

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 55

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Sander Rue

AN ACT

RELATING TO MISSING PERSONS; REQUIRING LAW ENFORCEMENT TRAINING FOR MISSING PERSON AND AMBER ALERT INCIDENTS; COMBINING THE STATUTES PERTAINING TO MISSING PERSONS AND TO MISSING CHILDREN INTO THE MISSING PERSONS INFORMATION AND REPORTING ACT; SPECIFYING INFORMATION FOR MISSING PERSON REPORTS; ESTABLISHING TIME FRAMES FOR LAW ENFORCEMENT AGENCY ACTION; PROVIDING FOR DISCIPLINARY ACTION FOR NONCOMPLIANCE WITH DUTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Law Enforcement Training Act is enacted to read:

"[NEW MATERIAL] MISSING PERSON AND AMBER ALERT TRAINING.--

A minimum of four hours of combined missing person and AMBER alert training shall be included in the curriculum of each

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 basic law enforcement training class. Missing person and AMBER
2 alert training shall be included as a component of in-service
3 training each year for certified police officers."

4 Section 2. Section 29-15-1 NMSA 1978 (being Laws 1995,
5 Chapter 146, Section 1) is amended to read:

6 "29-15-1. SHORT TITLE.--~~[This act]~~ Chapter 29, Article 15
7 NMSA 1978 may be cited as the "Missing Persons Information and
8 Reporting Act."

9 Section 3. Section 29-15-2 NMSA 1978 (being Laws 1995,
10 Chapter 146, Section 2, as amended) is amended to read:

11 "29-15-2. DEFINITIONS.--As used in the Missing Persons
12 Information and Reporting Act:

13 A. "child" means an individual under the age of
14 eighteen years who is not emancipated;

15 B. "clearinghouse" means the missing persons
16 information clearinghouse;

17 C. "custodian" means a parent, guardian or other
18 person who exercises legal physical control, care or custody of
19 a child;

20 D. "endangered person" means a missing person who:

21 (1) is in imminent danger of causing harm to
22 the person's self;

23 (2) is in imminent danger of causing harm to
24 another;

25 (3) is in imminent danger of being harmed by

.179447.2SA

underscoring material = new
[bracketed material] = delete

1 another or who has been harmed by another; or

2 (4) has Alzheimer's disease or another
3 degenerative brain disorder;

4 E. "immediate family member" means the spouse or
5 nearest relative of a person;

6 F. "law enforcement agency" means a law enforcement
7 agency of the state, a state agency or a political subdivision
8 of the state;

9 [~~F.~~] G. "lead station" means an AM radio station
10 that has been designated as the "state primary station" by the
11 federal communications commission for the emergency alert
12 system;

13 [~~G.~~] H. "missing person" means a person whose
14 whereabouts are unknown to the person's custodian or immediate
15 family member and the circumstances of whose absence indicate
16 that:

17 (1) the person did not leave the care and
18 control of the custodian or immediate family member voluntarily
19 and the taking of the person was not authorized by law; or

20 (2) the person voluntarily left the care and
21 control of the custodian without the custodian's consent and
22 without intent to return;

23 [~~H.~~] I. "missing person report" means information
24 that is:

25 (1) given to a law enforcement agency on a

.179447.2SA

underscored material = new
[bracketed material] = delete

1 form used for sending information to the national crime
2 information center; and

3 (2) about a person whose whereabouts are
4 unknown to the reporter and who is alleged in the form
5 submitted by the reporter to be missing;

6 [~~F.~~] J. "person" means an individual, regardless of
7 age;

8 [~~J.~~] K. "possible match" means the similarities
9 between [~~an~~] unidentified [~~body of a person~~] human remains and
10 a missing person that would lead one to believe they are the
11 same person;

12 [~~K.~~] L. "reporter" means the person who reports a
13 missing person; [~~and~~

14 ~~L.~~] M. "state agency" means an agency of the state,
15 a political subdivision of the state or a public post-secondary
16 educational institution; and

17 N. "state registrar" means the employee so
18 designated by the public health division of the department of
19 health pursuant to the Vital Statistics Act."

20 Section 4. Section 29-15-3 NMSA 1978 (being Laws 1995,
21 Chapter 146, Section 3) is amended to read:

22 "29-15-3. MISSING PERSONS INFORMATION CLEARINGHOUSE--
23 FUNCTION.--

24 A. The "missing persons information clearinghouse"
25 is established in the department of public safety. The

.179447.2SA

underscored material = new
[bracketed material] = delete

1 department of public safety shall provide for the
2 administration of the clearinghouse. The department of public
3 safety may adopt rules [~~and regulations~~] to carry out the
4 provisions of the Missing Persons Information and Reporting Act
5 in the manner prescribed in Subsection E of Section 9-1-5 NMSA
6 1978.

