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OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1197

2007 HOUSE JUDICIARY

HB 1197

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/16/07

Recorder Job Number: 1150

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1197.

Rep. Klemin: Sponsor of the bill (see attached testimony). The fiscal note really didn't explain how the figures were arrived at. Apparently, this would include building a new state crime lab. I know that in the past we did send these DNA samples out of state for testing. I thought there was a new DNA lab that was being built at NDSU or one of the schools. Maybe there are some alternatives that we can look at as to what the actual fiscal effect is. That is something that would probably be best addressed in the Appropriations Committee if this committee determines that its policy should be looking at DNA arrestees for getting testing. I might also suggest that there are a number of other states that have passed these DNA arrestee bills. I've got some other information that I handed out to you.

Rep. Griffin: On the bottom of page 2, where the new language has been added, is it where the defendant was not convicted, is it going to be up to the court whether the DNA records be released.

Rep. Klemin: Under our existing law, that's the way it is. The additional language only puts arrests into the same standard. I need to mention also that this afternoon we have another bill that's going to be heard that I've introduced at the request of the district courts and Judge

Wefald is planning to attend and testify that amends section 31-13-07 to provide that instead of having an expungement that the court records would be sealed. We need to have this requirement of the removal of DNA profiles from the database because federal law says that in order for us to be able to use the national database system, as I understand it, if we don't have a provision provided for expungement of identifiable information in the database if a person is not convicted, then we're not going to be able to use the national database system. So, the way our law is right now, as I understand it, is sufficient under the federal law. We do have a process for expungement, which under that other bill will be sealed.

Rep. Koppelman: I think we're all sympathetic with the intent of the bill, and many of us have supported and/or participated in enacting the current laws that we have on the books as you know, relative to DNA testing. I'm curious though when you talk about the idea of requiring this testing for everyone that is arrested for any kind of a felony, and then you have the provision that Rep. Griffin was just asking about, that says if you're not convicted it would probably be expunged. What's the point. The current provision is, if you are convicted you're going to give a sample, and the new provision is that you give it upon arrest. If you're acquitted, it will probably go away, isn't that a lot of cost to do this.

Rep. Klemin: Well, that's actually the way it works under the federal law right now. Federal law requires a DNA sample from arrestees for federal crimes. The expungement comes if they're not convicted. The whole point of this thing of DNA fingerprint, is to put it into the database to see if it matches anything else. If it doesn't and they're not convicted of the crime they were arrested for, it's expunged.

Rep. Koppelman: The other thought that occurs to me, and I understand that people are arrested for felonies are probably are some folks that we should keep an eye on. On the other hand, not all people arrested for felonies are convicted, sometimes because there's not

enough evidence there, and sometimes because they are innocent. If we are saying that we are going to profile everybody that's arrested for felony, where does that stop. Do we then move and say that everybody who is arrested for a misdemeanor needs to have the test taken. Maybe, at some point, we should do the whole population because after all, we might get a hit somewhere, somebody who could live three doors down.

Rep. Klemin: The subject of defective DNA fingerprinting on civil liberties has been a philosophical discussion that's been going on across the country for some time now. There are states that do have DNA testing for people who are arrested for commission of misdemeanors. There are states that have DNA testing for persons who are convicted of misdemeanors. We don't have that. Another situation might be that somebody is arrested for a commission of a felony in ND but they are convicted of a misdemeanor, that doesn't go into our database right now. We don't take a test unless they are convicted of a felony. England tests everybody. There are some countries that are doing this population testing sometimes. It is an issue that's been discussed and being discussed, and probably will continue to be discussed. There are some court cases that have looked at whether the DNA fingerprinting of an arrestee goes beyond reasonable search and seizure under the 4th amendment of the constitution. Some courts have held that there must be a determination of probable cause to do that. Some courts have upheld the constitutionality of that. I believe that a majority of the courts that have looked at this have upheld the constitutionality, but there are some that haven't. North Dakota was one of the last states to pass on all felons' law. I hope we won't be the last to pass a state DNA arrestee law. It is a process that's ongoing. I should mention that I just read an article about DNA testing, the testing seems to be advancing. Hope Olson, the state crime lab person, could answer some questions about the costs, etc. There is a new methodology which has now come out that's going to be used by Homeland Security that reduces

the time to about 2-5 minutes instead of the days it takes now for the test results to come in. Hopefully that will become available soon.

Rep. Koppelman: Is the cost coming down on the tests. Also, you mentioned earlier that you were aware of some states that test arrestees of violent crimes. Did you look into that, and would that substantially reduce the fiscal note.

Rep. Klemin: I just saw the fiscal note this morning. The fiscal note doesn't give us a whole lot of information as to how they came up with the numbers. I don't know what the current cost of a DNA kit is, it used to be around \$30. Whether that cost has come down recently, I don't know. I don't know what the cost of the new test would be either.

Rep. Koppelman: Is there any way to find that out. Would the cost be less if we just tested arrestees of violent crimes vs. all other felonies. I wonder what the fiscal impact on that would be.

Rep. Klemin: In the fiscal note, it doesn't say how the figures were arrived at. They must have used some formula. I hope they didn't ask how much a new crime lab going to cost and here's what it is.

Rep. Meyer: How many people were arrested last year for a felony.

Rep. Klemin: I think Tom Trenbeath has some information on that.

Tom Trenbeath, AG's office: The figures that I have been told, that felony arrests are approximately 5,000 across the state. That seems like a lot, but total arrests across the state are about 29,000.

Rep. Griffin: Do you know what the conviction rate is?

Tom Trenbeath: I don't know, I'm sure it is determinable.

Chairman DeKrey: Are you going to testify for the bill, Tom.

Tom Trenbeath: I will be testifying, neutral.

Rep. Klemin: I might say, Rep. Griffin, that a number of those people who are arrested for a commission of a felony are already in the system, have been before and had their DNA sample taken. As you will see, in the language of HB 1197, they are not required to do it again. So there is going to be duplication of people that won't need a second test. This will only affect arrests for brand new felons. There are a number of people already in the system.

Rep. Kretschmar: Have any of the courts looked at the issue of an arrestee giving DNA and it be a violation of the 5th amendment of the constitution, where you're not required to testify against yourself.

Rep. Klemin: I'm not sure if they addressed that issue or not. I know they looked at it from the standpoint of the 4th amendment, but I don't know about the 5th amendment. In my opinion, off the cuff, it's no difference than taking regular fingerprints.

Rep. Kretschmar: Taking something from your body is different from fingerprints.

Rep. Klemin: I couldn't tell you that. I'm sure that if there were an argument to be made, somebody would make it.

Rep. Boehning: If you've already given a DNA sample and you're arrested again, do you have to give another sample.

Rep. Klemin: If you're already in the system, there's no reason to take another test.

Chairman DeKrey: Thank you. Further testimony in support of HB 1197. Testimony in opposition. Testimony neutral.

Tom Trenbeath, Chief Deputy AG, state of ND: I'm not necessarily here in support of the bill, but maybe to provide a little information. The first bit of information I will tell you, is that I think Rep. Klemin has done an excellent job of identifying the issues with respect to this bill. The AG is in support of any legislation that enhances the public safety of the citizens of the state of ND, within the bounds of both federal and state constitutions and within our capabilities

to support the legislation. So we have identified the issues of constitutionality as have been discussed here briefly and those have gone both ways across the country. Still and all, having just reviewed in a cursory fashion, the way those challenges have gone across the country, we are still in support of the concept of this legislation. The numbers given are a little tricky, because they are not exact. You can't say that there's going to be 5,000 of these done a year, all you can say is that 5,000 felony arrests, approximately, some of those might be multiple felonies for one arrest, some of those might be re-arrests of convicted felons, where their DNA would already be in the database. I guess what I am here to say, is that 5,000 number is probably a high number. That means that the fiscal note is probably a high number. However, I think there is a misconception with respect to the number in the fiscal note. That does not include any additional space that might be required for the lab. The initial one that was generated made a stab at that and we discarded it and said we want to know what the possibility of hard costs would be, recognizing that there may be some additional expense involved in building the lab that we might require to accommodate this, as well as other legislation. We have a DNA lab now, we have funds from our last biennium and are seeking additional funds to either add on to the existing lab or build a new building. So the fiscal note doesn't have exact numbers with respect to the actual cost of doing DNA tests. We are reasonably exact on that. I thought Hope would be here this morning, so she could recite some of those costs. Those costs are determinable, just the number they are applied to is what's off.

Rep. Meyer: Do you know the cost of the DNA kit.

Tom Trenbeath: I don't.

Rep. Meyer: I was just wondering on the fiscal note, when this comes down like this, how they arrived at this fiscal note.

Tom Trenbeath: That's what I was trying to explain. The formula is pretty exact as far as the hard costs of each individual test. The soft number is the number of tests that you can do. I'm suggesting that the 5,000 is probably on the high end.

Chairman DeKrey: I think we will probably have to get Kathy Roll in here to explain it to us. It says the expenditures include the cost of DNA test kits, software, IT consulting services needed to implement this legislation. Two FTE's and an genetic analyzer. The expenses will be from the general fund. The cost of building space, based on determination of the crime lab project location is unknown at this time. I think before we act on the bill, we need to kind of research what Rep. Koppelman was talking about. I'm sure there are plenty of felons out there that don't involve physical violence towards anybody and whether we can save enough money by not testing those people that don't seem to be prone to violence.

