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SENATE BILL 669

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

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING THE DEFINITION OF "SEX OFFENDER"; REDUCING THE TIME SEX OFFENDERS HAVE BEFORE THEY HAVE TO REGISTER WITH THE COUNTY SHERIFF; LENGTHENING REGISTRATION PERIODS FOR CERTAIN SEX OFFENDERS; REQUIRING A SEX OFFENDER TO PROVIDE ADDITIONAL REGISTRATION INFORMATION; AMENDING SECTIONS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 29-11A-2 NMSA 1978 (being Laws 1995, Chapter 106, Section 2, as amended) is amended to read:

"29-11A-2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) sex offenders pose a significant risk of recidivism; and

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1 (2) the efforts of law enforcement agencies to  
2 protect their communities from sex offenders are impaired by  
3 the lack of information available concerning convicted sex  
4 offenders who live within the agencies' jurisdictions.

5 B. The purpose of the Sex Offender Registration and  
6 Notification Act is to assist law enforcement agencies' efforts  
7 to protect their communities by:

8 (1) requiring a sex ~~[offenders]~~ offender who  
9 ~~[are residents]~~ is a resident of New Mexico to register with  
10 the ~~[county]~~ sheriff of the county in which the sex offender  
11 resides;

12 (2) requiring a sex ~~[offenders]~~ offender who  
13 ~~[are residents]~~ is a resident in ~~[other states]~~ another state,  
14 but who ~~[are]~~ is employed in New Mexico or who ~~[attend]~~ attends  
15 school in New Mexico or who visits New Mexico for more than  
16 twenty-four hours, to register with the ~~[county]~~ sheriff of the  
17 county in which the sex offender works or attends school;

18 (3) requiring the establishment of a central  
19 registry for sex offenders; and

20 (4) providing public access to information  
21 regarding certain registered sex offenders."

22 Section 2. Section 29-11A-3 NMSA 1978 (being Laws 1995,  
23 Chapter 106, Section 3, as amended) is amended to read:

24 "29-11A-3. DEFINITIONS.--As used in the Sex Offender  
25 Registration and Notification Act:

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1           A. "conviction" means a conviction in any court of  
2 competent jurisdiction and includes a deferred sentence, but  
3 does not include a conditional discharge;

4           B. "institution of higher education" means a:

5                 (1) private or public post-secondary  
6 educational institution;

7                 (2) trade school; or

8                 (3) professional school;

9           C. "registration requirement" means any requirement  
10 set forth in Section 29-11A-4 NMSA 1978 that requires a sex  
11 offender to register, provide information, including a DNA  
12 sample, renew, revise or change [~~his~~] registration information  
13 or provide written notice or disclosure regarding [~~his~~] the sex  
14 offender's status as a sex offender;

15           D. "sex offender" means a person who:

16                 (1) is a resident of New Mexico who is  
17 convicted of a sex offense in New Mexico;

18                 (2) changes [~~his~~] residence to New Mexico,  
19 when that person has been convicted of a sex offense in another  
20 state pursuant to state, federal, tribal or military law;

21                 (3) is a resident of New Mexico who is  
22 convicted of a sex offense pursuant to federal, tribal or  
23 military law;

24                 (4) does not have an established residence in  
25 New Mexico, but lives in a shelter, halfway house or

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1 transitional living facility or stays in multiple locations in  
2 New Mexico and who has been convicted of a sex offense in New  
3 Mexico or any other state pursuant to state, federal, tribal or  
4 military law; or

5 (5) is a resident of another state and who has  
6 been convicted of a sex offense pursuant to state, federal,  
7 tribal or military law, but who is:

8 (a) employed full time or part time in  
9 New Mexico for a period of time exceeding fourteen days or for  
10 an aggregate period of time exceeding thirty days during any  
11 calendar year, including any employment or vocation, whether  
12 financially compensated, volunteered or for the purpose of  
13 government or educational benefit; ~~or~~

14 (b) enrolled on a full-time or part-time  
15 basis in a private or public school or an institution of higher  
16 education in New Mexico; ~~and~~ or

17 (c) a visitor from another state and  
18 will be in New Mexico for more than twenty-four hours; and

19 E. "sex offense" means:

20 (1) criminal sexual penetration in the first,  
21 second, third or fourth degree, as provided in Section 30-9-11  
22 NMSA 1978;

23 (2) criminal sexual contact in the fourth  
24 degree, as provided in Section 30-9-12 NMSA 1978;

25 (3) criminal sexual contact of a minor in the

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1 second, third or fourth degree, as provided in Section  
2 30-9-13 NMSA 1978;

