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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.

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:

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

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

C. Samples shall be collected in accordance with  
rules and procedures adopted by the DNA oversight committee,

1 shall be subject to the confidentiality and penalty  
2 provisions of the DNA Identification Act and shall be used  
3 only as authorized by that act.

4 D. As used in this section:

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

9 (2) "DNA" means deoxyribonucleic acid;

10 (3) "felony" means:

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

13 (b) any other felony offense that  
14 involves death, great bodily harm, aggravated assault,  
15 kidnapping, burglary, larceny, robbery, aggravated stalking,  
16 use of a firearm or an explosive or a violation pursuant to  
17 the Antiterrorism Act; and

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

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

22 "29-16-2. PURPOSE OF ACT.--The purpose of the DNA  
23 Identification Act is to:

24 A. establish a DNA identification system for  
25 covered offenders and persons required to provide a DNA

1 sample pursuant to the provisions of Section 1 of this 2006  
2 act;

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

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

7 (2) registration of sex offenders required  
8 to register pursuant to the provisions of the Sex Offender  
9 Registration and Notification Act;

10 C. establish a missing persons DNA identification  
11 system consisting of the following DNA indexes:

12 (1) unidentified persons;

13 (2) unidentified human remains; and

14 (3) relatives of, or known reference samples  
15 from, missing persons; and

16 D. facilitate the use of DNA records by local,  
17 state and federal law enforcement agencies and the state  
18 medical investigator in the identification and location of  
19 missing and unidentified persons or human remains."

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

22 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--  
23 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

24 A. The administrative center shall be an  
25 appropriate unit of the department or such other qualified

1 New Mexico law enforcement agency as the secretary of public  
2 safety may designate in accordance with this section.

3 B. The administrative center shall:

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

20 (2) coordinate sample collection activities;

21 (3) perform or contract for DNA testing;

22 (4) serve as a repository for samples and  
23 DNA records;

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

- 1                   (6) adopt rules and procedures governing:  
2                   (a) sample collection;  
3                   (b) DNA testing;  
4                   (c) the DNA identification system and  
5 DNA records;  
6                   (d) the acceptance, security and  
7 dissemination of DNA records; and  
8                   (e) communication between local, state  
9 and federal law enforcement agencies, the corrections  
10 department and local jails and detention facilities in order  
11 to minimize duplicate sample collections from the same  
12 individual;  
13                   (7) provide training to jail and detention  
14 facility personnel who are required to collect samples  
15 pursuant to Section 1 of this 2006 act;  
16                   (8) be reimbursed for, pursuant to the DNA  
17 Identification Act, the costs of sample collection and DNA  
18 testing of samples taken for the purposes of the  
19 identification of missing persons and unidentified human  
20 remains;  
21                   (9) establish and administer the missing  
22 persons DNA identification system as a part of the DNA  
23 identification system; and  
24                   (10) establish and administer the sex  
25 offender DNA identification system as part of the DNA

1 identification system.

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

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

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

15 "29-16-6. COLLECTION OF SAMPLES.--

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

18 (1) a covered offender convicted on or  
19 after July 1, 1997 shall provide a sample immediately upon  
20 request to the corrections department as long as the request  
21 is made before release from any correctional facility or, if  
22 the covered offender is not sentenced to incarceration,  
23 before the end of any period of probation or other supervised  
24 release;

25 (2) a covered offender incarcerated on or

1 after July 1, 1997 shall provide a sample immediately upon  
2 request to the corrections department as long as the request  
3 is made before release from any correctional facility;

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

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

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

23 (1) the person has previously provided a  
24 sample sufficient for DNA testing pursuant to the provisions  
25 of this section;

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

3 (3) the sample has not been expunged.

4 C. Samples from unidentified persons or relatives  
5 of a missing person shall be provided to the administrative  
6 center, as follows:

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

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

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

12 D. Samples from unidentified human remains shall  
13 be provided by the state medical investigator.

14 E. Samples of known reference materials from  
15 missing persons shall be provided by the investigating law  
16 enforcement agency."

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

19 "29-16-8. CONFIDENTIALITY--DISCLOSURE AND  
20 DISSEMINATION OF DNA RECORDS.--

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

25 B. The administrative center shall make DNA

1 records available for identification, comparison and  
2 investigative purposes to local, state and federal law  
3 enforcement agencies and the state medical investigator  
4 pursuant to the rules developed and adopted by the DNA  
5 oversight committee. The administrative center may  
6 disseminate statistical or research information derived from  
7 samples and DNA testing if all personal identification is  
8 removed pursuant to the rules developed and adopted by the  
9 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, to local, state and  
13 federal law enforcement agencies, the corrections department,  
14 jails and detention facilities for the purpose of verifying  
15 whether a sample has been collected from a specific  
16 individual. Information provided under this subsection shall  
17 not include DNA testing results."

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

20 "29-16-8.1. DNA SEARCHES.--

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

25 (1) unidentified persons;

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

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

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

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

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

- 21                   (1) provide a sample; or
- 22                   (2) provide a sample by alternative means
- 23 if the covered offender or person will not cooperate.

24               B. Nothing in this section shall prevent the  
25 collection of samples by order of a court of competent

1 jurisdiction or the collection of samples of covered  
2 offenders."

3 Section 8. Section 29-16-10 NMSA 1978 (being Laws  
4 1997, 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 the  
8 person's sample and DNA records from the DNA identification  
9 system on the following grounds:

10 (1) the conviction that led to the  
11 inclusion of the sample has been reversed; or

12 (2) the arrest that led to the inclusion of  
13 the sample has:

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

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

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

25 (1) a written request for expungement of

1 the sample and DNA records; and

2 (2) a certified copy of a court order that  
3 reverses the conviction that led to the inclusion of the  
4 sample; or

5 (3) for samples included pursuant to  
6 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  
17 and 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  
21 pending felony charge for which collection of a sample is  
22 authorized pursuant to the provisions of the DNA  
23 Identification Act."

24 Section 9. Section 29-16-13 NMSA 1978 (being Laws  
25 1997, Chapter 105, Section 13) is amended to read:

1 "29-16-13. DNA FUND CREATED--PURPOSES.--

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

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

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

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

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

25 Section 10. SEXUAL ASSAULT--SUBMISSION OF DNA SAMPLES

1 BY LAW ENFORCEMENT AND LABORATORIES.--

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

9 B. As used in this section:

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

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

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

21 (4) "DNA" means deoxyribonucleic acid;

22 (5) "DNA testing" means a forensic DNA  
23 analysis that includes restriction fragment length  
24 polymorphism, polymerase chain reaction or other valid  
25 methods of DNA typing performed to obtain identification

1 characteristics of samples; and

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

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

7 Section 12. EFFECTIVE DATE.--

8 The effective date of the provisions of this act  
9 is January 1, 2007. \_\_\_\_\_

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