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SENATE BILL 114

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CISCO MCSORLEY

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE DNA IDENTIFICATION ACT;
PROVIDING FOR COLLECTION OF DNA SAMPLES FROM CONVICTED FELONS;
ASSESSING A FEE; CREATING A FUND; PROVIDING A PENALTY; MAKING AN
APPROPRIATION.

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

Section 1. SHORT TITLE. -- This act may be cited as the "DNA
Identification Act".

Section 2. PURPOSE OF ACT. -- The purpose of the DNA
Identification Act is to:

A. establish a DNA identification system for covered
offenders;

B. facilitate the use of DNA records by law
enforcement agencies in the identification, detection or
exclusion of persons in connection with criminal investigations,

Underscored material = new
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1 prosecutions and other purposes; and

2 C. assist in humanitarian endeavors, including
3 identification of deceased persons, missing persons, close
4 biological relatives of missing persons and disaster victims.

5 Section 3. DEFINITIONS. --As used in the DNA Identification
6 Act:

7 A. "administrative center" means the law enforcement
8 agency or unit that administers and operates the DNA
9 identification system;

10 B. "advisory committee" means the DNA identification
11 system advisory committee;

12 C. "CODIS" means the federal bureau of
13 investigation's national DNA index system for storage and
14 exchange of DNA records submitted by forensic DNA laboratories;

15 D. "covered offender" means any person convicted of
16 a felony offense under the Criminal Code or adjudicated pursuant
17 to youthful offender or serious youthful offender proceedings
18 under the Children's Code;

19 E. "department" means the department of public
20 safety;

21 F. "DNA" means deoxyribonucleic acid as the basis of
22 human heredity;

23 G. "DNA identification system" means the DNA
24 identification system established pursuant to the DNA
25 Identification Act;

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

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

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

9 K. "sample" means a sample of biological material
10 sufficient for DNA testing.

11 Section 4. ADMINISTRATIVE CENTER-- POWERS AND DUTIES--
12 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

13 A. The administrative center shall be an appropriate
14 unit of the department or such other qualified New Mexico law
15 enforcement agency as the secretary of public safety may
16 designate in accordance with this section.

17 B. The administrative center shall:

18 (1) establish and administer the DNA
19 identification system. The DNA identification system shall
20 provide for collection, storage, DNA testing, maintenance and
21 comparison of samples and DNA records for forensic purposes.
22 Such purposes shall include generation of investigative leads
23 and statistical analysis of DNA profiles, as well as
24 humanitarian purposes. Procedures used for DNA testing shall be
25 compatible with the procedures the federal bureau of

1 investigation has specified, including comparable test
2 procedures, laboratory equipment, supplies and computer
3 software. Procedures used shall meet or exceed CODIS' minimum
4 standards for acceptance of DNA records;

- 5 (2) coordinate sample collection activities;
- 6 (3) perform or contract for DNA testing;
- 7 (4) serve as a repository for samples and DNA
8 records;
- 9 (5) act as liaison with the federal bureau of
10 investigation for purposes of CODIS; and
- 11 (6) adopt regulations and procedures governing:
 - 12 (a) sample collection;
 - 13 (b) DNA testing; and
 - 14 (c) the DNA identification system and DNA
15 records.

16 C. The secretary of public safety may designate,
17 pursuant to a joint powers agreement, the crime laboratory of
18 the police department for the largest municipality in a class A
19 county having a population of more than two hundred fifty
20 thousand at the most recent federal decennial census to act as
21 the administrative center.

22 D. The secretary of public safety may designate,
23 pursuant to a joint powers agreement, any other law enforcement
24 agency to act as administrative center upon recommendation of
25 four voting members of the advisory committee.

