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## FISCAL IMPACT REPORT

SPONSOR: Lopez DATE TYPED: 03/07/03 HB

SHORT TITLE: Sex Offender DNA Samples SB 861

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant (See Narrative)	Recurring	General Fund/DNA Identification System Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$0.1 Significant	\$0.1 Significant	Recurring	DNA Identification System Fund

### SOURCES OF INFORMATION

Responses Received From

Attorney General (AG)  
Administrative Office of the Courts (AOC)

No Response

Department of Public Safety (DPS)  
Public Defender Department (PDD)  
Administrative Office of the District Attorneys (AODA)

## SUMMARY

### Synopsis of Bill

House Bill 861 amends 29-11A-4 NMSA 1978, providing that when a sex offender registers with a county sheriff, the sheriff shall obtain a DNA sample for insertion into the DNA identification system pursuant to the provisions of the DNA Identification Act. The sheriff shall also collect a DNA collection fee of \$100 from each offender. Fees shall be deposited into the DNA identification system fund.

The bill amends 29-11A-5, providing that the sheriff shall forward the samples of DNA obtained from sex offenders to the DNA identification system's administrative center and the collected fees to the Department of Public Safety (DPS) for deposit into the fund.

The bill amends 29-11A-5.1, providing that DNA analysis information shall only be disclosed pursuant to the provisions of Section 29-16-8 NMSA 1978.

The bill amends 29-16-6, providing that covered offenders registering or renewing registration pursuant to 29-11A-4 NMSA on or after July 1, 2003 shall provide a sample at the time of registration or renewal.

### Significant Issues

The Attorney General (AG) notes that any amendments to the Act implicate constitutional challenges currently pending in the New Mexico Supreme Court and the New Mexico Court of Appeals. AG reports that relevant cases include Doe v. Department of Public Safety, NMSC No. 27,854; State v. Brothers, NMSC 27,739; State v. Furr, NMSC No. 27,561; and State v. Druktenis, NMCOA No. 22, 437. In addition, two cases pending in the United States Supreme Court will affect sex offender registration acts. These cases are Doe v. Dept. of Public Safety, 271 F.3d 38 (2<sup>nd</sup> Cir. 2001) (due process challenge to Connecticut's Act) and Doe v. Otte, 259 F.3d 979 (9<sup>th</sup> Cir. 2001) (ex post facto challenge).

The state maintains a significant number of unprocessed DNA samples, as it does not currently have sufficient resources available to process all of the samples from state and local law enforcement agencies and from covered offenders. In the absence of an appropriation, the DPS crime lab will be unable to generate DNA profiles for inclusion in the federal or state DNA databases without reducing the amount of resources devoted to other analysis. The majority of analysis currently being performed is for cases that have suspects and impending trial dates.

## FISCAL IMPLICATIONS

The Attorney General (AG) notes that challenges to the requirement of providing a DNA sample or the payment of a fee may be raised in either a writ proceeding or on direct appeal. Such challenges will likely increase the caseload in the Criminal Appeals Division. District Attorneys, PDD, and the courts may see an increase in caseload as a result of the provisions of the bill.

There may be a small increase in workload for county sheriffs, as they will be required to obtain and forward samples and fees to DPS.

**CONFLICT, RELATIONSHIP**

Relates to/Conflicts with HB 449 (Additional registration requirements, lengthens registration periods); Conflicts with SB 569 (Provides for sex offender registration within 24 hours)

**TECHNICAL ISSUES**

Page 1, lines 13-14 states “making an appropriation.” There is no appropriation contained in the bill.

**JCF/njw**