3 (4) sexual exploitation of children, as  
4 provided in Section 30-6A-3 NMSA 1978;

5 (5) sexual exploitation of children by  
6 prostitution, as provided in Section 30-6A-4 NMSA 1978;

7 (6) kidnapping, as provided in Section  
8 30-4-1 NMSA 1978, when the victim is less than eighteen years  
9 of age and the offender is not a parent of the victim;

10 (7) false imprisonment, as provided in Section  
11 30-4-3 NMSA 1978, when the victim is less than eighteen years  
12 of age and the offender is not a parent of the victim;

13 (8) aggravated indecent exposure, as provided  
14 in Section 30-9-14.3 NMSA 1978;

15 (9) enticement of child, as provided in  
16 Section 30-9-1 NMSA 1978;

17 (10) incest, as provided in Section 30-10-3  
18 NMSA 1978, when the victim is less than eighteen years of age;

19 (11) solicitation to commit criminal sexual  
20 contact of a minor in the second, third or fourth degree, as  
21 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

22 (12) attempt to commit any of the sex offenses  
23 set forth in Paragraphs (1) through (10) of this subsection, as  
24 provided in Section 30-28-1 NMSA 1978."

25 Section 3. Section 29-11A-4 NMSA 1978 (being Laws 1995,

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1 Chapter 106, Section 4, as amended) is amended to read:

2 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION  
3 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

4 A. A sex offender residing in this state shall  
5 register with the [~~county~~] sheriff for the county in which the  
6 sex offender resides.

7 B. A sex offender who is a resident of New Mexico  
8 shall register with the county sheriff no later than [~~ten days~~]  
9 twenty-four hours after being released from the custody of the  
10 corrections department, a municipal or county jail or a  
11 federal, military or tribal correctional facility or detention  
12 center or being placed on probation or parole. A sex offender  
13 who changes [~~his~~] residence to New Mexico shall register with  
14 the county sheriff no later than [~~ten days~~] twenty-four hours  
15 after [~~his~~] arrival in this state. When a sex offender  
16 registers with the county sheriff, [~~he~~] the sex offender shall  
17 provide the following registration information:

18 (1) [~~his~~] the sex offender's legal name and  
19 any other names or aliases that [~~he~~] the sex offender is using  
20 or has used;

21 (2) [~~his~~] the sex offender's date of birth;

22 (3) [~~his~~] the sex offender's social security  
23 number;

24 (4) [~~his current address~~] the addresses of all  
25 residences the sex offender owns, specifying which address is

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1 the sex offender's primary residence;

2 (5) [~~his~~] the sex offender's place of  
3 employment;

4 (6) the sex offense for which [~~he~~] the sex  
5 offender was convicted; [~~and~~]

6 (7) the date and place of [~~his~~] the sex  
7 offense conviction; and

8 (8) the sex offender's motor vehicle  
9 registration information with a description of all motor  
10 vehicles owned.

11 C. A sex offender who is a resident of another  
12 state but who is employed in New Mexico, [~~or~~] attending public  
13 or private school or an institution of higher education in New  
14 Mexico or visiting New Mexico shall register with the [~~county~~]  
15 sheriff for the county in which the sex offender is working or  
16 attending school or an institution of higher education or  
17 visiting New Mexico.

18 D. A sex offender who is a resident of another  
19 state but who is employed in New Mexico or attending public or  
20 private school or an institution of higher education in New  
21 Mexico or visiting New Mexico shall register with the county  
22 sheriff no later than [~~ten days~~] twenty-four hours after  
23 beginning work, [~~or~~] school or the visit. When the sex  
24 offender registers with the county sheriff, [~~he~~] the sex  
25 offender shall provide the following registration information:

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1 (1) [~~his~~] the sex offender's legal name and  
2 any other names or aliases that [~~he~~] the sex offender is using  
3 or has used;

4 (2) [~~his~~] the sex offender's date of birth;

5 (3) [~~his~~] the sex offender's social security  
6 number;

7 (4) [~~his~~] the sex offender's current address  
8 in [~~his~~] the sex offender's state of residence and, if  
9 applicable, the address of [~~his~~] the sex offender's place of  
10 lodging in New Mexico while [~~he is~~] working or attending school  
11 or an institution of higher education;

12 (5) [~~his~~] the sex offender's place of  
13 employment or the name of the school [~~he~~] the sex offender is  
14 attending;

15 (6) the sex offense for which [~~he~~] the sex  
16 offender was convicted; [~~and~~]

17 (7) the date and place of [~~his~~] the sex  
18 offense conviction; and

19 (8) the sex offender's motor vehicle  
20 registration information and a description of all motor  
21 vehicles that the sex offender will use in New Mexico.