Tom Trenbeath: The other area to look at more closely, is the area that Rep. Klemin mentioned with respect to expungement and whether or not that would be a mandatory expungement. The way it's phrased now, it would seem to have some judicial discretion on whether to expunge. My understanding of the Justice for All act of 2004, would require expungement if there wasn't a conviction, or we wouldn't be able to participate in that. We might want to get some more definitive answers.

Chairman DeKrey: Thank you. Further testimony in support/opposition? We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/24/07

Recorder Job Number: 1850

Committee Clerk Signature

Maureen Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1197.

Rep. Klemin: To refresh your recollection, this is the bill that would require a DNA test from any person arrested and who's charged with a felony. It's called a DNA arrestee bill, which has been passed in a number of states, as I explained in my previous testimony. It seems to be the direction that the country is going to help us try and solve crimes through collecting DNA. Statistics show that people who commit crimes before, a lot of them commit crimes again. In fact, recidivism rates from what I've seen from materials, federal criminal justice statistics show that 70% of those people convicted have already been convicted before of something. In ND, the recidivism rate, or the number of people that are arrested and charged and convicted of a felony, about 23% of them, I'm told" have previously been convicted and would have already had a DNA sample taken. The bill is supported by the AG's office, which is also in charge of the Crime Lab, and hence the fiscal note impact. I went over to the Crime Lab and I talked to the Director, and quite honestly there is no room for any more testing over there. There is no room for any more equipment, no room for an additional person in there to do this work, they have a refrigerator full of about 2,000 DNA samples that they haven't tested yet from persons that have been convicted and they lost one of their forensic scientists. They

are estimating that there would be about 5,000 people arrested and charged with a felony per year in ND, of about 30,000 people arrested in total. Some of those people would have already had a DNA sample taken, some of them wouldn't. It would take another five refrigerators to store these DNA samples. They do have an appropriation request for another building which would take care of the problem with room. Regardless of how one feels about this, whether we should do it or not, as a practical matter, they can't do it. There is no place to do it. They received an appropriation for a new crime lab for an addition on to the one that they already have in the last session. That money was \$3.6 million dollars or something like that, and it wasn't sufficient after the bids came in, because they share the same building with the lab from the Dept. of Health and in they put an addition on, they'd have to make a lot of other changes to the other half of the building too, such as ventilation and fire sprinklers, etc. These additional items drove up the cost a lot. That place is really crowded. There just isn't any room. So when they got the bids back, they didn't have enough money to do what they wanted to, and the proposed building would have been too small. So they have an appropriation request in to the Legislature this time again, which is in appropriations for another amount, which is being considered and there also looking at the possibility of building their own building somewhere up by the Bureau of Criminal Investigation; where the Highway Patrol Offices are, rather than down where they are at now. There isn't enough room to build another building there. So what I've done is that I've prepared an amendment to HB 1197 to provide that this bill would become effective on August 1, 2009. The benefit of doing it this way, is that now the State Crime Lab and the AG's office would have the ability to work another forensic scientist and this additional equipment that they needed into the plans for the building that they are going to build if Appropriations grants their request. Secondly, it would also provide the opportunity and the time for them to apply for appropriate federal grants.

There are federal grant monies available, that is how they got some of the analyzer equipment that they have now, through federal DNA grants. By putting this into the 2009, they would be able to work the cost of doing this into their grant requests for the federal government to take up part of the cost of this equipment that they need. This equipment is very expensive. Even the software to run it is very expensive, as is the licenses. I guess another thing that is on there to require them to have to do this, they would have to get another forensic scientist as I mentioned; they had two, they lost one that took another job out-of-state. They can't find anybody to fill the opening they've got, so requiring them to fill another opening isn't going to make much sense either, even if they had a place to put that person. I propose that we amend this bill to become effective on August 1, 2009. That will also have the affect of taking the fiscal note, which was reduced to \$682,000 for this biennium. A lot of this would be covered by federal money if they apply for the grants. If we pass it with this amendment that would drop the fiscal note down close to zero for this next biennium because we wouldn't be doing anything, this would just wait until after the next session.

Chairman DeKrey: Are we obligating the future legislature.

Rep. Klemin: I don't think we are, because a future legislature is going to have to look at the appropriation for this.

Chairman DeKrey: This bill would not fund a future legislature.

Rep. Klemin: The 2009 legislature is going to have to fund this and by that time, hopefully they will have their building, by the way, is supposed to be coming on-line and constructed in 2009. So this kind of fits into their plans, where they would have the building, they would have the room, and they would be able to apply for federal grants to get the equipment to take out part of this cost. I think if we get to 2009 and the appropriations committee says that we don't have the money, or maybe we will, then certainly they can't fund it. Or this could come back

and we could look at the effective date again. Since this won't have gone into effect by the time we meet again in the next legislative session, we could repeal it without having implemented it at all. But the benefit of doing it now, with that kind of effective date, is that it puts into process all the planning that goes into what you need for the building, equipment, personnel and federal grants, etc. I am moving the amendment.

Rep. Kretschmar: Seconded.

Rep. Boehning: Can we still take the DNA samples and store them for the two years.

Chairman DeKrey: He's saying that there isn't any room.

Rep. Klemin: They would need five refrigerators and they don't room for any more.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I still have some questions about anybody who is arrested for any felony. Privacy is something that people are very concerned about. How many states have actually done this and have there been any challenges at all. I have supported all of your DNA testing bills before, and I didn't have a problem with that because it was conviction; things were in place and so on. But arrested for something, still no matter what people tell us, I like to believe that people are innocent until proven guilty. If I am proven guilty of something and they want body fluids from me, that's one thing. But I just think it goes farther than I can go.

Chairman DeKrey: Further discussion.

Rep. Koppelman: I made a note during the testimony, that some states do testing only on those arrested for the commission of violent crimes. Did you testify to that, Rep. Klemin.

Rep. Klemin: Yes, I suggested that to the Crime Lab and they said it would just be simpler if they did them all, instead of trying to figure out which ones were which.

Rep. Griffin: I just don't think it's right that if someone is found not guilty, that they would have to petition the court to get their DNA sample destroyed. If they are found innocent, or not guilty, the court shouldn't have that power. It appears that the national standard is that they cannot do this.

Rep. Klemin: First of all, this talks about expungement and that refers to something, the court records are actually going to be sealed now. Those records are separate and distinct from the DNA profile that's actually in the database. On Page 3 it talks about the laboratory shall expunge all identifiable information in the database. That is actually a separate process that's required by federal law that gets us the grant money. So it is sort of independent of what the court does with their files. That's a computer process, basically. They take it out of the database.

Rep. Griffin: So the DNA evidence would be off.

Rep. Klemin: The DNA profile is gone, it would be deleted out. That's part of the federal requirement to get these grant funds, that you don't have these DNA profiles in the database, to confuse the issue. I would like to respond to Rep. Delmore's question about what is happening in the states. The majority of states that have not made any DNA arrests from statutes that have been challenged in court have been upheld.

Rep. Delmore: How many actual states are doing this to every single person they arrest, not convicted. I supported all the other ones.

Rep. Klemin: I think it is 12. MN has a statute like this, which was tied to probable cause and it is my understanding that the statute and they are trying to fix that. There have been a number of court challenges, most have been upheld.

Rep. Koppelman: I have agonized over this bill, I have been supportive of law enforcement efforts in this kind of testing of those who are convicted, etc. The more I look at it, you are

talking about people who are arrested for the commission of a felony. Often times it is even overreaching in an arrest. In other words, we are not even talking only about those who have been charged vs. convicted. But we are talking about those who have been arrested. Sometimes people are arrested for a felony and the officer is maybe overreaching a little bit, and the prosecutor says, that the felony charge isn't going to stick, I'm going to charge the person for a misdemeanor. So we're taking DNA on somebody who isn't going to be charged with a felony, but he was arrested on a felony. If he is acquitted and, in fact, you've taken DNA samples from somebody who's charged with a misdemeanor and not found guilty. I just think it overreaches.

Rep. Klemin: Of course, this is to find out if they have committed some other unsolved crime that they haven't been arrested for. The state of Virginia has been doing this since 2003, and their numbers have been going up exponentially every year. The federal statistics show that 70% of people arrested have been in the system before and they just found a lot of hits to other crimes for which they didn't have a suspect, from the DNA database. Incidentally, our own Crime Lab has gotten about 140 some cases pending, but they got 10 hits, they found people who have been arrested for vehicle theft, they went into Gross Sexual Imposition crimes. They recently had a homicide that they linked to a previous rape that wasn't solved, just here in ND. They've got burglary cases that they went to previous unsolved rapes. This is a fantastic tool as far as law enforcement is concerned. If you haven't committed any of these crimes, then you have nothing to worry about.

Rep. Meyer: We've seen cases in the news where it's getting a lot easier to frame someone when you leave as much hair around in the day as I do. It would be very easy to frame someone. There is the reverse situation too, where say I stole a car, I shouldn't have done it, but then if you're going to frame me for, say murder, and you take a hair off the hairbrush that

gets left or picked up, and that's the DNA that they use. If it were a conviction I wouldn't have any problem, but when you're just arrested, before you ever had a chance to prove your innocence, or your not guiltiness.

Rep. Klemin: If you recall, this is what is called Sadie's law. This relates back to the case in NM where a young woman was raped and murdered, and her body was set on fire and left in the dump. They don't know who committed that crime, but they do have a DNA profile. NM has had an DNA arrestee statute.

Rep. Onstad: It said you can't take the DNA unless they are convicted of that. So how are they going to be able to use the DNA in a case to convict somebody, if they aren't able to get a DNA sample. This is arrest, part of that arrest and evidence that leads to conviction, it seems like they would need a DNA sample. Therefore, how are they going to get it, if that is their leading piece of evidence for conviction, and they have to wait until after the conviction before they can take the DNA sample, I don't know how that is going to work.