7 B. The clearinghouse is a central repository of
8 information on missing persons and shall be used by all law
9 enforcement agencies, including tribal agencies, in this state.

10 C. The clearinghouse shall:

11 (1) establish a system of intrastate
12 communication of information relating to missing persons;

13 (2) provide a centralized file for the
14 exchange of information on missing persons and unidentified
15 bodies of persons within the state;

16 (3) communicate with the national crime
17 information center for the exchange of information on missing
18 persons suspected of interstate travel;

19 (4) collect, process, maintain and disseminate
20 accurate and complete information on missing persons;

21 (5) provide a statewide toll-free telephone
22 line for the reporting of missing persons and for receiving
23 information on missing persons;

24 (6) disseminate to custodians, law enforcement
25 agencies, the [~~state department of~~] public education

.179447.2SA

underscored material = new
[bracketed material] = delete

1 department, the children, youth and families department and the
2 general public information that explains how to prevent child
3 abduction and what to do if a child becomes missing;

4 (7) compile statistics relating to the
5 incidence of missing persons within the state;

6 (8) provide training and technical assistance
7 to law enforcement agencies and social services agencies
8 pertaining to missing persons; and

9 (9) establish a media protocol for
10 disseminating information pertaining to missing persons.

11 D. The clearinghouse shall print and distribute
12 posters, flyers and other forms of information containing
13 descriptions of missing persons.

14 E. The department of public safety may accept
15 public or private grants, gifts and donations to assist the
16 department in carrying out the provisions of the Missing
17 Persons Information and Reporting Act."

18 Section 5. Section 29-15-5 NMSA 1978 (being Laws 1995,
19 Chapter 146, Section 5) is amended to read:

20 "29-15-5. CUSTODIAN OR IMMEDIATE FAMILY MEMBER REQUEST
21 FOR INFORMATION.--

22 A. Upon written [~~notification~~] or oral request to a
23 law enforcement agency by a custodian or immediate family
24 member of a missing person, the law enforcement agency shall
25 immediately request from the clearinghouse information

.179447.2SA

underscored material = new
[bracketed material] = delete

1 concerning the missing person that may aid the custodian or
2 immediate family member in the identification or location of
3 the missing person.

4 B. A law enforcement agency to which [~~notification~~]
5 a request has been [~~provided~~] made pursuant to Subsection A of
6 this section shall report to the custodian or immediate family
7 member on the results of its inquiry to the clearinghouse
8 within seven calendar days after the day the [~~written~~
9 ~~notification~~] request is received by the law enforcement
10 agency, or as soon as the results of its inquiry become
11 available, whichever occurs last."

12 Section 6. Section 29-15-6 NMSA 1978 (being Laws 1995,
13 Chapter 146, Section 6) is amended to read:

14 "29-15-6. MISSING PERSON REPORT FORMS.--

15 A. The clearinghouse shall distribute missing
16 person report forms to law enforcement agencies in the state.

17 B. A missing person report may be made to a law
18 enforcement agency in person, or by telephone, electronic media
19 or other indirect method of communication and the person taking
20 the report may enter the information on the form for the
21 reporter. A missing person report form may be completed by the
22 reporter and delivered to a law enforcement officer.

23 C. A copy of the missing person report form shall
24 be filed with the clearinghouse.

25 D. A missing person report form shall include, to

.179447.2SA

underscored material = new
[bracketed material] = delete

1 the extent available, the following information:

2 (1) the missing person's:

3 (a) name, including any alternative
4 names used;

5 (b) date of birth;

6 (c) identifying marks, including
7 birthmarks, moles, tattoos and scars;

8 (d) height and weight;

9 (e) gender;

10 (f) race;

11 (g) current hair color and true or
12 natural hair color;

13 (h) eye color;

14 (i) prosthetics, surgical implants or
15 cosmetic implants;

16 (j) physical anomalies;

17 (k) blood type;

18 (l) driver's license number; and

19 (m) social security number;

20 (2) a photograph of the missing person, with a
21 recent photograph being preferable;

22 (3) a description of the clothing the missing
23 person was believed to be wearing;

