

1 SENATE BILL 357

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO DNA IDENTIFICATION; PROVIDING THAT THE DNA
12 IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE SHALL DESIGNATE THE
13 LOCATION OF THE ADMINISTRATIVE CENTER AND APPROVE THE SELECTION
14 OF THE HEAD OF THE ADMINISTRATIVE CENTER; PROVIDING FOR
15 QUALIFICATIONS FOR THE HEAD OF THE ADMINISTRATIVE CENTER;
16 REQUIRING A WRITTEN AGREEMENT BETWEEN THE COMMITTEE AND THE LAW
17 ENFORCEMENT AGENCY WHERE THE ADMINISTRATIVE CENTER IS LOCATED;
18 PROVIDING FOR THE COLLECTION OF THE DNA FEE BY THE CORRECTIONS
19 DEPARTMENT; PROVIDING PROCEDURES FOR MONEY WITHDRAWN FROM THE
20 DNA IDENTIFICATION SYSTEM FUND; REQUIRING ACCOUNTABILITY FOR
21 EXPENDITURES FROM THE FUND.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 29-16-3 NMSA 1978 (being Laws 1997,
25 Chapter 105, Section 3, as amended) is amended to read:

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1 "29-16-3. DEFINITIONS.--As used in the DNA Identification
2 Act:

3 A. "administrative center" means the part of a law
4 enforcement agency crime laboratory that participates in the
5 national DNA index system [~~qualified New Mexico crime~~
6 ~~laboratory~~] and that administers and operates the DNA
7 identification system;

8 B. "CODIS" means the federal bureau of
9 investigation's national DNA index system for storage and
10 exchange of DNA records submitted by forensic DNA laboratories;

11 C. "covered offender" means any person convicted of
12 a felony offense as an adult pursuant to state, federal or
13 military law or convicted as an adult pursuant to youthful
14 offender or serious youthful offender proceedings under the
15 Children's Code or a sex offender required to register pursuant
16 to the provisions of the Sex Offender Registration and
17 Notification Act;

18 D. "department" means the department of public
19 safety;

20 E. "DNA" means deoxyribonucleic acid as the basis
21 of human heredity;

22 F. "DNA identification system" means the DNA
23 identification system established pursuant to the DNA
24 Identification Act;

25 G. "DNA oversight committee" means the DNA

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1 identification system oversight committee;

2 H. "DNA records" means the results of DNA testing
3 and related information;

4 I. "DNA testing" means a forensic DNA analysis that
5 includes restriction fragment length polymorphism, polymerase
6 chain reaction or other valid methods of DNA typing performed
7 to obtain identification characteristics of samples;

8 J. "fund" means the DNA identification system fund;

9 K. "missing persons DNA identification system"
10 means the missing persons DNA identification system established
11 by the DNA Identification Act;

12 L. "sample" means a sample of biological material
13 sufficient for DNA testing; and

14 M. "sex offender DNA identification system" means
15 the sex offender DNA identification system established by the
16 DNA Identification Act."

17 SECTION 2. Section 29-16-4 NMSA 1978 (being Laws 1997,
18 Chapter 105, Section 4, as amended) is amended to read:

19 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--
20 [~~TRANSFER TO OTHER LAW ENFORCEMENT AGENCY~~] HEAD--LOCATION--
21 WRITTEN AGREEMENT.--

22 [~~A. The administrative center shall be an~~
23 ~~appropriate unit of the department or such other qualified New~~
24 ~~Mexico law enforcement agency as the secretary of public safety~~
25 ~~may designate in accordance with this section that meets the~~

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1 ~~requirements for participation in the national DNA index~~
2 ~~system.~~