22 E. When a sex offender registers with a county  
23 sheriff, the sheriff shall obtain:

24 (1) a photograph of the sex offender and a  
25 complete set of the sex offender's fingerprints;

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1 (2) a description of [~~any~~] tattoos, scars or  
2 other distinguishing features on the sex offender's body that  
3 would assist in identifying the sex offender; and

4 (3) a DNA sample [~~of his DNA~~] for inclusion in  
5 the sex offender DNA identification system pursuant to the  
6 provisions of the DNA Identification Act.

7 F. When a sex offender who is registered changes  
8 [~~his~~] residence within the same county, the sex offender shall  
9 send written notice of [~~his~~] the change of address to the  
10 county sheriff [~~no later than ten days after~~] prior to  
11 establishing [~~his~~] the new residence.

12 G. When a sex offender who is registered changes  
13 [~~his~~] residence to a new county in New Mexico, the sex offender  
14 shall register with the [~~county~~] sheriff of the new county no  
15 later than [~~ten days~~] twenty-four hours after establishing  
16 [~~his~~] the new residence, including proof of the new residence.  
17 The sex offender shall also send written notice of the change  
18 in residence to the county sheriff with whom [~~he~~] the sex  
19 offender last registered no later than [~~ten days~~] twenty-four  
20 hours after establishing [~~his~~] the new residence, including  
21 proof of the new residence.

22 H. When a sex offender who is registered or  
23 required to register does not have an established residence,  
24 but lives in a shelter, halfway house or transitional living  
25 facility or stays in multiple locations in New Mexico, the sex

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1 offender shall register with the [~~county~~] sheriff for each  
2 county in which the sex offender is living or temporarily  
3 located. The sex offender shall register no later than [~~ten~~  
4 ~~days~~] twenty-four hours after a change in [~~his~~] living  
5 arrangements or temporary location.

6 I. When a sex offender who is registered or  
7 required to register is employed, begins a vocation or is  
8 enrolled as a student at an institution of higher education in  
9 New Mexico, the sex offender shall disclose [~~his~~] the sex  
10 offender's status as a sex offender in writing to the [~~county~~]  
11 sheriff for the county in which the institution of higher  
12 education is located, the law enforcement entity responsible  
13 for the institution of higher education and the registrar for  
14 the institution of higher education no later than [~~ten days~~]  
15 twenty-four hours after beginning employment, beginning a  
16 vocation or enrolling at the institution of higher education.  
17 The sex offender shall also send written notice of any change  
18 regarding [~~his~~] employment, vocation or enrollment status at an  
19 institution of higher education to the county sheriff, the law  
20 enforcement entity and the registrar no later than [~~ten days~~]  
21 twenty-four hours after the change in [~~his~~] employment,  
22 vocation or enrollment status.

23 J. When a sex offender who is registered or  
24 required to register is employed or is enrolled as a student at  
25 a public or private school in New Mexico, the sex offender

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1 shall disclose [~~his~~] the sex offender's status as a sex  
2 offender in writing to the [~~county~~] sheriff for the county in  
3 which the school is located and to the principal of the school  
4 no later than [~~ten days~~] twenty-four hours after enrolling at  
5 the school. The sex offender shall also send written notice of  
6 any change regarding [~~his~~] enrollment status at a school to the  
7 county sheriff and the principal no later than [~~ten days~~]  
8 twenty-four hours after the change in [~~his~~] enrollment status.

9 K. When a sex offender who is registered or  
10 required to register is employed, begins a vocation or  
11 volunteers [~~his~~] services, regardless of whether the sex  
12 offender receives payment or other compensation, the sex  
13 offender shall disclose [~~his~~] the sex offender's status as a  
14 sex offender in writing to [~~his~~] the sex offender's employer,  
15 supervisor or person similarly situated. The written  
16 disclosure shall be made immediately upon beginning [~~his~~]  
17 employment, vocation or volunteer service.

18 L. Following [~~his~~] initial registration pursuant to  
19 the provisions of this section:

20 (1) a sex offender required to register  
21 pursuant to the provisions of Subsection D of Section 29-11A-5  
22 NMSA 1978 shall renew [~~his~~] registration with the county  
23 sheriff not less than once in each ninety-day period following  
24 the date of the sex offender's initial registration for the  
25 entirety of [~~his~~] the sex offender's natural life; and

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1 (2) a sex offender required to register  
2 pursuant to the provisions of Subsection E of Section 29-11A-5  
3 NMSA 1978 shall ~~[annually]~~ renew ~~[his]~~ the sex offender's  
4 registration with the county sheriff ~~[prior to December 31 of~~  
5 ~~each subsequent calendar year]~~ not less than once in each  
6 ninety-day period following the date of the sex offender's  
7 initial registration for a period of ~~[ten]~~ twenty years.