Rep. Klemin: The DNA doesn't convict anybody. It gives law enforcement a suspect. They still have to prove that this person did it, beyond a reasonable doubt.

Rep. Koppelman: I think what Rep. Onstad is referring to is, in a case where somebody is charged, I think the court would order a DNA sample, couldn't they. If the DNA sample is taken from someone who is arrested and they are acquitted, is it destroyed, or does it stay in that database.

Rep. Klemin: No, it is expunged.

Rep. Kingsbury: I move a Do Pass as amended with a rereferral to Appropriations.

Rep. Dahl: Seconded.

Chairman DeKrey: Any further discussion? The clerk will call the roll.

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House Judiciary Committee
Bill/Resolution No. HB 1197
Hearing Date: 1/24/07

10 YES 3 NO 1 ABSENT

DO PASS AS AMENDED WITH REREFER TO APPROPS.

CARRIER: Rep. Kingsbury

FISCAL NOTE
Requested by Legislative Council
03/14/2007

Amendment to: Reengrossed
HB 1197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						\$1,114,419
Appropriations						\$1,114,419

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires a DNA sample from each felony arrestee. The average percent of repeat arrestees from the number of arrestees to be tested are removed.

As amended, this bill becomes effective on August 1, 2009, upon receipt of federal funding to implement this act.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of this bill on the Office of Attorney General includes funding for 2 FTE's, operating expenses including the DNA sample kits required, genetic analyzer, and building space.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The federal funds expenditures for 2009-11 assume federal funds are for 23 months of the biennium. Federal fund expenditures include the cost of DNA sample kits, software and IT consulting services needed to implement this legislation, 2 FTE's, building space, and a genetic analyzer.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount of expenditures and appropriations needed is the same. The appropriation amount was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
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Phone Number: 328-3622

Date Prepared: 03/16/2007

FISCAL NOTE
Requested by Legislative Council
02/13/2007

Amendment to: Engrossed
HB 1197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$634,411		\$415,451
Appropriations				\$634,411		\$415,451

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires a DNA sample from each felony arrestee. The average percent of repeat arrestees from the number of arrestees to be tested are removed.

As amended, this bill becomes effective upon receipt of federal funding to implement this act.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of this bill on the Office of Attorney General includes funding for 2 FTE's, operating expenses including the DNA sample kits required, genetic analyzer, and building space, the cost of which is not known at this time based on two possible locations for the new Crime Lab building.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The federal funds expenditures for 2007-09 assume federal funds are received for 21 months biennium, to match the federal fiscal year. Federal fund expenditures include the cost of DNA sample kits, software and IT consulting services needed to implement this legislation, 2 FTE's, and a genetic analyzer. The cost of building space, based on a determination of the Crime Lab project location, is unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount of expenditures and appropriations needed is the same. The appropriation amount was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	02/13/2007

FISCAL NOTE
Requested by Legislative Council
01/29/2007

Amendment to: HB 1197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures					\$682,371	
Appropriations					\$682,371	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires a DNA sample from each felony arrestee. The average percent of repeat arrestees from the number of arrestees to be tested are removed; with the assumption repeat arrestee DNA samples would already have been taken.

As amended, this bill becomes effective August 1, 2009.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of this bill on the Office of Attorney General includes funding for 2 FTE's, operating expenses including the DNA sample kits required, genetic analyzer, and building space, the cost of which is not known at this time based on two possible locations for the new Crime Lab building.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

General fund expenditures include the cost of DNA sample kits, software and IT consulting services needed to implement this legislation, 2 FTE's, and a genetic analyzer. The cost of building space, based on a determination of the Crime Lab project location, is unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount of expenditures and appropriations needed is the same. The appropriation amount was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/29/2007

FISCAL NOTE
Requested by Legislative Council
01/23/2007

REVISION

Bill/Resolution No.: HB 1197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$682,371		\$415,451	
Appropriations			\$682,371		\$415,451	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires a DNA sample from each felony arrestee. This revision removes the average percent of repeat arrestees from the number of arrestees to be tested; with the assumption repeat arrestee DNA samples would already have been taken.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The impact of this bill on the Office of Attorney General includes 1 forensic scientist and 1 administrative assistant, operating expenses including the DNA sample kits required, a genetic analyzer, and increased building space, the cost of which is in flux in connection with the location of the Crime Lab project and the office's budget.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

General fund expenditures include the cost of DNA sample kits, software and IT consulting services needed to implement this legislation, 2 FTE's, and a genetic analyzer. The cost of building space, based on a determination of the Crime Lab project location, is unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount of expenditures and appropriations needed is the same. The appropriation amount was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/24/2007

FISCAL NOTE
Requested by Legislative Council
01/15/2007

Bill/Resolution No.: HB 1197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$751,564		\$491,563	
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires a DNA sample from each felony arrestee.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The impact of this bill on the Office of Attorney General includes 1 forensic scientist and 1 administrative assistant, operating expenses including the DNA sample kits required, a genetic analyzer, and increased building space, the cost of which is in flux in connection with the location of the Crime Lab project and the office's budget.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Types of expenditures include the cost of DNA sample kits, software and IT consulting services needed to implement this legislation, 2 FTE's, and a genetic analyzer. The expenses will be from the general fund. The cost of building space, based on a determination of the Crime Lab project location, is unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount of expenditures and appropriation needed is the same. The appropriation amount was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/15/2007

Date: 1/24/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended w/Rerefer to Approps.

Motion Made By Rep. Kingsbury Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging	✓		Rep. Onstad		
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Kingsbury

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1197: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 3, after "purposes" insert "; and to provide an effective date"

Page 3, after line 5, insert:

"SECTION 3. EFFECTIVE DATE. This Act becomes effective on August 1, 2009."

Renumber accordingly

2007 HOUSE APPROPRIATIONS

HB 1197

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2665 and 2785

Committee Clerk Signature

Shirley Branning

Minutes: **Job 2665:**

Chm. Svedjen called the meeting to order to take up HB 1197 The First Engrossment, a bill having to do with DNA samples by calling on Rep. Duane DeKrey, District 14 to explain the bill.

Rep. DeKrey: Explained the amendment .0201.

Chm. Svedjen: Questions why the bill is in the Appropriations Committee.

Rep. DeKrey: It should go through appropriations because of the obligation.

Rep. Kempenich: Did you talk about, what if you went to felony, like a class A?

Rep. DeKrey: This talks about arrested as a felon.

Rep. Wald: A law enforcement official suggested arrested rather than convicted.

Rep. DeKrey: Other states have been successful in solving arrested cases. Committee wanted it to come here to see if the money is actually available to do this.

Rep. Hawken: Could a DNA sample be done as people are born? If the idea is to have a bank, that is a different issue.

Chm. Svedjen expressed a concern regarding the effective date; it doesn't start until two years from now.

Rep. DeKrey: If we don't have the money to do it, there is a good chance we could get a federal fund to pay for it as other states have done.

Chm. Svedjen expressed the second part of his concern, being that if the lab is so far behind now, how could they do it even if we funded it.

Rep. Monson: By putting off the date to 2009 the hope is the State Crime Lab could get caught up on some of the back log. DNA matches might be found quicker and arrestees will not fall through the cracks.

Rep. Gulleason: Is there an allowance for the discretion of the officer to request this test at the time of the arrest?

Rep. DeKrey: A court order has to be issued, there has to be probable cause to take a DNA sample from someone. The area is grey judicially, DNA means taking a piece of someone.

Rep. Carlisle: This is not a money bill, do we send it back?

Chm. Svedjen: You suggested, if we could find money....

Rep. DeKrey: This is an act of good faith from my committee so that when it comes back two years from now.....

Chm. Svedjen: It came down because of the first fiscal note for the 2007-09 biennium.

Rep. DeKrey: We changed the effective date because the information was other states that have passed like legislation but no funding, that the feds came in and funded it.

Rep. Aarsvold: It could be misused to get even, this comes from the policy side.

Rep. Klein: How many other states have this in place? What was the response from the law enforcement in testimony?

Rep. DeKrey: Guessing about 20 states have it and law enforcement wants all the tools they can get and were quite enthused.

Rep. Skarphol: With an effective date of '09 there would be no way to implement this if the federal money did come through.

Rep. DeKrey: States that can't afford this have made application for funds and funding was provided. This funding would take effect in '09.

Rep. Kempenich: The health department could come through the emergency commission if this money did come in, to accept the grant.

Rep. Wald: If this money does come through, will it sit in limbo until August of '09? Language should be added to state that it becomes effective when the money comes in.

Rep. Kroeber: The authorization for the use of funds in budget section has happened on a number of occasions.

Chm. Svedjen: This is new policy. If funds became available there would have to be a grant application submitted to get the funds. If funds were received, it would come before the emergency commission and budget section to approve the expenditure of those funds. But this is a change in policy and unless we change the policy, they wouldn't be able to spend the money.

Rep. Monson: If we accept federal money, the date would have to be changed to effective immediately but no general funds expended during this biennium and it goes into play when federal funds are received.

Job # 2785:

Chm. Svedjen: The amendment changes the effective date to contingent upon receipt of federal funds.

Rep. Carlisle moved to adopt the amendment .0201 to HB 1197. Seconded by Rep. Bellew. The Do Pass motion carried by voice vote and is adopted.

Rep. Nelson: Requested a roll call vote on the amendment.