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1 Section 5. ADVISORY COMMITTEE--CREATED--POWERS AND
2 DUTIES.--

3 A. The "DNA identification system advisory
4 committee" is created. The advisory committee shall be composed
5 of five voting members and one nonvoting member as follows:

6 (1) a scientific representative from the
7 department crime laboratory appointed by the secretary of public
8 safety;

9 (2) a scientific representative from the crime
10 laboratory of the police department for the largest municipality
11 in a class A county having a population of more than two hundred
12 fifty thousand at the most recent federal decennial census;

13 (3) the secretary of corrections or his
14 designated representative;

15 (4) the state medical investigator or his
16 designated representative;

17 (5) the attorney general or his designated
18 representative; and

19 (6) the head of the administrative center or
20 his designated representative, who is the nonvoting member.

21 B. The advisory committee shall review and advise
22 the administrative center on rules, regulations, procedures and
23 policies to be adopted and sample collection and testing
24 procedures.

25 C. The advisory committee may advise the

Underscored material = new
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1 administrative center on how to best prioritize analysis of
2 samples.

3 Section 6. COVERED OFFENDERS SUBJECT TO COLLECTION OF
4 SAMPLES. -- Each covered offender shall provide one or more
5 samples to the administrative center, as follows:

6 A. covered offenders convicted on or after the
7 effective date of the DNA Identification Act shall provide a
8 sample at any time before release from any correctional facility
9 or, if the covered offender is not sentenced to incarceration,
10 before the end of any period of probation or other supervised
11 release;

12 B. covered offenders incarcerated on the effective
13 date of the DNA Identification Act shall provide a sample at any
14 time before release from any correctional facility; and

15 C. covered offenders on probation or other
16 supervised release on the effective date of the DNA
17 Identification Act shall provide a sample before the end of any
18 period of probation or other supervised release.

19 Section 7. PROCEDURES FOR COLLECTION OF SAMPLES. --

20 A. The collection of samples pursuant to the
21 provisions of Section 6 of the DNA Identification Act shall be
22 conducted in a medically approved manner in accordance with
23 rules, regulations and procedures adopted by the administrative
24 center.

25 B. All persons who collect samples shall be trained

Underscored material = new
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1 in procedures that meet the requirements and standards specified
2 in Subsection A of this section.

3 C. All persons authorized to collect samples and
4 their employers shall be immune from liability in any civil or
5 criminal action if the collection is performed without
6 negligence. This subsection shall not be deemed to create any
7 additional liability or waive any immunity of public employees
8 under the Tort Claims Act.

9 D. Samples shall be stored in accordance with rules,
10 regulations and procedures adopted by the administrative center.

11 E. DNA testing shall be performed by the
12 administrative center or a contract facility it may designate.

13 F. DNA records and samples shall be securely
14 classified and stored at the administrative center.

15 Section 8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION
16 OF DNA RECORDS. --

17 A. DNA records and samples are confidential and
18 shall not be disclosed except as authorized in the DNA
19 Identification Act.

20 B. The administrative center shall make DNA records
21 available for identification, comparison and investigative
22 purposes to local, state and federal law enforcement agencies.
23 The administrative center may disseminate statistical or
24 research information derived from samples and DNA testing if all
25 personal identification is removed.

Underscored material = new
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1 Section 9. ENFORCEMENT. --The attorney general or a
2 district attorney may petition a district court for an order
3 requiring a covered offender to:

4 A. provide a sample; or

5 B. provide a sample by alternative means if the
6 covered offender will not cooperate.

7 Section 10. ASSESSMENT OF FEE. --On and after the effective
8 date of the DNA Identification Act, when a covered offender is
9 convicted, the court shall assess a fee of one hundred dollars
10 (\$100) in addition to any other fee, restitution or fine. The
11 fee shall be deposited in the fund.

12 Section 11. PENALTY. --Any person who by virtue of his
13 employment or official position possesses or has access to
14 samples or DNA records and who willfully discloses any of them
15 to any person or in any manner not authorized by the DNA
16 Identification Act is guilty of a misdemeanor and shall be
17 sentenced pursuant to the provisions of Subsection A of Section
18 31-19-1 NMSA 1978.