8 M. Notwithstanding the provisions of Paragraph (2)  
9 of Subsection L of this section, if a sex offender is convicted  
10 a second or subsequent time for a sex offense set forth in  
11 Subsection E of Section 29-11A-5 NMSA 1978, ~~[he]~~ the sex  
12 offender shall renew ~~[his]~~ registration with the county sheriff  
13 not less than once in each ninety-day period following the date  
14 of the sex offender's initial registration for the entirety of  
15 ~~[his]~~ the sex offender's natural life.

16 N. A sex offender who willfully or knowingly fails  
17 to comply with the registration requirements set forth in this  
18 section is guilty of a fourth degree felony and shall be  
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
20 1978. A sex offender who willfully or knowingly fails to  
21 comply with the registration requirements set forth in this  
22 section after a first or subsequent conviction for a violation  
23 pursuant to this section is guilty of a third degree felony and  
24 shall be sentenced pursuant to the provisions of Section  
25 31-18-15 NMSA 1978. The willful failure to comply with any

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1 registration requirement set forth in this section shall be  
2 deemed part of a continuing transaction or occurrence. A  
3 conviction pursuant to this subsection shall not be considered  
4 a felony for purposes of the imposition of sentencing  
5 enhancements pursuant to the provisions of Section 31-18-17  
6 NMSA 1978.

7 0. A sex offender who willfully or knowingly  
8 provides false information when complying with the registration  
9 requirements set forth in this section is guilty of a fourth  
10 degree felony and shall be sentenced pursuant to the provisions  
11 of Section 31-18-15 NMSA 1978. A sex offender who willfully or  
12 knowingly provides false information when complying with the  
13 registration requirements set forth in this section after a  
14 first or subsequent conviction for a violation pursuant to this  
15 section is guilty of a third degree felony and shall be  
16 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
17 1978. The willful providing by a sex offender of false  
18 information with respect to the registration requirements set  
19 forth in this section shall be deemed part of a continuing  
20 transaction or occurrence. A conviction pursuant to this  
21 subsection shall not be considered a felony for purposes of the  
22 imposition of sentencing enhancements pursuant to the  
23 provisions of Section 31-18-17 NMSA 1978."

24 Section 4. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,  
25 Chapter 8, Section 6, as amended) is amended to read:

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1 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM  
2 NEW MEXICO TO ANOTHER STATE.--

3 A. If a sex offender intends to move from New  
4 Mexico to another state, no later than thirty days prior to  
5 moving to the other state, ~~he~~ the sex offender shall:

6 (1) notify the ~~county~~ sheriff of the county  
7 ~~he~~ the sex offender resides in that ~~he~~ the sex offender is  
8 moving to the other state; and

9 (2) provide the county sheriff with a written  
10 notice that identifies the ~~state~~ new address of the residence  
11 to which the sex offender is moving.

12 B. Within five days of receiving a sex offender's  
13 written notice of intent to move to another state, the county  
14 sheriff shall transmit that information to the department of  
15 public safety. Within five days of receiving that information  
16 from a county sheriff, the department shall contact the state  
17 agency responsible for registering sex offenders in the state  
18 to which the sex offender is moving. The department shall  
19 provide that state agency with registration information  
20 regarding the sex offender. The department shall also obtain  
21 information regarding registration requirements for sex  
22 offenders in the state to which the sex offender is moving.  
23 The department shall provide the sex offender with written  
24 notification of the registration requirements in the state to  
25 which the sex offender is moving.

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1 C. A sex offender who willfully fails to comply  
2 with the requirements set forth in this section is guilty of a  
3 fourth degree felony and shall be sentenced pursuant to the  
4 provisions of Section 31-18-15 NMSA 1978."

5 Section 5. Section 29-11A-5 NMSA 1978 (being Laws 1995,  
6 Chapter 106, Section 5, as amended) is amended to read:

7 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--  
8 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN  
9 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

10 A. A county sheriff shall maintain a local registry  
11 of sex offenders in [~~his~~] the sheriff's jurisdiction required  
12 to register pursuant to the provisions of the Sex Offender  
13 Registration and Notification Act.