Rep. Nelson moved a Do Pass the amendment .0201 on HB 1197. **Rep. Klein** seconded the motion. The Do Pass motion failed by a roll call vote of 11 yea, 11 no and 2 absent and not voting.

Rep. Hawken: You could have section 2 of this bill removed if you were found not guilty.

Chm. Svedjen: You are saying it could be expunged.

Rep. Thoreson: This would be at the discretion of the court and I believe they shouldn't have the information. I think it should be convicted instead of arrested.

Rep. Kempenich: Move without recommendation

Rep. Skarphol: Second

Rep. Carlson: Believe we can't separate the policy from the money. You either like it or you don't like it.

Rep. Klein: Why don't we go to section 2 and amend this section to have DNA automatically removed instead of having to petition?

Rep. Martinson: We deal with policy every day and, Doggone it, those committees send us crap. If you got the money, you got the policy and if you don't like us dealing with policy, don't send us crap because we've got plenty of stuff to do with money.

Rep. Kempenich: Withdraw recommendation.

Rep. Skarphol: Withdraw second.

Rep. Wald: Move that if there is no conviction and the DNA test be expunged automatically.

Rep. Kreidt: Second.

Chm. Svedjen: That is to request an amendment that the record be expunged automatically if there is not a conviction.

Rep. Wald moved to request an amendment that the record be expunged automatically if there is not a conviction. Seconded by Rep. Kreidt. The Do Pass motion carried by voice vote and the bill is amended.

Chm. Svedjen: Asked for a motion to Do Pass as amended #2.

Rep. Thoreson moved a Do Pass to HB 1197 as amended. Rep. Wieland Seconded the motion.

The Do Pass motion carried by a roll call vote of 18 yea, 4 nay and 2 absent and did not vote. Rep. Thoreson will be the carrier of the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

Page 1, line 3, replace "an" with "a contingent"

Page 3, line 7, after "3." insert "**CONTINGENT**" and replace "becomes effective on August 1, 2009" with "is contingent on the receipt of federal funding to implement this Act. This Act becomes effective on the date the attorney general certifies to the secretary of state that the state has received federal funds to implement this Act. The secretary of state shall notify the legislative council of the effective date of this Act"

Renumber accordingly

Date: 2/5/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70480, 0201

Action Taken ~~Adopt~~ Adopt Amend

Motion Made By Carlisle Seconded By Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*motion carries by
voice vote and is
adopted.*

Date: 2/5/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number as amended

Action Taken Do Pass as amended . 0201

Motion Made By Nelson Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich		✓			
Representative Wald	✓		Representative Aarsvold		✓
Representative Monson	✓		Representative Gulleson		✓
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim		✓
Representative Carlisle	✓		Representative Kroeber		✓
Representative Skarphol		✓	Representative Williams		✓
Representative Thoreson		✓			
Representative Pollert		✓	Representative Ekstrom		✓
Representative Bellew	✓		Representative Kerzman		
Representative Kreidt		✓	Representative Metcalf		
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 11 No 11

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion fails

Date: 2/5/07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move without recommendation

Motion Made By Kempenich Seconded By Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleon		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion withdrawn

Date: 2/5/07
Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken (#2) Request amend. that record be expunged
automatically if not corrected.

Motion Made By Wald Seconded By Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleon		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

will vote - motion carries

Date: 2/5/07
Roll Call Vote #: 5

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass as Amended (#2)

Motion Made By Thoreson Seconded By Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleason		✓
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert		✓	Representative Ekstrom		✓
Representative Bellew		✓	Representative Kerzman		
Representative Kreidt	✓		Representative Metcalf		
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 18 No 4

Absent 2

Floor Assignment Thoreson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1197, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (18 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "an" with "a contingent"

Page 2, line 31, replace the first "or" with an underscored semicolon

Page 3, line 1, after "conviction" insert "; has not resulted in a felony conviction;"

Page 3, line 7, after "3." insert "**CONTINGENT**" and replace "becomes effective on August 1, 2009" with "is contingent on the receipt of federal funding to implement this Act. This Act becomes effective on the date the attorney general certifies to the secretary of state that the state has received federal funds to implement this Act. The secretary of state shall notify the legislative council of the effective date of this Act"

Renumber accordingly

2007 SENATE JUDICIARY

HB 1197

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 5, 2007

Recorder Job Number: 4402

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to Collection and testing of DNA samples for law enforcement identification purposes.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Rep. Larry Klemin, Dist. #47 Introduced the bill – Att. #1a also reviewed an article from the Bismarck Paper – Att. #1b, spoke of Virginia's Division of Forensic Science DNA Databank Statistics – Att. #1c, commented on Forensic DNS Program – Att. #1d, Forensic DNA Testing Article – Att. #1e, He spoke of the changes in the house and the contingency of the effective date; due to a backlog clause that has to exists before the funding can be procured and submitted an amendment to do this – Att. 1f. He brought up another bill in which it would require the offender to pay a portion of the DNA testing as a court cost.

Sen. Febieger questioned (meter 19:21) the closing of a loop-hole and how it would effect the fourth amendment and a "white collar" crime with nothing to do with a sexual offence or violent crime and as I see the bill it does not take into consideration the type of crime. This gives me

great heartburn, when I see the way we are moving. There is a big difference to be between a conviction and an arrest. Rep. Klemin reviewed the last legislation and the statistics relating the crime. Spoke of Supreme Court Case. He related this process to the finger print process. Spoke to what other states are doing.

Hope Olson, Director of the Crime Lab (meter 23:59) stating the A.G.'s office is in support of the bill providing the resources are available to do the work out lined in the bill. She reviewed the fiscal note. The committee asked several questions pertaining to what money will be spent were.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4874

Committee Clerk Signature *Mina L. Solby*

Minutes: Relating to collection and testing of DNA samples for law enforcement identifying purposes.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The Chairman and the committee addressed Rep. Klemin's amendment on page 4 of his testimony dated 3/5.

Sen. Nelson made the motion to Do Pass Amendment – Att. #1, page 4 from 3/5 and **Sen.**

Marcellais seconded the motion. All members except for Sen. Fiebiger were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass HB 1197 as amended and **Sen. Marcellais** seconded the motion. All members except Sen. Fiebiger were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the committee work.

JF
3-12-07

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1197

Page 1, line 3, replace "a contingent" with "an"

Page 2, line 8, after "offense" insert "or an individual arrested for the commission of a felony offense after July 31, 2009,"

Page 3, line 8, remove "**CONTINGENT**" and replace "is contingent on the receipt" with "becomes effective on August 1, 2009"

Page 3, remove lines 9 through 11

Page 3, line 12, remove "Act"

Renumber accordingly

Roll Call Vote # 10 of 2

BILL/RESOLUTION NO. 1197

Senate	Judiciary	Committee
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Legislative Council Amendment Number

Action Taken Do Pass Around Att #1 pg 4

Motion Made By Sen. Nelson Seconded By Sen. Marcellais

[illegible]

Total Yes 5 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-12-07
Roll Call Vote # 2 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1197

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Lyson Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger		X
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 5 No 1

Absent 0

Floor Assignment Sen Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1197, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Reengrossed HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "a contingent" with "an"

Page 2, line 8, after "offense" insert "or an individual arrested for the commission of a felony offense after July 31, 2009,"

Page 3, line 8, remove "**CONTINGENT**" and replace "is contingent on the receipt" with "becomes effective on August 1, 2009"

Page 3, remove lines 9 through 11

Page 3, line 12, remove "Act"

Renumber accordingly

2007 SENATE APPROPRIATIONS

HB 1197

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1197

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-20-07

Recorder Job Number: 5317

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1197 with roll call.

Representative Lawrence R. Klemin, District 47, Bismarck, presented written testimony in support of HB 1197 providing the background information on 1197 for DNA testing. States are being asked to pass the law in front of us. When a person is arrested DNA testing is done and put in computer data bank. This is also known as Katie's law. This law provides an effective date of August 1, 09. Page 2 line 7 refers to victims with any felony offense. Line 22-23 pg 2 indicates the sentencing court will absorb the cost of DNA samples – if person not convicted, the sample has to be removed from the data base. The '09 effective date is because the room and space is not available until then.

Senator Wardner indicated the difference is this bill says "when arrested" they will be tested when arrested. The response was that is correct. The reason for this is that the person may also be suspect in another crime.

Senator Tallackson asked if two people can have the same DNA. The response was the probability of that has got to be in the crime lab. Ms Olson from crime lab can address that question.

3-20-07

Senator Lindaas questioned if there is a parallel with the fingerprinting done, if they are found innocent are they kept, stored, or are they expunged also? The response was they are kept. But federal law on DNA requires expungement. This bill provides DNA must be taken immediately. In order to get federal grant money we have to eliminate the backlog by expunging the DNA.

Tom Treanbeth, Chief Deputy Attorney General testified responding to questions and indicating multiple births do have identical DNA.

Senator Krebsbach asked what the cost of DNA testing is.

Hope Olson, Director, Crime Lab, Attorney General's Office indicated the DNA cost for the laboratory is about \$20 for the data base sample. If talking about individual testing it costs more.

Senator Tallackson asked if you need two people to certify the DNA. The response was the quality assurance standards requires two qualified DNA analysts to agree on the profile. That means we have to agree on the ultimate result.

Senator Bowman with DNA test could also free someone as well as convict. The response was yes.

Senator Krebsbach asked if multiple births have the same DNA, what about fingerprints? The response was BCI should respond to that.

Senator Krauter stated that section 3 says the effective date on the fiscal note states Feb 13 and another spot indicates as soon as federal money comes in. The response was there is a new fiscal note.

