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HOUSE BILL 130

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING COLLECTION OF DNA  
SAMPLES FROM ALL PERSONS ARRESTED FOR CRIMINAL OFFENSES THAT  
AMOUNT TO FELONIES; MAKING AN APPROPRIATION.

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 AND DNA COLLECTION FROM  
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:

(1) make fingerprint impressions prior to the  
person's release. The arresting peace officer or the jail

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

5 (2) provide a DNA sample prior to the person's  
6 release from custody, unless the arresting peace officer or the  
7 jail determines that the person had previously provided a DNA  
8 sample while in the custody of the corrections department, to a  
9 county sheriff pursuant to registration as a sex offender or to  
10 a jail or detention center pursuant to a previous arrest and  
11 the sample has not been expunged.

12 B. A person arrested for the commission of a  
13 criminal offense not amounting to a felony but punishable by  
14 imprisonment for more than six months under the laws of this  
15 state or any political subdivision shall be required by the  
16 arresting peace officer or the jail to make fingerprint  
17 impressions prior to the person's release. The arresting peace  
18 officer or the jail shall obtain fingerprint impressions and a  
19 photograph each time a person is arrested. At the time of  
20 fingerprinting, a state tracking number shall be assigned to  
21 the fingerprint records and the booking sheet.

22 C. A person arrested for violating a provision of  
23 Section 66-8-102 NMSA 1978 or committing a violation of a  
24 municipal or county ordinance prescribing criminal penalties  
25 for driving while under the influence of intoxicating liquor or

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1 drugs shall be required by the arresting peace officer or the  
2 jail to make fingerprint impressions prior to the person's  
3 release. The arresting peace officer or the jail shall obtain  
4 fingerprint impressions and a photograph each time a person is  
5 arrested. At the time of fingerprinting, a state tracking  
6 number shall be assigned to the fingerprint records and the  
7 booking sheet.

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

18 E. Arresting peace officers or jail personnel who  
19 collect DNA samples pursuant to this section shall forward the  
20 sample, within twenty-four hours of collection, to the  
21 administrative center that operates the DNA identification  
22 system pursuant to the DNA Identification Act. DNA samples  
23 shall be collected in accordance with rules and procedures  
24 adopted by the DNA oversight committee, shall be subject to the  
25 confidentiality provisions of the DNA Identification Act and

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1 shall be used only as authorized by that act.

2           ~~[E-]~~ F. An inmate who is charged with a felony or  
3 misdemeanor offense while incarcerated shall be fingerprinted  
4 and photographed, and the jail or corrections facility shall  
5 forward the offender's fingerprint records and photograph to  
6 the department.

7           ~~[F-]~~ G. The administrative office of the courts  
8 shall provide to the department the disposition of all criminal  
9 cases assigned a state tracking number. The disposition shall  
10 be provided in electronic format, promptly upon the conclusion  
11 of the case.

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

19           ~~[H-]~~ I. Law enforcement agencies, the  
20 administrative office of the courts and the administrative  
21 office of the district attorneys may allow the department  
22 access to their records for the purpose of auditing those  
23 records to ensure compliance with the provisions of this  
24 section.

25           J. As used in this section:

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1                   (1) "DNA" means deoxyribonucleic acid as the  
2 basis of human heredity; and

3                   (2) "DNA sample" means a sample of biological  
4 material sufficient for DNA testing."

5           Section 2. Section 29-16-2 NMSA 1978 (being Laws 1997,  
6 Chapter 105, Section 2, as amended) is amended to read:

7           "29-16-2. PURPOSE OF ACT.--The purpose of the DNA  
8 Identification Act is to:

9                   A. establish a DNA identification system for  
10 covered offenders and persons arrested for a criminal offense  
11 that amounts to a felony;

12                   B. facilitate the use of DNA records by local,  
13 state and federal law enforcement agencies in the:

14                           (1) identification, detection or exclusion of  
15 persons in connection with criminal investigations; and

16                           (2) registration of sex offenders required to  
17 register pursuant to the provisions of the Sex Offender  
18 Registration and Notification Act;

19                   C. establish a missing persons DNA identification  
20 system consisting of the following DNA indexes:

21                           (1) unidentified persons;

22                           (2) unidentified human remains; and

23                           (3) relatives of, or known reference samples  
24 from, missing persons; and

25                   D. facilitate the use of DNA records by local,

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1 state and federal law enforcement agencies and the state  
2 medical investigator in the identification and location of  
3 missing and unidentified persons or human remains."

