

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130

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

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING COLLECTION OF DNA
SAMPLES FROM ALL PERSONS EIGHTEEN YEARS OF AGE OR OVER WHO ARE
ARRESTED FOR CERTAIN FELONY OFFENSES; REQUIRING SUBMISSION OF
DNA SAMPLES COLLECTED PURSUANT TO MEDICAL EXAMINATIONS OF
SEXUAL ASSAULT VICTIMS; MAKING AN APPROPRIATION.

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

Section 1. A new section of Chapter 29, Article 3 NMSA
1978 is enacted to read:

"[NEW MATERIAL] DNA COLLECTION FROM PERSONS ARRESTED.--

A. A person eighteen years of age or over who is
arrested for the commission of a felony under the laws of this
state or any other jurisdiction shall provide a DNA sample to
jail or detention facility personnel upon booking. A sample is
not required if it is determined that a sample has previously

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1 been taken, is in the possession of the administrative center,
2 has not been expunged pursuant to the DNA Identification Act
3 and is sufficient for DNA identification testing.

4 B. Jail or detention facility personnel who collect
5 samples pursuant to this section shall forward the samples to
6 the administrative center.

7 C. Samples shall be collected in accordance with
8 rules and procedures adopted by the DNA oversight committee,
9 shall be subject to the confidentiality and penalty provisions
10 of the DNA Identification Act and shall be used only as
11 authorized by that act.

12 D. As used in this section:

13 (1) "administrative center" means the law
14 enforcement agency or unit that administers and operates the
15 DNA identification system pursuant to the provisions of the DNA
16 Identification Act;

17 (2) "DNA" means deoxyribonucleic acid;

18 (3) "felony" means:

19 (a) a sex offense as defined in the
20 provisions of Section 29-11A-3 NMSA 1978 that is a felony; or

21 (b) any other felony offense that
22 involves death, great bodily harm, aggravated assault,
23 kidnapping, burglary, larceny, robbery, aggravated stalking,
24 use of a firearm or an explosive or a violation pursuant to the
25 Antiterrorism Act; and

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

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

5 "29-16-2. PURPOSE OF ACT.--The purpose of the DNA
6 Identification Act is to:

7 A. establish a DNA identification system for
8 covered offenders and persons required to provide a DNA sample
9 pursuant to the provisions of Section 1 of this 2006 act;

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

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

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

17 C. establish a missing persons DNA identification
18 system consisting of the following DNA indexes:

19 (1) unidentified persons;
20 (2) unidentified human remains; and
21 (3) relatives of, or known reference samples
22 from, missing persons; and

23 D. facilitate the use of DNA records by local,
24 state and federal law enforcement agencies and the state
25 medical investigator in the identification and location of

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1 missing and unidentified persons or human remains."

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

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

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

10 B. The administrative center shall:

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

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1 (2) coordinate sample collection activities;
2 (3) perform or contract for DNA testing;
3 (4) serve as a repository for samples and DNA
4 records;

5 (5) act as liaison with the federal bureau of
6 investigation for purposes of CODIS;

7 (6) adopt rules and procedures governing:
8 (a) sample collection;
9 (b) DNA testing;
10 (c) the DNA identification system and
11 DNA records; ~~and~~

12 (d) the acceptance, security and
13 dissemination of DNA records; and

14 (e) communication between local, state
15 and federal law enforcement agencies, the corrections
16 department and local jails and detention facilities in order to
17 minimize duplicate sample collections from the same individual;

18 (7) provide training to jail and detention
19 facility personnel who are required to collect samples pursuant
20 to Section 1 of this 2006 act;

21 [~~7~~] (8) be reimbursed for, pursuant to the
22 DNA Identification Act, the costs of sample collection and DNA
23 testing of samples taken for the purposes of the identification
24 of missing persons and unidentified human remains;

25 [~~8~~] (9) establish and administer the missing

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1 persons DNA identification system as a part of the DNA
2 identification system; and

3 ~~[(9)]~~ (10) establish and administer the sex
4 offender DNA identification system as part of the DNA
5 identification system.

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

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

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

18 "29-16-6. COLLECTION OF SAMPLES.--

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

21 (1) a covered offender convicted on or after
22 July 1, 1997 shall provide a sample immediately upon request
23 ~~[of]~~ to the corrections department ~~[so]~~ as long as the request
24 is made before release from any correctional facility or, if
25 the covered offender is not sentenced to incarceration, before

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1 the end of any period of probation or other supervised release;

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

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

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

20 B. A person eighteen years of age or over who is
21 arrested on or after January 1, 2007 for the commission of a
22 felony as provided in Section 1 of this 2006 act shall provide
23 a sample immediately upon request to jail or detention facility
24 personnel, unless:

25 (1) the person has previously provided a

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1 sample sufficient for DNA testing pursuant to the provisions of
2 this section;

3 (2) the sample is in the possession of the
4 administrative center; and

5 (3) the sample has not been expunged.

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

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

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

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

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

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

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

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

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

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1 developed and adopted by the DNA oversight committee.

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

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

19 Section 6. Section 29-16-8.1 NMSA 1978 (being Laws 2003,
20 Chapter 256, Section 3) is amended to read:

21 "29-16-8.1. DNA SEARCHES.--

22 A. Searches of samples collected pursuant to the
23 DNA Identification Act, for purposes of the missing persons DNA
24 identification system, shall be limited to searches against DNA
25 indexes consisting of:

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- 1 (1) unidentified persons;
- 2 (2) unidentified human remains;
- 3 (3) relatives of, or known reference samples
- 4 from, missing persons; [~~and~~]
- 5 (4) covered offenders as defined by the DNA
- 6 Identification Act and maintained by the DNA identification
- 7 system; and
- 8 (5) persons arrested for the commission of a
- 9 felony as provided in Section 1 of this 2006 act.