14 B. The county sheriff shall forward:

15 (1) registration information obtained from sex  
16 offenders to the department of public safety. The initial  
17 registration information and any new registration information  
18 subsequently obtained from a sex offender shall be forwarded by  
19 the county sheriff no later than ten working days after the  
20 information is obtained from a sex offender. If the department  
21 of public safety receives information regarding a sex offender  
22 from a governmental entity other than a county sheriff, the  
23 department shall send that information to the sheriff for the  
24 county in which the sex offender resides; and

25 (2) samples of DNA obtained from sex offenders

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1 to the administrative center for the sex offender DNA  
2 identification system pursuant to the provisions of the DNA  
3 Identification Act.

4 C. The department of public safety shall maintain a  
5 central registry of sex offenders required to register pursuant  
6 to the provisions of the Sex Offender Registration and  
7 Notification Act. The department shall participate in the  
8 national sex offender registry administered by the United  
9 States department of justice. The department shall send  
10 conviction information and fingerprints for all sex offenders  
11 registered in New Mexico to the national sex offender registry  
12 administered by the United States department of justice and to  
13 the federal bureau of investigation.

14 D. The department of public safety shall retain  
15 registration information regarding a sex offender convicted for  
16 any of the following sex offenses for the entirety of [~~his~~] the  
17 sex offender's natural life:

18 (1) criminal sexual penetration in the first,  
19 second or third degree, as provided in Section 30-9-11 NMSA  
20 1978;

21 (2) criminal sexual contact of a minor in the  
22 second, third or fourth degree, as provided in Section  
23 30-9-13 NMSA 1978;

24 (3) sexual exploitation of children, as  
25 provided in Section 30-6A-3 NMSA 1978;

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1 (4) kidnapping, as provided in Section  
2 30-4-1 NMSA 1978, when the victim is less than eighteen years  
3 of age and the offender is not a parent of the victim;

4 (5) criminal sexual contact in the fourth  
5 degree, as provided in Section 30-9-12 NMSA 1978; [~~or~~]

6 (6) aggravated indecent exposure, as provided  
7 in Section 30-9-14.3 NMSA 1978;

8 (7) enticement of child, as provided in  
9 Section 30-9-1 NMSA 1978; or

10 [~~(6)~~] (8) attempt to commit any of the sex  
11 offenses set forth in Paragraphs (1) through [~~(5)~~] (7) of this  
12 subsection, as provided in Section 30-28-1 NMSA 1978.

13 E. The department of public safety shall retain  
14 registration information regarding a sex offender convicted for  
15 the following offenses for a period of [~~ten~~] twenty years  
16 following the sex offender's conviction, release from prison or  
17 release from probation or parole, whichever occurs later:

18 (1) criminal sexual penetration in the fourth  
19 degree, as provided in Section 30-9-11 NMSA 1978;

20 (2) sexual exploitation of children by  
21 prostitution, as provided in Section 30-6A-4 NMSA 1978;

22 (3) false imprisonment, as provided in Section  
23 30-4-3 NMSA 1978, when the victim is less than eighteen years  
24 of age and the offender is not a parent of the victim;

25 [~~(4)~~] ~~aggravated indecent exposure, as provided~~

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1 ~~in Section 30-9-14.3 NMSA 1978;~~

2 ~~(5) enticement of child, as provided in~~  
3 ~~Section 30-9-1 NMSA 1978;~~

4 ~~(6)]~~ (4) incest, as provided in Section  
5 30-10-3 NMSA 1978, when the victim is less than eighteen years  
6 of age;

7 [~~(7)]~~ (5) solicitation to commit criminal  
8 sexual contact of a minor in the second, third or fourth  
9 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;  
10 or

11 [~~(8)]~~ (6) attempt to commit any of the sex  
12 offenses set forth in Paragraphs (1) through [~~(6)]~~ (4) of this  
13 subsection, as provided in Section 30-28-1 NMSA 1978.

14 F. Notwithstanding the provisions of Subsection E  
15 of this section, if a sex offender is convicted a second or  
16 subsequent time for a sex offense set forth in that subsection,  
17 the department of public safety shall retain information  
18 regarding the sex offender for the entirety of the sex  
19 offender's natural life.

20 G. The department of public safety shall adopt  
21 rules necessary to carry out the provisions of the Sex Offender  
22 Registration and Notification Act. Rules necessary for the  
23 collection of DNA samples and the administration and operation  
24 of the sex offender DNA identification system shall be adopted  
25 by the DNA identification system oversight committee pursuant

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to the provisions of the DNA Identification Act."

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.