3-20-07

Senator Krauter federal fiscal yr is October and federal dollars are available this year. Did you start the process to get activated on it? The response was once the federal funds are here we would use the date certain in the bill.

Gregory Runge, Legislative Coordinator for American Civil Liberties, distributed testimony in opposition of HB 1197. They believe this in violation of the US Constitution 4th amendment He indicated that searches conducted outside the judicial process are unreasonable under 4th amendment. He read an additional quote from the forensics examiner they cannot see taking samples of all arrested felons.

Chairman Holmberg closed the hearing on HB 1197.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1197

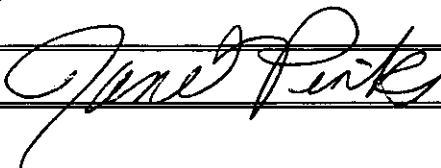
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-20-07

Recorder Job Number: unknown

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1197 indicating the fiscal impact of the bill.

Senator Fischer moved a do pass on HB 1197, Senator Krebsbach seconded. A roll call vote was taken resulting in 13 yes, 1 no and 0 absent. The motion passed and Senator Lyson will carry the bill.

Chairman Holmberg closed the hearing on HB 1197.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1197**

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: **March 22, 2007**

Recorder Job Number: **5456 0 to 4:07m**

Committee Clerk Signature



S Holmberg: The DNA, we had testimony from Klemin and had testimony from the ACLU.

I received another email after the hearing from Rep, Klemin, the fiscal impact was other funds expenditures, the federal funds, the 23 months that they would assume they are going to be getting. .

S Fischer moved a do pass

Second _____

Roll for Do Pass on HB 1197

This goes back to Judiciary.

Date:
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Fisher Seconded By Krebs

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour		✓
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment ~~Legislation~~ Jud

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 22, 2007 10:33 a.m.

Module No: SR-54-5878
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1197, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Reengrossed HB 1197, as amended, was placed on the Fourteenth order on the calendar.

2007 HOUSE APPROPRIATIONS

CONFERENCE COMMITTEE

HB 1197

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1197

House Appropriations Committee

☒ Check here for Conference Committee

Hearing Date: April 13, 2007

Recorder Job Number: 5980

Committee Clerk Signature

Shelly N. Sand

Minutes:

Chm. Al Carlson called the Conference Committee on HB 1197 to order. The Conference Committee members included Rep. Carlson, Rep. Klemin, Rep. Kerzman, Sen. Lyson, Sen. Olafson, and Sen. Nelson.

Chm. Carlson: Give me the mechanics, Rep. Klemin, about how the federal money comes for this.

Rep. Klemin: The federal funds come through the federal law known as the DNA Backlog Elimination Act. In order to get the federal funds under this act you have to have a backlog to eliminate. The contingent effective date that was on it in the House stated that the act could not become effective until the Attorney General certified that the federal funds are here. However, that's kind of a catch 22 because under that contingent effective date, you could not take the DNA samples in order to create the backlog to apply for the federal funds. With that kind of provision it could never become effective. The Senate provided for an effective date of August 1, 2009 with the provision that's already in this law (p.2, line 12). The other reason for the effective date is that they can't physically do it now anyway because of the crime lab workspace situation.

Rep. Carlson: So there were no other substantive changes to the bill other than the effective date.

Rep. Klemin: There was a technical change on p. 2, line 9.

Rep. Carlson: The FTEs required for this are subject to this federal funding coming, were they not?

Don Wolf, Legislative Council: I am not familiar with the Attorney General's budget or this bill to answer that question. I'm trying to reach Allen Knudson.

Rep. Carlson: I'm almost certain that the FTEs would not be added until the funding was available.

Sen. Lyson: Seems to me there were no FTEs, it's all equipment.

Rep. Klemin: There are two FTEs but the fiscal note does say that the fiscal impact includes funding for two FTEs and operating expenses. It becomes effective upon receipt of federal funding to implement it.

Rep. Carlson: I think the delayed implementation is a good thing. We have funded a new facility for the crime lab and they can't take any more business.

Rep. Klemin: They also lost one of their analyzers and are short of personnel.

Rep. Carlson: The people are burnt out. I think the Senate additions were good because you do that timeline because the building has to start as soon as possible.

Rep. Klemin motioned that the House Accede to the Senate amendments. Sen. Nelson seconded the motion.

Rep. Kerzman: Didn't the Senate amendments take the date back to August? They remove the effective date. Didn't they want to do it before then?

Rep. Carlson: The reason we can't is because they don't have the space or the people to do it. You need to have the backlog in order to get the money. It's seems absolutely backwards, but if that's the way it is, that's the way it is.

The motion that the House Accede to the Senate amendments carried by a roll call vote of 6 ayes, 0 nays and 0 absent and not voting. Rep. Klemin was designated to carry the bill.

Rep. Carlson adjourned the meeting.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1197 (, as (re)engrossed)

Date: 4/13/07

Your Conference Committee House Appropriations

For the Senate:

For the House:

	YES / NO		YES / NO
P <u>Sen. Lyson</u>	☒	<u>Rep. Carlson</u>	☒
P <u>Sen. Blafson</u>	☒	<u>Rep. Klemin</u>	☒
P <u>Sen. Nelson</u>	☒	<u>Rep. Keryman</u>	☒

recommends that the (SENATE/HOUSE) (ACCEDE) to (RECEDE from)

the (Senate) House amendments on (SJ/HJ) page(s) 1123 --

☒ and place 1197 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

(Re)Engrossed 1197 was placed on the Seventh order of business on the calendar.

DATE: 4/13/07

CARRIER: Rep. Klemin

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Klemin

SECONDED BY: Nelson

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1197, as reengrossed: Your conference committee (Sens. Lyson, Olafson, Nelson and Reps. Carlson, Klemin, Kerzman) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1123 and place HB 1197 on the Seventh order.

Reengrossed HB 1197 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1197

HOUSE BILL NO. 1197
TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
JANUARY 16, 2007

Mr. Chairman and members of the committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am appearing before in support of House Bill 1197.

Section 31-13-03 of the North Dakota Century Code was first adopted in 1995 to require DNA testing of persons convicted of sexual offenses in order to have the DNA samples included in law enforcement identification data bases. The purpose was to determine if the DNA sample from the convicted person matched existing DNA evidence from previous unsolved crimes in a data base. If there was a match, then law enforcement would have a suspect for the commission of that unsolved crime. Since 1995, this law has been gradually expanded to include DNA testing of persons convicted of all felonies, which is now the law in North Dakota and the prevailing standard throughout the United States.

The DNA testing requirement has been successful in matching many unsolved crimes across the United States, including North Dakota. Attached to my testimony is an article from The Bismarck Tribune from October 12, 2006. Jayme Rowley had been convicted of burglary and sent to prison. Because of our law to require DNA samples from all felons, Rowley had a DNA sample taken. The DNA sample was placed in the data base, and matched the DNA profile for an unsolved rape committed in 2003. Without the requirement for the DNA sample from a person convicted of burglary, the 2003 rape crime might have never been solved.

However, there is a loophole in our law which is detrimental to public safety. The loophole is that our law currently applies only after a person has been convicted of a felony. If the person is out on bail pending a trial, is not convicted, or the charges are dropped and the person is set free, then we would have no way of knowing whether that person had committed any other unsolved crimes. House Bill 1197 closes the loophole by requiring DNA testing from persons arrested for the commission of a felony. This is known as a "DNA arrestee" bill. It is also known as "Katie's Law".

In 2003, Katie Sepich, a 22 year old woman attending New Mexico State University was raped and murdered, her body set on fire, and left in a city dump. Katie's killer has not been identified, but his DNA profile has been identified and was placed in the DNA data bases. If the person who committed this crime is ever again arrested for the commission of a felony, a "Katie's Law" requirement could result in the solving of this murder.

Taking a DNA sample upon arrest for the commission of a felony can save lives by assisting to prevent other crimes. The DNA arrestee law is the next logical extension of our DNA testing law. This new law can assist in solving other unsolved crimes and by taking criminals off the street so they can't commit other crimes.

Attached to my testimony are statistics from the State of Virginia. When a DNA sample is taken and matched to an existing DNA profile in a data base, that match is called a "hit". The statistics from Virginia show the increasing number of DNA arrestee samples in the data base, the increasing number of databank hits, and the crimes solved or assisted by type. The Virginia statistics show that between January 1, 2003 and September 30, 2006, there were a total of 307 hits to the arrestee data base and that 60 of those hits were for sexual assault cases.

There are costs associated with increased DNA testing. The Appropriations Committee will examine those costs if this bill is approved by this committee. However, there are also costs to our citizens if we do not do this testing. We can save lives and solve crimes. We can prevent the commission of additional crimes in the future by catching persons now before they can rape or murder again or before they can commit other crimes while they are out on bail. We need to decide if the tangible and intangible savings to society outweigh the costs of increased DNA testing.

I urge your support for House Bill 1197.

THURSDAY,
OCTOBER 12, 2006

The Bismarck Tribune

www.bismarcktribune.com

Man gets 3½ years for sex assault

■ DNA sample left at a crime scene leads to conviction



TOM STROMME/Tribune

Jayme Rowley told Judge Sonna Anderson he was addicted to sex, drugs and alcohol at his sentencing in district court on Wednesday.

By JENNY MICHAEL
Bismarck Tribune

Jayme Rowley was slated to be released from prison for burglary and unauthorized intrusion convictions today. Instead, the man charged in 2003 with gross sexual imposition and burglary because of a DNA sample left at a crime scene in 2003 started a new 3½-year sentence Wednesday.