10 B. Searches of samples collected from unidentified
11 persons or relatives of missing persons pursuant to the DNA
12 Identification Act shall not be performed against DNA indexes
13 consisting of evidentiary samples resulting from criminal
14 investigations."

15 Section 7. Section 29-16-9 NMSA 1978 (being Laws 1997,
16 Chapter 105, Section 9) is amended to read:

17 "29-16-9. ENFORCEMENT.--

18 A. The attorney general or a district attorney may
19 petition a district court for an order requiring a covered
20 offender or a person required to provide a DNA sample pursuant
21 to the provisions of Section 1 of this 2006 act to:

- 22 [~~A.~~] (1) provide a sample; or
- 23 [~~B.~~] (2) provide a sample by alternative means
- 24 if the covered offender or person will not cooperate.

25 B. Nothing in this section shall prevent the

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1 collection of samples by order of a court of competent
 2 jurisdiction or the collection of samples of covered
 3 offenders."

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

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

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

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

14 (2) the arrest that led to the inclusion of
 15 the sample has:

16 (a) resulted in a felony charge that has
 17 been resolved by a dismissal, nolle prosequi, successful
 18 completion of a pre-prosecution diversion program or a
 19 conditional discharge, misdemeanor conviction or acquittal; or

20 (b) not resulted in a felony charge
 21 within one year of arrest.

22 B. The administrative center shall expunge a
 23 person's sample and DNA records from the DNA identification
 24 system when the person provides the administrative center with
 25 the following materials:

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

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

6 (3) for samples included pursuant to arrest:

7 (a) a certified copy of the dismissal,
8 nolle prosequi, successful completion of a pre-prosecution
9 diversion program or a conditional discharge, misdemeanor
10 conviction or acquittal; or

11 (b) a sworn affidavit that no felony
12 charges arising out of the arrest have been filed within one
13 year.

14 C. When a person's sample and DNA records are
15 expunged from the DNA identification system, the head of the
16 administrative center shall ensure that the person's sample and
17 DNA records are expunged from CODIS.

18 D. The administrative center shall not expunge a
19 person's sample and DNA records from the DNA identification
20 system if the person has a prior felony conviction or a pending
21 felony charge for which collection of a sample is authorized
22 pursuant to the provisions of the DNA Identification Act."

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

25 "29-16-13. DNA FUND CREATED--PURPOSES.--

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1 A. The "DNA identification system fund" is created
2 in the state treasury.

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

7 C. Money and investment income in the fund at the
8 end of any fiscal year shall not revert to the general fund but
9 shall remain in the fund.

10 D. Money and investment income in the fund is
11 appropriated to the administrative center for expenditure in
12 fiscal year 1998 and subsequent fiscal years for the purposes
13 of the fund.

14 E. The fund shall be used for the purposes of the
15 DNA Identification Act, including paying the expenses incurred
16 by the administrative center and all other reasonable expenses.
17 The administrative center may use money in the fund for loans
18 or grants of money, equipment or personnel to any law
19 enforcement agency, correctional facility, jail, detention
20 facility, judicial agency, the public defender department or
21 the office of the state medical investigator, upon
22 recommendation of the DNA oversight committee."

23 Section 10. [NEW MATERIAL] SEXUAL ASSAULT--SUBMISSION OF
24 DNA SAMPLES BY LAW ENFORCEMENT AND LABORATORIES.--

25 A. Samples from biological material collected

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1 pursuant to a medical examination of a sexual assault victim
2 shall be submitted by the investigating law enforcement agency
3 to that agency's servicing laboratory for DNA testing. Records
4 derived from DNA testing that qualify for insertion into CODIS
5 shall be submitted by the servicing laboratory to the
6 administrative center.

7 B. As used in this section:

8 (1) "administrative center" means the law
9 enforcement agency or unit that administers and operates the
10 DNA identification system pursuant to the provisions of the DNA
11 Identification Act;

12 (2) "biological material" means material that
13 is derived from a human body and includes bodily fluids, hair
14 and skin cells;

15 (3) "CODIS" means the federal bureau of
16 investigation's national DNA index system for storage and
17 exchange of DNA records submitted by forensic DNA laboratories;

18 (4) "DNA" means deoxyribonucleic acid;

19 (5) "DNA testing" means a forensic DNA
20 analysis that includes restriction fragment length
21 polymorphism, polymerase chain reaction or other valid methods
22 of DNA typing performed to obtain identification
23 characteristics of samples; and

24 (6) "sample" means a sample of biological
25 material sufficient for DNA testing.

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1 Section 11. APPROPRIATION.--Three hundred sixty thousand
2 dollars (\$360,000) is appropriated from the general fund to the
3 DNA identification system fund for expenditure in fiscal year
4 2007 and subsequent fiscal years for staff, training, equipment
5 and operating and administrative costs associated with
6 collecting DNA samples from all persons arrested for a criminal
7 offense that amounts to a felony. Any unexpended or
8 unencumbered balance remaining at the end of a fiscal year
9 shall not revert to the general fund.

10 Section 12. SEVERABILITY.--If any part or application of
11 this act is held invalid, the remainder or its application to
12 other situations or persons shall not be affected.

13 Section 13. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Sections
15 1 through 10 and 12 of this act is January 1, 2007.

16 B. The effective date of the provisions of Section
17 11 of this act is July 1, 2006.

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