3 B.] A. 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 generation
9 of investigative leads, statistical analysis of DNA profiles
10 and identification of missing persons and unidentified human
11 remains. Procedures used for DNA testing shall be compatible
12 with the procedures the federal bureau of investigation has
13 specified, including comparable test procedures, laboratory
14 equipment, supplies and computer software. Procedures used
15 shall meet or exceed the provisions of the federal DNA
16 Identification Act of 1994 regarding minimum standards for
17 state participation in CODIS, including minimum standards for
18 the acceptance, security and dissemination of DNA records;

19 (2) coordinate sample collection activities;

20 (3) perform or contract for DNA testing;

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

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

25 (6) adopt rules and procedures governing:

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- 1 (a) sample collection;
2 (b) DNA testing;
3 (c) the DNA identification system and
4 DNA records;
5 (d) the acceptance, security and
6 dissemination of DNA records; and
7 (e) communication between local, state
8 and federal law enforcement agencies, the corrections
9 department and local jails and detention facilities in order to
10 minimize duplicate sample collections from the same individual;
11 (7) provide training to jail and detention
12 facility personnel who are required to collect samples pursuant
13 to Section 29-3-10 NMSA 1978;
14 (8) be reimbursed for, pursuant to the DNA
15 Identification Act, the costs of sample collection and DNA
16 testing of samples taken for the purposes of the identification
17 of missing persons and unidentified human remains;
18 (9) establish and administer the missing
19 persons DNA identification system as a part of the DNA
20 identification system; and
21 (10) establish and administer the sex offender
22 DNA identification system as part of the DNA identification
23 system.

24 ~~[G. The secretary of public safety may designate,~~
25 ~~pursuant to a joint powers agreement, the crime laboratory of~~

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1 ~~the police department for the largest municipality in a class A~~
2 ~~county having a population of more than two hundred fifty~~
3 ~~thousand at the most recent federal decennial census to act as~~
4 ~~the administrative center.~~

5 ~~D. The secretary of public safety may designate,~~
6 ~~pursuant to a joint powers agreement, any other law enforcement~~
7 ~~agency to act as administrative center upon recommendation of~~
8 ~~five voting members of the DNA oversight committee]~~

9 B. The law enforcement agency where the
10 administrative center is located shall select the head of the
11 administrative center with the approval of six members of the
12 DNA oversight committee. The head of the administrative center
13 shall manage the operations of the administrative center and
14 shall have the education and experience to meet or exceed the
15 requirements for a technical leader or a CODIS administrator
16 pursuant to the federal bureau of investigation's quality
17 assurance standards.

18 C. The administrative center shall be located at
19 the crime laboratory of the law enforcement agency for the
20 largest municipality in a class A county having a population of
21 more than five hundred thousand at the most recent federal
22 decennial census. If a relocation of the administrative center
23 is required for continued compliance with the provisions of the
24 DNA Identification Act, the DNA oversight committee shall
25 designate any future locations of the administrative center

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1 upon approval of six voting members of the committee.

2 D. The DNA oversight committee shall enter into a
3 written agreement with the law enforcement agency where the
4 administrative center is located and may designate the attorney
5 general to enter into the agreement on its behalf and with its
6 approval."

7 SECTION 3. Section 29-16-5 NMSA 1978 (being Laws 1997,
8 Chapter 105, Section 5, as amended) is amended to read:

9 "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND
10 DUTIES.--

11 A. The "DNA identification system oversight
12 committee" is created. The DNA oversight committee shall be
13 composed of nine voting members as follows:

14 (1) a scientific representative from the
15 department crime laboratory appointed by the secretary of
16 public safety;

17 (2) a scientific representative from the crime
18 laboratory of the police department for the largest
19 municipality in a class A county having a population of more
20 than two hundred fifty thousand at the most recent federal
21 decennial census;

22 (3) the secretary of corrections or the
23 secretary's designated representative;

24 (4) the state medical investigator or the
25 investigator's designated representative;

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1 (5) the attorney general or the attorney
2 general's designated representative;

3 (6) the president of the district ~~[attorneys]~~
4 attorney's association or the president's designated
5 representative;

6 (7) the chief public defender or the chief
7 public defender's designated representative;

8 (8) the president of the New Mexico criminal
9 defense lawyers association or the president's designated
10 representative; and

11 (9) the head of the administrative center or
12 the head's designated representative.