24 (4) a description of items that might be with
25 the missing person, such as jewelry and accessories;

.179447.2SA

underscoring material = new
[bracketed material] = delete

1 (5) information on the missing person's
2 electronic communications devices, including cell phone numbers
3 and email addresses;

4 (6) reasons why the reporting person believes
5 that the person is missing;

6 (7) the name and location of the missing
7 person's school or employer;

8 (8) the name and location of the missing
9 person's dentist or primary care physician;

10 (9) any circumstances that may indicate that
11 the disappearance of the missing person was not voluntary;

12 (10) any circumstances that indicate that the
13 missing person may be at risk of injury or death;

14 (11) a description of the possible means of
15 transportation of the missing person, including make, model,
16 color, license and vehicle identification number of a vehicle;

17 (12) any identifying information about a known
18 or possible abductor of the missing person or the person last
19 seen with the missing person;

20 (13) any other information that can aid in
21 locating the missing person; and

22 (14) the date of last contact with the missing
23 person."

24 Section 7. Section 29-15-7 NMSA 1978 (being Laws 1995,
25 Chapter 146, Section 7, as amended) is amended to read:

.179447.2SA

underscored material = new
[bracketed material] = delete

1 "29-15-7. LAW ENFORCEMENT REQUIREMENTS--MISSING PERSON
2 REPORTS--UNIDENTIFIED BODIES.--

3 A. A law enforcement agency [~~upon~~] shall accept
4 without delay and without exception for any reason any report
5 of a missing person and, no later than two hours after
6 receiving a missing person report or additional or supplemental
7 information for the report, shall:

8 (1) [~~immediately~~] start an appropriate
9 investigation to determine the present location of the missing
10 person and to determine whether the missing person is an
11 endangered person;

12 (2) provide to the clearinghouse all
13 information the law enforcement agency has relating to an
14 investigation regarding or the location or identification of a
15 missing person;

16 (3) [~~immediately~~] enter the name of the
17 missing person into the clearinghouse and the national crime
18 information center missing person file; and

19 (4) if the missing person is determined to be
20 an endangered person, [~~immediately~~] notify the department of
21 public safety in accordance with procedures prescribed by the
22 department.

23 B. Information not immediately available shall be
24 obtained as soon as possible by the law enforcement agency and,
25 no later than two hours after receipt of the information,

.179447.2SA

underscored material = new
[bracketed material] = delete

1 entered into the clearinghouse and the national crime
2 information center file as a supplement to the original entry.

3 C. All New Mexico law enforcement agencies are
4 required to enter information about all unidentified bodies of
5 persons found in their jurisdiction into the clearinghouse and
6 the national crime information center unidentified person file,
7 including all available identifying features of the body and a
8 description of the clothing found on the body. If an
9 information entry into the national crime information center
10 file results in an automatic entry of the information into the
11 clearinghouse, the law enforcement agency is not required to
12 make a direct entry of that information into the
13 clearinghouse."

14 Section 8. A new section of the Missing Persons
15 Information and Reporting Act, Section 29-15-7.1 NMSA 1978, is
16 enacted to read:

17 "29-15-7.1. [NEW MATERIAL] MISSING CHILD REPORTS--LAW
18 ENFORCEMENT AGENCIES--DUTIES--REGISTRAR.--

19 A. Upon receiving a report of a child believed to
20 be missing, a law enforcement agency shall:

21 (1) [~~immediately~~] no later than two hours
22 after receiving the report, enter identifying and descriptive
23 information about the child into the national crime information
24 center computer. Law enforcement agencies having direct access
25 to the national crime information center computer shall enter

.179447.2SA

underscoring material = new
[bracketed material] = delete

1 and retrieve the data directly and shall cooperate in the entry
2 and retrieval of data on behalf of law enforcement agencies
3 that do not have direct access to the system; and

4 (2) notify the state registrar within
5 twenty-four hours, by telephone, facsimile or electronic
6 transmission, of the missing child. Within three days of this
7 initial notification, the law enforcement agency shall make a
8 written notification in a manner and form prescribed by the
9 state registrar. Both notifications shall include the missing
10 child's name, date of birth and county and state of birth; the
11 mother's maiden name; the name of the noncustodial parent if
12 the parents are not married; the name and telephone number of a
13 contact person at the reporting law enforcement agency; and any
14 other information required by the state registrar.