South Central District Court Judge Sonna Anderson sentenced Rowley on Wednesday to 10 years with six and a half years suspended and five years probation for gross sexual imposition and 10 years with seven years suspended and five years probation for burglary at the Burleigh County Courthouse. The sentences will be served concurrently.

Anderson also ordered Rowley to pay \$775 in fees and \$1,478.49 in restitution for the victim's medical and ambulance bills.

Rowley, 28, pleaded guilty on June 19 to the Class B felony charges.

Burleigh County Assistant State

Attorney Cynthia Feland requested that Rowley be sentenced to 10 years with five years suspended and five years probation for both charges, in addition to the fees and restitution. Defense attorney Steve Balaban requested that Rowley be sentenced to 10 years with seven years suspended and a half years suspended on both charges.

At his June hearing, Rowley admitted to drinking and smoking marijuana all day on Feb. 21, 2003. He said he went home from the bar and went for a walk. He said he knocked on the door of an apartment on West Century Avenue and identified himself as Mike.

A 19-year-old woman answered the door, because she knew several people named Mike.

Rowley said at the earlier hearing that he pushed his way in, knocked the woman down and bit her on the breast.

Feland said the woman has a "Type A personality," and fought Rowley off. She said a rape kit was performed, and charges were filed against a "John Doe" in Rowley, Page 9A

Thursday, October 12, 2006

Bismarcktribune.com ■ Bismarck Tribune

Rowley: Sex offenders must submit to testing

FROM 1A

suspect.

Because of state law, Rowley was required to give a DNA sample when he was convicted of burglary and surreptitious intrusion in 2004. The DNA sample matched the DNA profile in the "John Doe" charge.

Sex offenders have been required to submit to DNA testing under state law since 1995. Last year, the Legislature added all convicted felons to the list. The DNA results can then be compared to unsolved cases where DNA evidence was available.

The "John Doe" suspect was charged because the statute of limitations for any felony other than murder in North Dakota is three years.

Feland said this case was the first one in North Dakota solved by a DNA sample given because of the state law.

Feland said more unsolved crimes will "suddenly become solved crimes" because of the DNA database compiled by the state.

A presentence investigation was performed after Rowley pleaded guilty in June. Feland said Rowley reported in the presentence investigation that he has little impulse control and fantasized about forcing someone to have a sexual act with him.

"We have some really strong concerns about this case," she said.

While Rowley's past convictions are not for sexual offenses, his past actions are sexually related, she said. She said he stole women's underwear during burgla-

ries and masturbated while peering in a woman's window.

"He is in that high-risk category," she said.

Feland said Rowley reported in the presentence investigation that he had been doing those kind of actions since his adolescence.

Balaban said Rowley has been in treatment since he has been at the state penitentiary.

"He is facing the things that happened in the past," he said.

Rowley said he is sorry for his past actions and will take responsibility for them.

"I will never be able to say sorry enough times," he said. "I really wish I could take back the things I've done, but I can't."

He said his life was out of control before he began treatment.

"I'm addicted to sex, drugs and alcohol," he said.

After Rowley is released from prison, he will be required to register as a sex offender. He will not be allowed contact with anyone younger than 18 except for his own two children.

Feland said Rowley must complete treatment before he can be released. If he doesn't, his probation could be revoked before it begins, she said.

Even if he does complete treatment, he could be re-evaluated, Feland said. She said he could meet the requirements for a civil commitment to the state hospital if it is determined he is too dangerous to be released.

"At this point, it's too premature to tell" how he will do in treatment, she said.

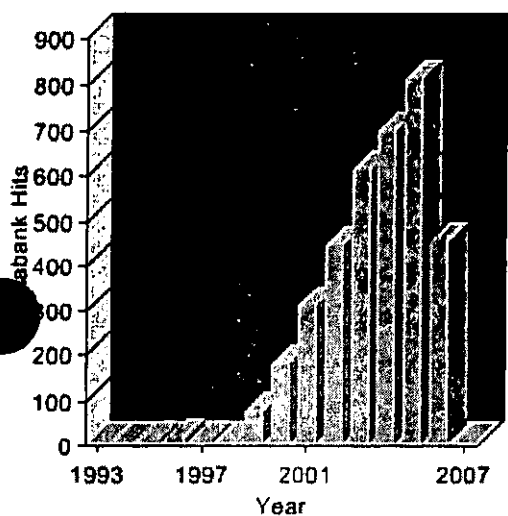


Virginia Division of Forensic Science

DNA Databank Statistics

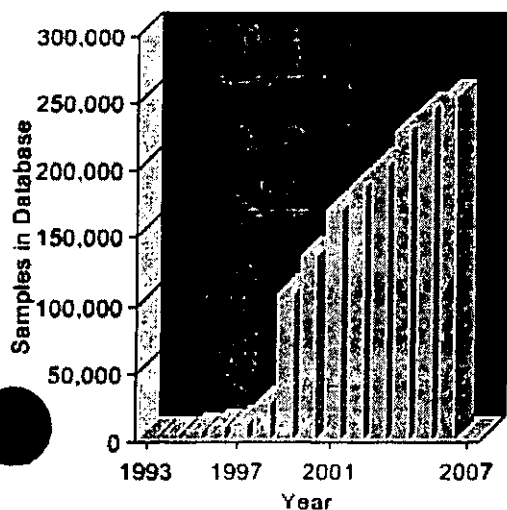
Databank Hits

Last Updated: 9/30/2006



Offender/Arrestee Samples in Database

Last Updated: 9/30/2006



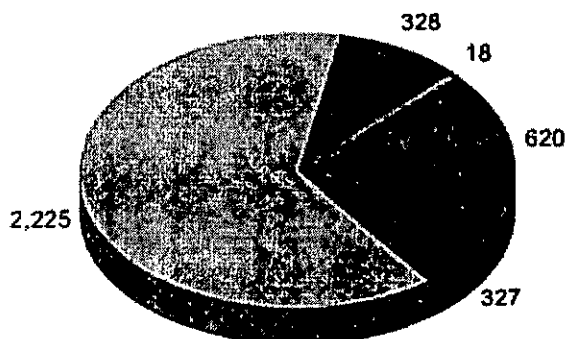
Notes

- **Total Hits:** 3,600
 - **Total Samples:** 253,156
 - To see yearly totals,
point mouse cursor over
the corresponding bar in
the above charts.
-

Crimes Solved/Assisted by Type

Last Updated: 9/30/2006
Total Investigations Aided: 3,518

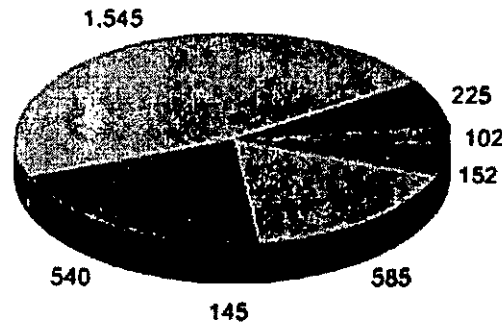
- Sex Crime
- Rape/Murder
- Murder
- B+E/Burglary/GL/Robbery
- Miscellaneous



Previous Criminal Conviction of Offenders Identified

Last Updated: 9/30/2006
Total Offender Hits: 3,294

- ☒ Sex Crime
- ☒ Murder/Abd/Kidnapping
- ☒ Wound/Assault
- ☒ Burglary/B+E/Robbery/GL
- ☒ Drugs
- ☒ Forgery/Uttering
- ☒ Miscellaneous



The graph at the top demonstrates the dramatic impact that the size of the convicted offender sample database has on the hit rate to non-suspect cases. A hit occurs when the DNA profile from a crime scene sample with no suspect matches a DNA profile in a database of previously convicted offenders, a database of samples from those individuals arrested for specified crimes, or a database of other crime scene profiles. A record breaking 106 hits were achieved in the month of March, 2005.

A decision in 1998 to enter into a contract with the Bode Technology Group of Springfield, Virginia to run backlogged convicted offender samples for three years combined with grant funding provided by NIJ, which allowed the Division to continue outsourcing the analysis of convicted offender samples into the summer of 2004, resulted in essentially no backlog of convicted offender or arrestee samples. The Department remains current (i.e., there is no backlog) on the analysis of these samples in-house and Virginia's databank now contains more than 253,000 offender and arrestee profiles.

It is the combination of these activities that led the Department of Forensic Science to score 283 hits by the end of 2000, an additional 308 hits in 2001, 445 more in 2002 (an average of 37 hits per month), 608 in 2003 (an average of 51 hits per month), 695 in 2004 (an average of 58 hits per month) and 810 in 2005 (an average of 68 hits per month). For the first nine months of 2006, 451 hits were made to databank samples. For 2003, 63 of the hits were made to the Arrestee Database (established January 1, 2003); in 2004 an additional 68 hits were made to arrestees, and in 2005, 107 hits to arrestees occurred. For the first nine months of 2006, 69 hits to arrestees were made. The first hit to the Arrestee Database occurred after the upload of the first 80 samples into the database! As of September 30, 2006, a total of 307 hits to the Arrestee Database had been obtained. Sixty of the hits to arrestees were associated with sexual assault cases.

Arrestees

- Approximately 80% of hits would have been missed if the Databank was limited to only violent offenders.
- Approximately 39% of violent crimes solved were perpetrated by individuals with previous property crime convictions.
- DNA Databanks are most effective with inclusion of at least all felons and applied to all forms of cases.

View this page without Macromedia Flash enabled.