4 Section 3. Section 29-16-4 NMSA 1978 (being Laws 1997,  
5 Chapter 105, Section 4, as amended) is amended to read:

6 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--  
7 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

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

12 B. The administrative center shall:

13 (1) establish and administer the DNA  
14 identification system. The DNA identification system shall  
15 provide for collection, storage, DNA testing, maintenance and  
16 comparison of samples and DNA records for forensic and  
17 humanitarian purposes. Those purposes shall include generation  
18 of investigative leads, statistical analysis of DNA profiles  
19 and identification of missing persons and unidentified human  
20 remains. Procedures used for DNA testing shall be compatible  
21 with the procedures the federal bureau of investigation has  
22 specified, including comparable test procedures, laboratory  
23 equipment, supplies and computer software. Procedures used  
24 shall meet or exceed the provisions of the federal DNA  
25 Identification Act of 1994 regarding minimum standards for

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1 state participation in CODIS, including minimum standards for  
2 the acceptance, security and dissemination of DNA records;  
3 (2) coordinate sample collection activities;  
4 (3) perform or contract for DNA testing;  
5 (4) serve as a repository for samples and DNA  
6 records;  
7 (5) act as liaison with the federal bureau of  
8 investigation for purposes of CODIS;  
9 (6) adopt rules and procedures governing:  
10 (a) sample collection;  
11 (b) DNA testing;  
12 (c) the DNA identification system and  
13 DNA records; and  
14 (d) the acceptance, security and  
15 dissemination of DNA records;  
16 (7) facilitate communication between local,  
17 state and federal law enforcement agencies, the corrections  
18 department and local jails and detention centers in order to  
19 minimize duplicate sample collections from the same individual;  
20 (8) provide training to law enforcement  
21 officers and jail personnel who are required to collect samples  
22 pursuant to Section 29-3-8 NMSA 1978;  
23 [~~7~~] (9) be reimbursed for, pursuant to the  
24 DNA Identification Act, the costs of sample collection and DNA  
25 testing of samples taken for the purposes of the identification

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1 of missing persons and unidentified human remains;

2 [~~(8)~~] (10) establish and administer the  
3 missing persons DNA identification system as a part of the DNA  
4 identification system; and

5 [~~(9)~~] (11) establish and administer the sex  
6 offender DNA identification system as part of the DNA  
7 identification system.

8 C. The secretary of public safety may designate,  
9 pursuant to a joint powers agreement, the crime laboratory of  
10 the police department for the largest municipality in a class A  
11 county having a population of more than two hundred fifty  
12 thousand at the most recent federal decennial census to act as  
13 the administrative center.

14 D. The secretary of public safety may designate,  
15 pursuant to a joint powers agreement, any other law enforcement  
16 agency to act as administrative center upon recommendation of  
17 five voting members of the DNA advisory committee."

18 Section 4. Section 29-16-6 NMSA 1978 (being Laws 1997,  
19 Chapter 105, Section 6, as amended) is amended to read:

20 "29-16-6. COLLECTION OF SAMPLES.--

21 A. A covered offender shall provide one or more  
22 samples to the administrative center, as follows:

23 (1) a covered offender convicted on or after  
24 July 1, 1997 shall provide a sample immediately upon request of  
25 the corrections department [~~so~~] as long as the request is made

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1 before release from any correctional facility or, if the  
2 covered offender is not sentenced to incarceration, before the  
3 end of any period of probation or other supervised release;

4 (2) a covered offender incarcerated on or  
5 after July 1, 1997 shall provide a sample immediately upon  
6 request of the corrections department [~~so~~] as long as the  
7 request is made before release from any correctional facility;

8 (3) a covered offender on probation or other  
9 supervised release on or after July 1, 1997 shall provide a  
10 sample immediately upon request of the corrections department  
11 [~~so~~] as long as the request is made before the end of any  
12 period of probation or other supervised release; and

13 (4) a covered offender required to register or  
14 renew his registration pursuant to the provisions of the Sex  
15 Offender Registration and Notification Act shall provide a  
16 sample immediately upon request by the county sheriff located  
17 in any county in which the sex offender is required to  
18 register, unless the sex offender provided a sample while in  
19 the custody of the corrections department or to the county  
20 sheriff of another county in New Mexico in which the sex  
21 offender is registered.

22 B. A person arrested on or after January 1, 2007  
23 for a criminal offense that amounts to a felony shall provide a  
24 sample immediately upon the request of the arresting law  
25 enforcement officer or jail personnel if the request is made

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1 before release from custody, unless:

2 (1) the person has previously provided a  
3 sample pursuant to the provisions of this section; and

4 (2) the sample has not been expunged.

5 ~~[B-]~~ C. Samples from unidentified persons or  
6 relatives of a missing person shall be provided to the  
7 administrative center, as follows:

8 (1) upon the completion of a permission to  
9 search form authorizing the collection of a DNA sample;

10 (2) upon the receipt of a properly executed  
11 search warrant; or

12 (3) upon the issuance of a court order.

13 ~~[G-]~~ D. Samples from unidentified human remains  
14 shall be provided by the state medical investigator.

15 ~~[D-]~~ E. Samples of known reference materials from  
16 missing persons shall be provided by the investigating law  
17 enforcement agency."

18 Section 5. Section 29-16-8 NMSA 1978 (being Laws 1997,  
19 Chapter 105, Section 8, as amended) is amended to read:

20 "29-16-8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION  
21 OF DNA RECORDS.--

22 A. DNA records and samples are confidential and  
23 shall not be disclosed except as authorized in the DNA  
24 Identification Act pursuant to the rules and regulations  
25 developed and adopted by the DNA oversight committee.

