (1) a scientific representative from the  
6 department crime laboratory appointed by the secretary of public  
7 safety;

8 (2) a scientific representative from the crime  
9 laboratory of the police department for the largest municipality  
10 in a class A county having a population of more than two hundred  
11 fifty thousand at the most recent federal decennial census;

12 (3) the secretary of corrections or his  
13 designated representative;

14 (4) the state medical investigator or his  
15 designated representative;

16 (5) the attorney general or his designated  
17 representative; and

18 (6) the head of the administrative center or  
19 his designated representative, who is the nonvoting member.

20 B. The advisory committee shall review and advise  
21 the administrative center on rules, regulations, procedures and  
22 policies to be adopted and sample collection and testing  
23 procedures.

24 C. The advisory committee may advise the  
25 administrative center on how to best prioritize analysis of

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1 samples.

2 Section 6. COVERED OFFENDERS SUBJECT TO COLLECTION OF  
3 SAMPLES. -- Each covered offender shall provide one or more  
4 samples to the administrative center, as follows:

5 A. covered offenders convicted on or after the  
6 effective date of the DNA Identification Act shall provide a  
7 sample at any time before release from any correctional facility  
8 or, if the covered offender is not sentenced to incarceration,  
9 before the end of any period of probation or other supervised  
10 release;

11 B. covered offenders incarcerated on the effective  
12 date of the DNA Identification Act shall provide a sample at any  
13 time before release from any correctional facility; and

14 C. covered offenders on probation or other  
15 supervised release on the effective date of the DNA  
16 Identification Act shall provide a sample before the end of any  
17 period of probation or other supervised release.

18 Section 7. PROCEDURES FOR COLLECTION OF SAMPLES. --

19 A. The collection of samples pursuant to the  
20 provisions of Section 6 of the DNA Identification Act shall be  
21 conducted in a medically approved manner in accordance with  
22 rules, regulations and procedures adopted by the administrative  
23 center.

24 B. All persons who collect samples shall be trained  
25 in procedures that meet the requirements and standards specified

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1 in Subsection A of this section.

2 C. All persons authorized to collect samples and  
3 their employers shall be immune from liability in any civil or  
4 criminal action if the collection is performed without  
5 negligence. This subsection shall not be deemed to create any  
6 additional liability or waive any immunity of public employees  
7 under the Tort Claims Act.

8 D. Samples shall be stored in accordance with rules,  
9 regulations and procedures adopted by the administrative center.

10 E. DNA testing shall be performed by the  
11 administrative center or a contract facility it may designate.

12 F. DNA records and samples shall be securely  
13 classified and stored at the administrative center.

14 Section 8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION  
15 OF DNA RECORDS.--

16 A. DNA records and samples are confidential and  
17 shall not be disclosed except as authorized in the DNA  
18 Identification Act.

19 B. The administrative center shall make DNA records  
20 available for identification, comparison and investigative  
21 purposes to local, state and federal law enforcement agencies.  
22 The administrative center may disseminate statistical or  
23 research information derived from samples and DNA testing if all  
24 personal identification is removed.

25 Section 9. ENFORCEMENT.--The attorney general or a

1 district attorney may petition a district court for an order  
2 requiring a covered offender to:

3 A. provide a sample; or

4 B. provide a sample by alternative means if the  
5 covered offender will not cooperate.

6 Section 10. ASSESSMENT OF FEE. --On and after the effective  
7 date of the DNA Identification Act, when a covered offender is  
8 convicted, the court shall assess a fee of one hundred dollars  
9 (\$100) in addition to any other fee, restitution or fine. The  
10 fee shall be deposited in the fund.

11 Section 11. PENALTY. --Any person who by virtue of his  
12 employment or official position possesses or has access to  
13 samples or DNA records and who willfully discloses any of them  
14 to any person or in any manner not authorized by the DNA  
15 Identification Act is guilty of a misdemeanor and shall be  
16 sentenced pursuant to the provisions of Subsection A of Section  
17 31-19-1 NMSA 1978.

18 Section 12. DNA FUND CREATED--PURPOSES. --

19 A. The "DNA identification system fund" is created  
20 in the state treasury.

21 B. The fund shall consist of all money received by  
22 appropriation, gift or grant, all money collected pursuant to  
23 Section 10 of the DNA Identification Act and all investment  
24 income on the fund.

25 C. Money and investment income in the fund at the

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1 end of any fiscal year shall not revert but shall remain in the  
2 fund.

3 D. Money and investment income in the fund is  
4 appropriated to the administrative center for expenditure in  
5 fiscal year 1997 and subsequent fiscal years for the purposes of  
6 the fund.

7 E. The fund shall be used for the purposes of the  
8 DNA Identification Act, including paying the expenses incurred  
9 by the administrative center and all other reasonable expenses.  
10 The administrative center may use money in the fund for loans or  
11 grants of money, equipment or personnel to any law enforcement  
12 agency, correctional facility or judicial agency upon  
13 recommendation of the advisory committee.

14 Section 13. APPROPRIATION. -- One million dollars  
15 (\$1,000,000) is appropriated from the general fund to the DNA  
16 identification system fund for expenditure in fiscal year 1997  
17 for the purpose of implementing the provisions of the DNA  
18 Identification Act. Any unexpended or unencumbered balance  
19 remaining at the end of fiscal year 1997 shall not revert to the  
20 general fund.

21 Section 14. EFFECTIVE DATE. -- The effective date of the  
22 provisions of this act is July 1, 1996.

# **State of New Mexico House of Representatives**

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 568

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

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Cisco McSorley, Chairman

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Alwin, Gubbels, Sanchez, R. G.

Absent: Luna

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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 12, 1996

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 568

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 9, lines 14 and 15, strike "one million dollars  
(\$1,000,000)", and insert in lieu thereof "two hundred thousand  
dollars(\$200,000)".

Respectfully submitted,

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Max Coll, Chairman

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 13 For 0 Against

Yes: 13

Excused: Buffett, Casey, Knowles, Light, Picraux

Absent: None

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