19 Section 12. DNA FUND CREATED--PURPOSES. --

20 A. The "DNA identification system fund" is created
21 in the state treasury.

22 B. The fund shall consist of all money received by
23 appropriation, gift or grant, all money collected pursuant to
24 Section 10 of the DNA Identification Act and all investment
25 income from the fund.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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5 February 12, 1997
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7 Mr. President:
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9 Your JUDICIARY COMMITTEE, to whom has been referred
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11 SENATE BILL 114
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13 has had it under consideration and reports same with
14 recommendation that it DO NOT PASS, but that
15

16 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
17 SENATE BILL 114
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19 DO PASS, and thence referred to the FINANCE COMMITTEE.
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21 Respectfully submitted,
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Fernando R. Macias, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Sanchez, Tsosie, McSorley

Absent: None

S0114JU1

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 114

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE DNA IDENTIFICATION ACT;
PROVIDING FOR COLLECTION OF DNA SAMPLES FROM CONVICTED FELONS;
ASSESSING A FEE; CREATING A FUND; PROVIDING A PENALTY; MAKING AN
APPROPRIATION.

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

Section 1. SHORT TITLE. -- This act may be cited as the "DNA
Identification Act".

Section 2. PURPOSE OF ACT. -- The purpose of the DNA
Identification Act is to:

A. establish a DNA identification system for covered
offenders; and

B. facilitate the use of DNA records by local, state
and federal law enforcement agencies in the identification,
detection or exclusion of persons in connection with criminal

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investigations.

Section 3. DEFINITIONS.--As used in the DNA Identification Act:

1 A. "administrative center" means the law enforcement
2 agency or unit that administers and operates the DNA
3 identification system;

4 B. "DNA oversight committee" means the DNA
5 identification system oversight committee;

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

9 D. "covered offender" means any person convicted of a
10 felony offense as an adult under the Criminal Code, the Motor
11 Vehicle Code or the constitution of New Mexico or convicted as
12 an adult pursuant to youthful offender or serious youthful
13 offender proceedings under the Children's Code;

14 E. "department" means the department of public safety;

15 F. "DNA" means deoxyribonucleic acid as the basis of
16 human heredity;

17 G. "DNA identification system" means the DNA
18 identification system established pursuant to the DNA
19 Identification Act;

20 H. "DNA records" means the results of DNA testing and
21 related information;

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

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1 J. "fund" means the DNA identification system fund; and

2 K. "sample" means a sample of biological material
3 sufficient for DNA testing.

4 Section 4. ADMINISTRATIVE CENTER-- POWERS AND DUTIES-- TRANSFER
5 TO OTHER LAW ENFORCEMENT AGENCY. --

6 A. The administrative center shall be an appropriate unit
7 of the department or such other qualified New Mexico law
8 enforcement agency as the secretary of public safety may designate
9 in accordance with this section.

10 B. The administrative center shall:

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

24 (2) coordinate sample collection activities;

25 (3) perform or contract for DNA testing;

1 (4) serve as a repository for samples and DNA
2 records;

3 (5) act as liaison with the federal bureau of
4 investigation for purposes of CODIS; and

5 (6) adopt regulations and procedures governing:

6 (a) sample collection;

7 (b) DNA testing;

8 (c) the DNA identification system and DNA
9 records; and

10 (d) the acceptance, security and dissemination
11 of DNA records.

12 C. The secretary of public safety may designate, pursuant
13 to a joint powers agreement, the crime laboratory of the police
14 department for the largest municipality in a class A county having
15 a population of more than two hundred fifty thousand at the most
16 recent federal decennial census to act as the administrative
17 center.

18 D. The secretary of public safety may designate, pursuant
19 to a joint powers agreement, any other law enforcement agency to
20 act as administrative center upon recommendation of five voting
21 members of the advisory committee.