- Seven state legislatures & the US Congress have passed laws to require DNA upon arrest for felony crimes: California, New Mexico, Kansas, Louisiana, Minnesota, Virginia, Texas. CA, KS and LA laws apply to ALL felony arrests, the other state laws apply to felony arrests for sex crimes, violent crimes and burglary. The federal law applies to all arrests under federal authority. The CA legislation was passed as a voters initiative (Prop 69) with well over 60% of the popular vote.
- So far in 2007, eight states have introduced legislation for arrestee testing – North Dakota, Alaska, Washington, South Carolina, Mississippi, Montana, Wisconsin, New Jersey. The SC bill would apply to ALL arrests, and the WA bill would apply to all felony arrests and gross misdemeanor arrests. Additional arrestee bills for 2007 are being planned in at least 8 other states (though not introduced yet).
- Federal funding can be used to fully pay for both arrestee testing AND for upgrades to the lab (such as equipment purchases needed to analyze samples).
- Many states have begun using a “public safety fee” to help pay for DNA testing – for example, the California DNA initiative imposed a \$1 fine on every \$10 in civil and criminal violations to pay for DNA testing. These types of fees have been successful because there is such a strong general public safety interest in DNA testing. There are about 7 seven states with this type of funding mechanism in place now.
- Virginia began requiring DNA from felony arrestees on January 1, 2003. The following statistics are from Virginia’s crime lab website.

“For 2003, 63 of the hits were made to the Arrestee Database (established January 1, 2003); in 2004 an additional 68 hits were made to arrestees, and in 2005, 107 hits to arrestees occurred. For the first nine months of 2006, 69 hits to arrestees were made. The first hit to the Arrestee Database occurred after the upload of the first 80 samples into the database! As of September 30, 2006, a total of 307 hits to the Arrestee Database had been obtained. Sixty of the hits to arrestees were associated with sexual assault cases.”

Forensic DNA Programs

Partners in the Fight Against Rape

DID YOU KNOW?

- **Every two and a half minutes**, someone is sexually assaulted in America.
- **One in six American women** has been the victim of an attempted or completed rape, and 10% of sexual assault victims are men.
- In 2004, there were over **200,000 victims** of rape, attempted rape or sexual assault.
- About **44% of rape victims** are under the age of 18, and 80% are under the age of 30.
- Nearly **60% of all rapes** are not reported to police.

HOW CAN DNA HELP?

- The success of state DNA databases in identifying criminals is directly related to the number of DNA profiles included in the database.
- States that have eliminated their casework backlog and expanded collection of DNA to include new categories of individuals are leading the country in the successful use of DNA evidence to solve crimes.
- To maximize the use of DNA evidence in solving rape cases, DNA should be collected from everyone arrested for a felony, just as fingerprints are routinely collected from arrestees today.
- As states begin collecting DNA from all felony arrestees, the hit rate (percentage of cases in which analyzed DNA from a crime scene can be matched to the DNA profile of a criminal in the database) could increase to more than 40% nationally.

THINK ABOUT IT: For every 10 unsolved stranger rapes in your state, **at least 4 could be solved through a DNA match.**

But rapists cannot be identified unless their DNA profiles are included in the database. The next victim may be someone you know, perhaps someone you love.

HOW CAN YOU HELP?

Join seven states, and the federal government, in **enacting legislation** to expand law enforcement access to the DNA profiles of persons arrested for felony crimes, thereby giving law enforcement better tools to solve sexual assault crimes.

And if you know anyone who has been victimized by rape, please urge them to seek help by calling the National Sexual Assault Hotline at 1-800-656-HOPE.

RAINN
RAPE,
ABUSE &
INCEST
NATIONAL
NETWORK



Commemorating One Million Calls for Help

RAINN is the nation's largest anti-sexual assault organization and has been ranked as one of "America's 100 Best Charities" by Worth magazine. Visit www.rainn.org for more information.

Att # 1a
3-5-07

HOUSE BILL NO. 1197
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 5, 2007

Mr. Chairman and members of the committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am appearing before you today in support of House Bill 1197.

Section 1 of House Bill 1197 amends Section 31-13-03 of the North Dakota Century Code. Section 31-13-03 was first adopted in 1995 to require DNA testing of persons convicted of sexual offenses in order to have the DNA samples included in law enforcement identification data bases. The purpose is to determine if the DNA sample from the convicted person matches existing DNA evidence from previous unsolved crimes in a database. If there is a match, then law enforcement would have a suspect for the commission of that unsolved crime. Since 1995, this law has been gradually expanded to include DNA testing of persons convicted of all felonies, which is the law in North Dakota as of 2005 and the prevailing standard throughout the United States and under federal law.

The DNA testing requirement has been successful in matching many unsolved crimes across the United States, including North Dakota. When a DNA sample is taken from an offender, it is analyzed and uploaded into the national DNA database system known as CODIS (Combined DNA Index System). CODIS also contains DNA profiles from unsolved crimes. When a DNA sample from an offender matches a DNA profile from an unsolved crime, there is a "hit" and a suspect is identified.

Attached to my testimony is an article from The Bismarck Tribune from October 12, 2006. Jayme Rowley had been convicted of burglary and sent to prison. Because of our law to require DNA samples from all felons, Rowley had a DNA sample taken. The DNA sample was placed in the database, and matched the DNA profile for an unsolved rape committed in 2003. Without the requirement for the DNA sample from a person convicted of burglary, the 2003 rape crime might have never been solved. The North Dakota Crime Lab has now had "hits" on about a dozen other cases where DNA samples have been linked to unsolved crimes in which DNA samples were collected but there was no suspect. These include a person who committed a homicide who was linked to a previously unsolved rape and several persons convicted of vehicle theft or other crimes who have been linked to rape or other unsolved crimes. The Crime Lab expects to find many additional "hits" as it processes the DNA samples that have been taken from convicted felons that are being stored pending analysis.

Although taking DNA samples from convicted felons will be helpful to find suspects for unsolved crimes, there is a loophole in our law which is detrimental to public safety. The loophole is that our law currently applies only after a person

has been convicted of a felony. If the person is out on bail pending a trial, is not convicted, or the charges are dropped and the person is set free, then we would have no way of knowing whether that person had committed any other unsolved crimes. House Bill 1197 closes the loophole by requiring DNA testing from persons arrested for the commission of a felony. This is known as a "DNA arrestee" bill. It is also known as "Katie's Law".

In 2003, Katie Sepich, a 22 year old woman attending New Mexico State University was raped and murdered, her body set on fire, and left in a city dump. Katie's killer has not been identified, but his DNA profile has been identified and was placed in the DNA database. If the person who committed this crime is ever again arrested for the commission of a felony, a "Katie's Law" requirement could result in the solving of this murder.

Taking a DNA sample upon arrest for the commission of a felony can save lives by assisting to prevent other crimes. The DNA arrestee law is the next logical extension of our DNA testing law. This new law can assist in solving other unsolved crimes and by taking criminals off the street so they can't commit other crimes. It is the modern equivalent of fingerprinting, which is now routinely done when a person is arrested.

Attached to my testimony are statistics from the State of Virginia. The statistics from Virginia show the increasing number of DNA arrestee samples in the database, the increasing number of databank hits, and the crimes solved by type. The Virginia statistics show that between January 1, 2003 and September 30, 2006, there were a total of 307 hits to the arrestee database and that 60 of those hits were for sexual assault cases.

Also attached to my testimony is information from the Rape, Abuse & Incest National Network (RAINN) about the use of DNA samples in solving rape crimes. It is noted there that the success of state DNA databases in identifying criminals is directly related to the number of DNA profiles included in the database. RAINN recommends that to maximize the use of DNA evidence in solving rape crimes, DNA should be collected from everyone arrested for a felony, just as fingerprints are routinely collected from arrestees today.

I am also attaching some general information on forensic DNA testing entitled "Fingerprints of the 21st Century". Some highlights from this handout include the fact that DNA testing frees the innocent sooner, solves crimes faster, prevents crime, is minimally invasive, and protected from misuse by privacy requirements. DNA taken from arrestees can only be used for comparison against profiles from unsolved crimes.

Section 2 of the bill amends Section 31-13-07 of the North Dakota Century Code and requires removal of DNA profiles from the database if the person arrested is not actually charged with a felony within one year or if the case has been

resolved by a dismissal, acquittal, misdemeanor conviction, or has not resulted in a felony conviction. Removal from the database is known as expungement and is a requirement under federal law in order to obtain federal funding for DNA backlog elimination purposes. Under this section the lab must remove all identifiable information in the database and destroy all samples from the person. You may wish to take note of the fact that both chambers have already passed House Bill 1224, which also amends Section 31-13-07, which made some changes to this section about sealed records, rather than expunged records. I assume the Legislative Council Code Revisor will reconcile the changes made by House Bill 1197 and 1224, since they are not identical.

There are costs associated with increased DNA testing. However, Federal funding can be used to pay for both arrestee testing and for upgrades to the Crime Lab, such as equipment purchases needed to analyze samples. The North Dakota Crime Lab has previously received federal grant funds under the DNA Backlog Elimination Act to pay for the expensive equipment used for DNA analysis and will be applying for additional federal funds.

The bill you have before you is the Second Engrossment of House Bill 1197. The House Appropriations Committee amended Section 3 of the bill to provide for a contingent effective date. I was not consulted before the House Appropriations Committee amended Section 3 and the current version has some problems. The First Engrossment of this bill had provided for an effective date of August 1, 2009. A copy of the First Engrossment is also attached. The reason for this was because the North Dakota Crime Lab currently does not have the space necessary for additional DNA equipment or storage space for additional DNA samples. The Crime Lab did receive an appropriation for expansion of the lab in the 2005 Session and has an additional appropriation under consideration this session because the previous appropriation was determined to be inadequate based on the bids received. Until the Crime Lab expands, there isn't room for additional DNA testing even if federal funds are received as mentioned under amended Section 3 of the bill. The Crime Lab expects to have its expansion completed by August 1, 2009, which was the reason for the August 1, 2009, effective date in the First Engrossment of this bill.