13 B. The DNA oversight committee shall adopt rules
14 and procedures regarding the administration and operation of
15 the DNA identification system.

16 C. The administrative center shall review and make
17 recommendations to the DNA oversight committee regarding rules
18 and procedures for the administration and operation of the DNA
19 identification system.

20 D. The DNA oversight committee shall oversee the
21 establishment and administration of the missing persons DNA
22 identification system as part of the DNA identification system.

23 E. The DNA oversight committee shall adopt rules
24 and procedures regarding the administration and operation of
25 the missing persons DNA identification system as part of the

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1 DNA identification system.

2 F. The DNA oversight committee shall oversee the
3 establishment and administration of the sex offender DNA
4 identification system as part of the DNA identification system.

5 G. The DNA oversight committee shall adopt rules
6 and procedures regarding the administration and operation of
7 the sex offender DNA identification system as part of the DNA
8 identification system.

9 H. The DNA oversight committee shall designate and
10 approve the location of the administrative center as provided
11 in Section 29-16-4 NMSA 1978."

12 SECTION 4. Section 29-16-11 NMSA 1978 (being Laws 1997,
13 Chapter 105, Section 11) is amended to read:

14 "29-16-11. ~~[ASSESSMENT OF]~~ COLLECTION OF DNA FEE.--~~[On~~
15 ~~and after the effective date of the DNA Identification Act]~~
16 When a covered offender is convicted, ~~[the court shall assess~~
17 ~~fee of one hundred dollars (\$100) in addition to any other fee,~~
18 ~~restitution or fine. The fee shall be deposited in the fund.]~~
19 the corrections department shall collect a DNA fee of one
20 hundred dollars (\$100) from the covered offender and shall
21 remit the fee to the state treasurer for deposit in the DNA
22 identification system fund."

23 SECTION 5. Section 29-16-13 NMSA 1978 (being Laws 1997,
24 Chapter 105, Section 13, as amended) is amended to read:

25 "29-16-13. DNA IDENTIFICATION SYSTEM FUND CREATED--

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1 PURPOSES--PROCEDURE--ACCOUNTING.--

2 A. The "DNA identification system fund" is created
3 in the state treasury. [~~B.~~] The fund shall consist of all
4 money received by appropriation, gift or grant, all [~~money~~] DNA
5 fees collected pursuant to Section 29-16-11 NMSA 1978 and all
6 investment income from the fund.

7 [~~E.~~] B. Money and investment income in the fund at
8 the end of any fiscal year shall not revert to the general fund
9 but shall remain in the fund. [~~D.~~] Money and investment income
10 in the fund is appropriated to the [~~administrative center~~] DNA
11 oversight committee for expenditure in fiscal year 1998 and
12 subsequent fiscal years for the purposes [~~of the fund~~] provided
13 in this section.

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

24 D. The DNA oversight committee shall withdraw money
25 from the fund as necessary to implement the purposes of the DNA

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1 Identification Act. Any amounts withdrawn from the fund shall
2 be deposited into a separate account, maintained by the law
3 enforcement agency where the administrative center is located,
4 to be used only for the purposes authorized in this section.

5 E. The law enforcement agency where the
6 administrative center is located shall annually certify to the
7 DNA oversight committee and the state treasurer's office that
8 all money withdrawn from the fund was expended in accordance
9 with this section and shall provide an accounting of the funds
10 as directed by the committee or the state treasurer's office.

11 F. Withdrawals from the fund shall be made upon
12 warrants drawn by the secretary of finance and administration
13 pursuant to vouchers issued and signed by the chair of the DNA
14 oversight committee or the chair's designee."

15 SECTION 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2011.