22 Section 5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND
23 DUTIES.--

24 A. The "DNA identification system oversight committee" is
25 created. The DNA oversight committee shall be composed of nine

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1 voting members as follows:

2 (1) a scientific representative from the department
3 crime laboratory appointed by the secretary of public safety;

4 (2) a scientific representative from the crime
5 laboratory of the police department for the largest municipality in
6 a class A county having a population of more than two hundred fifty
7 thousand at the most recent federal decennial census;

8 (3) the secretary of corrections or his designated
9 representative;

10 (4) the state medical investigator or his designated
11 representative;

12 (5) the attorney general or his designated
13 representative;

14 (6) the president of the district attorney's
15 association or his designated representative;

16 (7) the chief public defender or his designated
17 representative; and

18 (8) the president of the New Mexico criminal defense
19 lawyers association or his designated representative; and

20 (9) the head of the administrative center or his
21 designated representative.

22 B. The DNA oversight committee shall adopt rules,
23 regulations and procedures regarding the administration and
24 operation of the DNA identification system.

25 C. The administrative center shall review and make

1 recommendations to the DNA oversight committee regarding rules,
2 regulations and procedures for the administration and operation of
3 the DNA identification system.

4 Section 6. COVERED OFFENDERS SUBJECT TO COLLECTION OF
5 SAMPLES. -- Each covered offender shall provide one or more samples
6 to the administrative center, as follows:

7 A. covered offenders convicted on or after the effective
8 date of the DNA Identification Act shall provide a sample at any
9 time before release from any correctional facility or, if the
10 covered offender is not sentenced to incarceration, before the end
11 of any period of probation or other supervised release;

12 B. covered offenders incarcerated on the effective date
13 of the DNA Identification Act shall provide a sample at any time
14 before release from any correctional facility; and

15 C. covered offenders on probation or other supervised
16 release on the effective date of the DNA Identification Act shall
17 provide a sample before the end of any period of probation or other
18 supervised release.

19 Section 7. PROCEDURES FOR COLLECTION OF SAMPLES. --

20 A. The collection of samples pursuant to the provisions
21 of Section 6 of the DNA Identification Act shall be conducted in a
22 medically approved manner in accordance with rules, regulations and
23 procedures adopted by the DNA oversight committee.

24 B. All persons who collect samples shall be trained in
25 procedures that meet the requirements and standards specified in

Underscored material = new
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1 Subsection A of this section.

2 C. All persons authorized to collect samples and their
3 employers shall be immune from liability in any civil or criminal
4 action with regard to the collection of samples, if the collection
5 is performed without negligence. This subsection shall not be
6 deemed to create any additional liability or waive any immunity of
7 public employees under the Tort Claims Act.

8 D. Samples shall be stored in accordance with rules,
9 regulations and procedures adopted by the administrative center.

10 E. DNA testing shall be performed by the administrative
11 center or a contract facility it may designate.

12 F. DNA records and samples shall be securely classified
13 and stored at the administrative center.

14 Section 8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION OF
15 DNA RECORDS.--

16 A. DNA records and samples are confidential and shall not
17 be disclosed except as authorized in the DNA Identification Act.

18 B. The administrative center shall make DNA records
19 available for identification, comparison and investigative purposes
20 to local, state and federal law enforcement agencies. The
21 administrative center may disseminate statistical or research
22 information derived from samples and DNA testing if all personal
23 identification is removed.

24 Section 9. ENFORCEMENT.--The attorney general or a district
25 attorney may petition a district court for an order requiring a

1 covered offender to:

2 A. provide a sample; or

3 B. provide a sample by alternative means if the covered
4 offender will not cooperate.

5 Section 10. EXPUNGEMENT OF SAMPLES AND DNA RECORDS FROM THE
6 DNA IDENTIFICATION SYSTEM AND CODIS. --

7 A. A person may request expungement of his sample and DNA
8 records from the DNA identification system on the grounds that the
9 conviction that led to the inclusion of his sample and DNA records
10 in the DNA identification system has been reversed.