15 B. Immediately after a missing child is located,
16 the law enforcement agency that located or returned the missing
17 child shall notify the law enforcement agency having
18 jurisdiction over the investigation, and the originating agency
19 shall clear the entry from the national crime information
20 center computer and shall, within twenty-four hours, notify the
21 state registrar in writing that the missing child has been
22 located."

23 Section 9. A new section of the Missing Persons
24 Information and Reporting Act, Section 29-15-7.2 NMSA 1978, is
25 enacted to read:

.179447.2SA

underscored material = new
[bracketed material] = delete

1 "29-15-7.2. [NEW MATERIAL] BIRTH RECORDS OF MISSING
2 CHILDREN--STATE REGISTRAR'S DUTIES.--

3 A. Upon notification by a law enforcement agency
4 that a child born in the state is missing, the state registrar
5 shall flag the child's birth record in such a manner that
6 whenever a copy of the birth certificate or information
7 concerning the birth record is requested, the state registrar
8 shall be alerted to the fact that the certificate is that of a
9 missing child.

10 B. Upon notification by a law enforcement agency
11 that a child born outside the state is missing, the state
12 registrar shall notify the corresponding officer in the state
13 where the child was born that the child has been reported
14 missing.

15 C. In response to any inquiry, the state registrar
16 or any local registrar appointed by the state registrar or any
17 employee of the vital statistics bureau of the health services
18 division of the department of health shall not provide a copy
19 of a birth certificate or information concerning the birth
20 record of any missing child whose birth record is flagged
21 pursuant to this section, except following notification of the
22 law enforcement agency having jurisdiction over the
23 investigation of the missing child. Such inquiries shall be
24 handled in the following manner:

- 25 (1) when a copy of the birth certificate of a

.179447.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 missing child whose record has been flagged is requested in
2 person, the local registrar or employee accepting the request
3 shall immediately notify that person's supervisor or the state
4 registrar. If possible, the person making the request shall
5 complete a form supplying the requester's name, address,
6 telephone number and relationship to the missing child and the
7 name, address and birth date of the missing child. The
8 driver's license of the requester, if available, shall be
9 photocopied and returned. The requester shall be informed that
10 a copy of the birth certificate will be mailed to the
11 requester. The local registrar or employee shall note the
12 physical description of the requester, and, upon that
13 requester's departure from the vital statistics bureau office,
14 the supervisor or state registrar shall immediately notify the
15 law enforcement agency having jurisdiction of the request and
16 the information obtained pursuant to this paragraph. The state
17 registrar will retain the form completed by the person making
18 the request; and

19 (2) when a copy of the birth certificate of a
20 missing child whose birth record has been flagged is requested
21 in writing, the state registrar shall immediately notify the
22 law enforcement agency having jurisdiction of the request and
23 shall provide a copy of the written request. The state
24 registrar shall retain the original written request.

25 D. Upon notification by a law enforcement agency

.179447.2SA

underscored material = new
[bracketed material] = delete

1 that a missing child has been recovered, the state registrar
2 shall remove the flag from the child's birth record."

3 Section 10. Section 29-15-8 NMSA 1978 (being Laws 1995,
4 Chapter 146, Section 8) is amended to read:

5 "29-15-8. RELEASE OF DENTAL RECORDS--IMMUNITY.--

6 A. At the time a missing person report is made, the
7 law enforcement agency to which the missing person report is
8 given shall provide a dental record release form conforming to
9 the requirements of the federal Health Information Portability
10 and Accountability Act of 1996 to the custodian or immediate
11 family member of the missing person, provided that the
12 custodian or immediate family member is authorized pursuant to
13 that federal act to execute a release on behalf of the missing
14 person. The law enforcement agency shall endorse the dental
15 record release form with a notation that a missing person
16 report has been made in compliance with the provisions of the
17 Missing Persons Information and Reporting Act. When the dental
18 record release form is properly completed by the custodian or
19 immediate family member of the missing person and contains the
20 endorsement, the form is sufficient to permit a dentist or
21 physician in this state to release dental records relating to
22 the missing person to the law enforcement agency.

23 B. [~~A district court judge may for good cause shown~~
24 ~~authorize the release of dental records of a missing person to~~
25 ~~a law enforcement agency.~~] If a release form cannot be

.179447.2SA

underscored material = new
[bracketed material] = delete

1 executed, the law enforcement agency shall seek disclosure of
2 the dental records of a missing person directly from the
3 records custodian pursuant to the provisions of the federal
4 Health Information Portability and Accountability Act of 1996
5 that allow disclosure of health information for law enforcement
6 purposes.

