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FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 02/05/03 HB _____

SHORT TITLE: DNA Identification Provisions SB 157

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Unknown	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

- Administrative Office of the District Attorneys (AODA)
- Department of Public Safety (DPS)
- Corrections Department (CD)
- Administrative Office of the Courts (AOC)
- Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 157 expands the DNA Identification Act, NMSA 1978, Section 29-16-1 et seq. (1997), to include the use of DNA to identify missing persons and to allow for the immediate collection of DNA samples from covered offenders.

The bill establishes three new provisions under the existing Act:

- Samples and DNA records may be expunged from the missing persons DNA identification system.

- When DNA testing of samples is required by law, the relevant administrative center shall be reimbursed for costs incurred in DNA testing for unidentified persons or human remains. Reimbursements shall be deposited in the fund.
- Searches of samples collected for purposes of the missing persons DNA identification system shall be limited to searches of DNA indexes consisting of: unidentified persons, unidentified human remains, known reference samples from missing persons, and covered offenders as defined by the Act. Searches of samples collected under this section shall not be performed against DNA indexes consisting of evidentiary samples resulting from criminal investigations.

The bill amends the DNA Identification Act, adding language to establish a missing persons DNA identification system consisting of indexes for unidentified persons, unidentified human remains, and relatives of or known reference samples missing persons as reference samples from missing persons.

The bill amends Section 29-16-5 providing that the DNA oversight committee shall adopt rules and procedures regarding the establishment and administration of the missing persons DNA identification system.

The bill amends Section 29-16-6 to require that covered offenders, as defined by the act, provide DNA samples immediately upon the request of the Corrections Department (CD). This language would apply to any covered offender convicted on or after July 1, 1997 and to requests made prior to release from incarceration, probation or other supervised release.

The bill amends Section 29-16-8 regarding confidentiality of DNA records to allow the state medical investigator access to DNA records.

Significant Issues

The Attorney General (AG) notes that the Office of the Medical Investigator has significant difficulties in identifying unknown corpses. The bill would facilitate the identification of missing persons.

The current law allows for the collection of DNA samples from covered inmates at any time before release. Inmates often refuse to provide DNA samples until just before parole or release from a correctional facility. This activity postpones the inclusion of data in DNA indexes, also postponing its availability for searches against DNA samples taken in current criminal investigations. This bill provides that covered offenders submit samples immediately upon request, eliminating the unintended implication that the Corrections Department (CD) can only request a DNA sample from a covered offender shortly before release.

FISCAL IMPLICATIONS

The state will likely incur administrative costs in carrying out a number of provisions of the bill. These include updating records, expanding databases and responding to expungement requests.

The bill does not contain an appropriation; however, it provides that reimbursements for the cost of processing samples shall be made to the DNA fund (by way of the administrative center) by

the investigating law enforcement agency or by the state medical investigator. These agencies may feel a significant fiscal impact.

RELATES

Relates to HB 425 which makes an appropriation for DNA sample processing.

TECHNICAL ISSUES

CD notes that the amended language in Section 29-16-6 (page 10, lines 14-24) may not cover a situation in which an inmate or a probationer refuses to submit a sample, the District Attorney files a civil action with the District Court to obtain an order requiring the inmate or probationer to submit a DNA sample and that court order is not obtained until after the inmate was released from custody or the period of probation or parole had expired. CD recommends removing the language "so long as the request is made before release from any correctional facility."

It appears that the amended language covers all situations in which the original request was made prior to release. If, as a policy consideration, the Legislature believes that the state should be able to request samples from offenders following release, the language should be changed.

JCF/njw