11 B. The administrative center shall expunge a person's
12 sample and DNA records from the DNA identification system when the
13 person provides the administrative center with the following
14 materials:

15 (1) a written request for expungement of his sample
16 and DNA records; and

17 (2) a certified copy of a court order that reverses
18 the conviction that led to the inclusion of his sample and DNA
19 records in the DNA identification system.

20 C. When a person's sample and DNA records are expunged
21 from the DNA identification system, the head of the administrative
22 center shall ensure that the person's sample and DNA records are
23 expunged from CODIS.

24 Section 11. ASSESSMENT OF FEE. -- On and after the effective
25 date of the DNA Identification Act, when a covered offender is

. 115709.3

1 convicted, the court shall assess a fee of one hundred dollars
2 (\$100) in addition to any other fee, restitution or fine. The fee
3 shall be deposited in the fund.

4 Section 12. PENALTY. --

5 A. Any person who by virtue of his employment or official
6 position possesses or has access to samples or DNA records and who
7 willfully discloses any of them to any person or in any manner not
8 authorized by the DNA Identification Act is guilty of a fourth
9 degree felony and shall be sentenced pursuant to the provisions of
10 Section 31-18-15 NMSA 1978.

11 B. Any person who uses or attempts to use samples or DNA
12 records for a purpose not authorized by the DNA Identification Act
13 is guilty of a fourth degree felony and shall be sentenced pursuant
14 to the provisions of Section 31-18-15 NMSA 1978.

15 C. Any person who obtains or attempts to obtain samples
16 or DNA records for a purpose not authorized by the DNA
17 Identification Act is guilty of a fourth degree felony and shall be
18 sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

19 Section 13. DNA FUND CREATED--PURPOSES. --

20 A. The "DNA identification system fund" is created in the
21 state treasury.

22 B. The fund shall consist of all money received by
23 appropriation, gift or grant, all money collected pursuant to
24 Section 11 of the DNA Identification Act and all investment income
25 from the fund.

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

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

E. The fund shall be used for the purposes of the DNA Identification Act, including paying the expenses incurred by the administrative center and all other reasonable expenses. The administrative center may use money in the fund for loans or grants of money, equipment or personnel to any law enforcement agency, correctional facility, judicial agency, the public defender department or the office of the medical investigator, upon recommendation of the DNA oversight committee.

Section 14. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.

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SJC/SB 114

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 4, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 114

has had it under consideration and reports same with recommendation
that it DO PASS.

Respectfully submitted,

Ben D. Altamirano, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Carraro, Lyons

Excused: Aragon, Campos, Ingle, Altamirano

Absent: None

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Underscored material = new
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**State of New Mexico
House of Representatives**

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

**SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 114**

**has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:**

**1. On page 7, line 23, after the word "Act" insert "pursuant to
the rules and regulations developed and adopted by the DNA oversight
committee".**

**2. On page 8, line 1, after the word "agencies" insert
"pursuant to the rules and regulations developed and adopted by the
DNA oversight committee".**

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/SJCS/SB 114

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3. On page 8, line 4, after the word "removed" insert "pursuant to the rules and regulations developed and adopted by the DNA oversight committee"., and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/SB 114

HJC/SJCS/SB 114

Page 26

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: Alwin, Luna, Rios, Sanchez

Absent: None

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Underscored material = new
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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 114

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 7, line 23, after the word "Act" insert "pursuant to
the rules and regulations developed and adopted by the DNA oversight
committee".

2. On page 8, line 1, after the word "agencies" insert
"pursuant to the rules and regulations developed and adopted by the
DNA oversight committee".

3. On page 8, line 4, after the word "removed" insert "pursuant
to the rules and regulations developed and adopted by the DNA
oversight committee".,

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/SB 114

HJC/SJCS/SB 114

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and thence referred to the APPROPRIATIONS AND FINANCE
COMMI TTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Alwin, Luna, Rios, Sanchez

Absent: None

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