7 C. The law enforcement agency shall send the dental
8 records to the clearinghouse.

9 D. A dentist or physician who releases dental
10 records [~~to a person presenting a proper release executed or~~
11 ~~ordered~~] pursuant to this section is immune from civil
12 liability or criminal prosecution for the release of the dental
13 records."

14 Section 11. Section 29-15-9 NMSA 1978 (being Laws 1995,
15 Chapter 146, Section 9) is amended to read:

16 "29-15-9. CROSS-CHECKING AND MATCHING.--

17 A. The clearinghouse shall cross-check and attempt
18 to match unidentified [~~bodies~~] human remains with descriptions
19 of missing persons. When the clearinghouse discovers a
20 possible match between [~~an~~] unidentified [~~body~~] human remains
21 and a missing person description, the clearinghouse shall
22 notify the appropriate law enforcement agencies.

23 B. Law enforcement agencies that receive notice of
24 a possible match shall make arrangements for positive
25 identification. If a positive identification is made, the law

.179447.2SA

underscored material = new
[bracketed material] = delete

1 enforcement agency shall complete and close the investigation
2 with written notification to the clearinghouse."

3 Section 12. Section 29-15-10 NMSA 1978 (being Laws 1995,
4 Chapter 146, Section 10) is amended to read:

5 "29-15-10. INTERAGENCY COOPERATION.--

6 A. State agencies and public and private schools
7 shall cooperate with a law enforcement agency that is
8 investigating a missing person report and shall furnish any
9 information that will assist the law enforcement agency in
10 completing the investigation.

11 B. Information provided by a state agency or a
12 public or private school shall not be released to any person
13 outside the law enforcement agency or the clearinghouse, except
14 as provided by [~~regulation~~] rule of the department of public
15 safety."

16 Section 13. Section 29-15-11 NMSA 1978 (being Laws 1995,
17 Chapter 146, Section 11) is amended to read:

18 "29-15-11. CONFIDENTIALITY OF RECORDS.--

19 A. The department of public safety shall by
20 [~~regulation~~] rule provide for the classification of information
21 and records as confidential that:

22 (1) are otherwise confidential under state or
23 federal law or [~~regulations~~] rules adopted pursuant to state or
24 federal law;

25 (2) are related to the investigation by a law

.179447.2SA

underscored material = new
[bracketed material] = delete

1 enforcement agency of a missing person or ~~[an]~~ unidentified
2 ~~[body]~~ human remains, if the department of public safety, in
3 consultation with the law enforcement agency, determines that
4 release of the information would be deleterious to the
5 investigation;

6 (3) are records or notations that the
7 clearinghouse maintains for internal use in matters relating to
8 missing persons and unidentified ~~[bodies]~~ human remains and the
9 department of public safety determines that release of the
10 internal documents might interfere with an investigation by a
11 law enforcement agency in New Mexico or any other jurisdiction;
12 or

13 (4) the department of public safety determines
14 might interfere with an investigation or otherwise harm a
15 person, custodian or reporter.

16 B. The ~~[regulation]~~ rule may provide for the
17 sharing of confidential information with the custodian or
18 immediate family member of the missing person."

19 Section 14. Section 29-15-12 NMSA 1978 (being Laws 1995,
20 Chapter 146, Section 12) is amended to read:

21 "29-15-12. ATTORNEY GENERAL TO REQUIRE COMPLIANCE--
22 REMOVAL OR DISCIPLINE.--

23 A. The attorney general shall ~~[require each law~~
24 ~~enforcement agency to comply with the provisions of the Missing~~
25 ~~Persons Information Act and may seek writs of mandamus or other~~

.179447.2SA

underscoring material = new
[bracketed material] = delete

1 ~~appropriate remedies to enforce the provisions of that act]~~
2 enforce state agency compliance with the provisions of the
3 Missing Persons Information and Reporting Act as appropriate to
4 assure the immediate response to a report of a missing person.

5 B. The intentional or willful neglect of a state
6 agency officer or employee to fulfill a duty imposed on the
7 officer or employee by the Missing Persons Information and
8 Reporting Act shall be grounds for removal from office as
9 provided by law or disciplinary action up to and including
10 dismissal pursuant to the Personnel Act."

11 Section 15. REPEAL.--Sections 32A-14-1 through 32A-14-4
12 NMSA 1978 (being Laws 1987, Chapter 25, Sections 1 through 4,
13 as amended) are repealed.