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1           B. The administrative center shall make DNA records  
2 available for identification, comparison and investigative  
3 purposes to local, state and federal law enforcement agencies  
4 and the state medical investigator pursuant to the rules  
5 developed and adopted by the DNA oversight committee. The  
6 administrative center may disseminate statistical or research  
7 information derived from samples and DNA testing if all  
8 personal identification is removed pursuant to the rules  
9 developed and adopted by the DNA oversight committee.

10           C. To minimize duplicate sample collection and  
11 testing, the administrative center may make information  
12 available, by secure electronic methods or otherwise, to local,  
13 state and federal law enforcement agencies, the corrections  
14 department, jails and detention centers for the purpose of  
15 verifying whether a sample has been collected from a specific  
16 individual. Information provided under this subsection shall  
17 not include any results of DNA testing."

18           Section 6. Section 29-16-9 NMSA 1978 (being Laws 1997,  
19 Chapter 105, Section 9) is amended to read:

20           "29-16-9. ENFORCEMENT.--The attorney general or a  
21 district attorney may petition a district court for an order  
22 requiring a covered offender or a person arrested for the  
23 commission of a criminal offense that amounts to a felony under  
24 the laws of this state or any other jurisdiction to:

25           A. provide a sample; or

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1 B. provide a sample by alternative means if the  
2 covered offender or person will not cooperate."

3 Section 7. Section 29-16-10 NMSA 1978 (being Laws 1997,  
4 Chapter 105, Section 10) is amended to read:

5 "29-16-10. EXPUNGEMENT OF SAMPLES AND DNA RECORDS FROM  
6 THE DNA IDENTIFICATION SYSTEM AND CODIS.--

7 A. A person may request expungement of [~~his~~] the  
8 person's sample and DNA records from the DNA identification  
9 system on the following grounds [~~that~~]:

10 (1) the conviction that led to the inclusion  
11 of [~~his~~] the sample and DNA records in the DNA identification  
12 system has been reversed; or

13 (2) the felony charge that led to the  
14 inclusion of the sample and DNA records in the DNA  
15 identification system has been dismissed with prejudice or the  
16 person has been acquitted.

17 B. The administrative center shall expunge a  
18 person's sample and DNA records from the DNA identification  
19 system when the person provides the administrative center with  
20 the following materials:

21 (1) a written request for expungement of [~~his~~]  
22 the sample and DNA records; and

23 (2) a certified copy of a court order that  
24 reverses the conviction that led to the inclusion of [~~his~~] the  
25 sample and DNA records in the DNA identification system; or

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1                   (3) a certified copy of the dismissal with  
2 prejudice or an acquittal from the felony charge that led to  
3 the inclusion of the sample and DNA records in the DNA  
4 identification system.

5                   C. When a person's sample and DNA records are  
6 expunged from the DNA identification system, the head of the  
7 administrative center shall ensure that the person's sample and  
8 DNA records are expunged from CODIS."

9                   Section 8. Section 29-16-13 NMSA 1978 (being Laws 1997,  
10 Chapter 105, Section 13) is amended to read:

11                   "29-16-13. DNA FUND CREATED--PURPOSES.--

12                   A. The "DNA identification system fund" is created  
13 in the state treasury.

14                   B. The fund shall consist of all money received by  
15 appropriation, gift or grant, all money collected pursuant to  
16 Section [~~11 of the DNA Identification Act~~] 29-16-11 NMSA 1978  
17 and all investment income from the fund.

18                   C. Money and investment income in the fund at the  
19 end of any fiscal year shall not revert to the general fund but  
20 shall remain in the fund.

21                   D. Money and investment income in the fund is  
22 appropriated to the administrative center for expenditure in  
23 fiscal year 1998 and subsequent fiscal years for the purposes  
24 of the fund.

25                   E. The fund shall be used for the purposes of the

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1 DNA Identification Act, including paying the expenses incurred  
2 by the administrative center and all other reasonable expenses.  
3 The administrative center may use money in the fund for loans  
4 or grants of money, equipment or personnel to any law  
5 enforcement agency, correctional facility, jail, detention  
6 center, judicial agency, the public defender department or the  
7 office of the state medical investigator, upon recommendation  
8 of the DNA oversight committee."

9 Section 9. APPROPRIATION.--Three hundred sixty thousand  
10 dollars (\$360,000) is appropriated from the general fund to the  
11 DNA identification system fund for expenditure in fiscal year  
12 2007 and subsequent fiscal years for staff, training, equipment  
13 and operating and administrative costs associated with  
14 collecting DNA samples from all persons arrested for a criminal  
15 offense that amounts to a felony. Any unexpended or  
16 unencumbered balance remaining at the end of a fiscal year  
17 shall not revert to the general fund.

18 Section 10. EFFECTIVE DATE.--

19 A. The effective date of the provisions of Sections  
20 1 through 8 of this act is January 1, 2007.

21 B. The effective date of the provisions of Section  
22 9 of this act is July 1, 2006.

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