Another problem with the amendment to Section 3 by the House Appropriations Committee is that it is contingent on the receipt of federal funds before any DNA samples can be taken. This is self-defeating because you can't get the federal funds unless you have a DNA backlog to eliminate. The current form of Section 3 won't allow us to take samples to create a backlog.

In 2005 when we passed the "all felon" DNA law in North Dakota, we said in Section 31-13-03(2) as follows (this language is on page 2, lines 7 through 13 of the bill in the current law):

Att #1f.
3-5-07

The court shall order an individual convicted after July 31, 2005, of any felony offense to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases, DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding.

I would ask this committee to reinstate the August 1, 2009, effective date in Section 3 of House Bill 1197, as was in the First Engrossment, as follows:

SECTION 3. EFFECTIVE DATE. This Act becomes effective on August 1, 2009.

I would also ask the committee to amend Section 1 of the bill on page 2, lines 7 through 13, to provide as follows:

The court shall order an individual convicted after July 31, 2005, of any felony offense or arrested for the commission of a felony offense after July 31, 2009, to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases, DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding.

By these two amendments, the DNA arrestee bill won't become effective until August 1, 2009, and DNA samples from the arrestees won't be collected until after then either. The Crime Lab doesn't have the space or the personnel to handle additional DNA samples now. By passing this bill now, however, rather than waiting until the 2009 Session, the Crime Lab can take this additional DNA sampling requirement into account when planning for space, equipment, and personnel requirements, and also when considering how and when to apply for additional federal funding. We wouldn't actually be taking any DNA arrestee samples until after August 1, 2007, and the Crime Lab can then store those samples until funding is received for analysis.

The Senate Appropriations Committee will examine the costs if this bill is approved by this committee and further amended. However, there are also costs to our citizens if we do not do this testing. We can save lives and solve crimes. We can prevent the commission of additional crimes in the future by catching persons now before they can rape or murder again. The tangible and intangible savings to society outweigh the costs of increased DNA testing. We can get federal funds to pay for much of the cost of this program if we have a backlog.

I urge your support for House Bill 1197.



Forensic DNA Testing *Fingerprints of the 21st Century*

Frees the Innocent as soon as possible and will not permit someone falsely accused to remain in jail when they should be freed. Consider the following exonerations in recent news:

Arkansas – Man detained in jail since April 2004 on murder charges finally released on December 31, 2004 after DNA evidence from the murder is not a match. (9 months incarceration without trial)

Arkansas Democrat-Gazette, February 20, 2005.

New Jersey -- Man detained in jail on rape charges since 2003 finally released March 2, 2005 after DNA evidence from the rape is not a match. (Over one year incarceration without trial)

Courier News, March 4, 2005.

Oregon – Man detained in jail since January 2006 on attempted murder charges finally released in July when analysis of DNA evidence from the crime is not a match. (Six months incarceration without trial)

Columbian, July 12, 2006.

West Virginia – Man detained in jail on rape charges since April 2004 finally released in February 2005 after DNA evidence from the rape is not a match. (10 months incarceration without trial)

The Associated Press, March 15, 2005.

Solves crime faster and keeps the guilty behind bars. Collecting DNA from arrestees means identifying criminals at an earlier stage in the criminal justice process, and will allow for more efficient prosecution practices. Virginia, which began collecting DNA from arrestees in 2003, has already solved 222 crimes through links to arrestees.

Prevents crime. A Chicago study has documented 60 *violent* crimes that could have been prevented if the perpetrator had been required to submit a DNA sample for a prior felony *arrest*. These 60 victims are a tragic testament to the potential for DNA testing of arrestees to halt the needless victimization of state residents.

Purges racial bias from the criminal justice system. The science of DNA is blind to race, and requiring DNA from all felony arrestees will ensure that those who are wrongfully accused of serious crimes will be freed in a timely manner. They will not become victims themselves of an overburdened system, with many wrongfully accused slipping through the cracks.

Minimally invasive and not similar to predictive genetic testing. Forensic DNA testing conducted on cheek cells gives only the most basic data necessary for a unique forensic identity. Crime labs do not have the personnel, training, software, time or money to screen DNA samples for predictive health tests. Moreover, such tests would serve no purpose to criminal investigations.

Federal and state laws strictly prohibit and harshly penalize any misuse of DNA samples collected for database purposes. Misuse includes disclosure of samples or related data for any use not related to law enforcement. The privacy of the forensic DNA samples is tightly guarded.

Use is specific to law enforcement. *Unlike fingerprints*, DNA databases are not, and cannot, be checked for the general purpose criminal history background checks that are often completed for employment screening by using fingerprints. By law, DNA taken from arrestees can only be used for comparison against profiles from unsolved crimes.

Not an effort to create a database of the innocent. DNA samples can be routinely expunged upon acquittal or dropped charges. Additionally, samples that are not expunged will have no impact on a person's criminal history record – the DNA database is only checked for linkages to DNA profiles found at unsolved crime scenes.

Att II le.
3-5-07

ACLU of the Dakotas

Paul Homan, *President, North Dakota Chapter*

Deb Phillips, *President, South Dakota Chapter*

Jennifer Ring, *Executive Director*

March 20, 2007

Testimony of Gregory Ian Runge on REENGROSSED HOUSE BILL 1197

Mr. Chairman and Members of the Senate Appropriations Committee:

My name is Gregory Ian Runge, I am the Legislative Coordinator for the American Civil Liberties Union of the Dakotas. We, as a membership are dedicated to defending the United States Constitution and the Bill of Rights. I am here today to speak in opposition to HB 1197 because we have serious concerns about the constitutionality of taking DNA before a conviction as a violation of the 4th amendment.

If passed, section 1 of Hb 1197, that is, section 31-13-03 (page 1, lines 5 - 15, lines) will be challenged as unconstitutional. The Fourth Amendment prohibits unreasonable searches and seizures. The United States Supreme Court has addressed this issue and stated that "[T]he most basic rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 2032 (1971) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514 (1967)).

In *Scherer v. California*, 384 U.S. 757, 86 S.Ct. 1826 (1966), the United States Supreme Court explained the role of the Fourth Amendment when the state directs that a biological specimen be taken from a person and analyzed. *Scherber* involved a defendant who was arrested at a hospital

while receiving treatment for injuries that he had suffered when the automobile he apparently had been driving was involved in an accident. *Id.* at 785, 86 S. Ct. at 1829. A police officer directed that a blood sample be drawn from the defendant by a physician at the hospital, and a chemical analysis of the sample indicated intoxication. *Id.* at 758-59, 86 S.Ct. at 1829. At the defendant's trial, for driving an automobile while under the influence of intoxicating liquor, the report of the chemical analysis was admitted into evidence over the defendant's objection that the blood had been drawn without his consent. *Id.* at 759, 86 S.Ct. at 1829. The defendant contended that in that circumstance, the withdrawal of the blood and admission of the report denied him his right not to be subjected to unreasonable searches and seizures in violation of the Fourth Amendment. *Id.*

The significant principal to be drawn from *Schmerber* is that establishing probable cause to arrest a person is not, by itself, sufficient to permit a biological specimen to be taken from the person without first obtaining a search warrant. In *Schmerber*, the facts that established probable cause to arrest the defendant were the smell of liquor on his breath, and the blood-shot, watery and glassy appearance of his eyes. *Id.* at 769, 86 S.Ct. 1835. These symptoms of drunkenness also suggested that there was alcohol in the defendant's blood. But, by itself, the strong inference that there was alcohol in the defendant's blood was not enough to permit the police officer to direct the physician to draw the defendant's blood. It was only because evidence of alcohol in the defendant's blood could disappear [exigent circumstances] during the time it would take to obtain a search warrant that the Supreme Court permitted the search without a warrant. Otherwise, a search warrant was required, and the inferences to support the warrant needed to be drawn by a neutral and detached magistrate, instead of the police.

While some will argue that once there is probable cause to make an arrest, it is enough to take a biological specimen, However, probable cause to support a criminal charge is not the same thing as probable cause to issue a search warrant.

For now, the unamended portion of HB 1197 requires specimens for DNA testing to be taken only from individuals who have been convicted of a criminal offense, and when weighing the individual's right to privacy against the state's interest in DNA testing, the opinion recognized that an individual who has been convicted of an offense has a reduced expectation of privacy and conclude that this reduced expectation of privacy does not outweigh that the state's interest in DNA testing.

Next, the state will destroy a biological specimen and remove information about the specimen from the combined DNA index system when the person from whom the specimen was taken is found not guilty or the charge against the person is dismissed. This requirement suggests that the legislature has determined that the states' interests in collecting and storing DNA samples is outweighed by the privacy interest of a person who has not been convicted. Consequently, unless the privacy expectation of a person who has been charged and is awaiting disposition of the charge but the charge was dismissed or the person was found not guilty, we see no basis for concluding that the state's interest in taking a biological specimen from a person solely because the person has been charged outweighs the person's right to privacy. And because a person who has been charged is presumed innocent until proven guilty, we see no basis for concluding that before being convicted, a charged person's privacy expectation is different from the privacy expectation of a person who was charged but the charge was dismissed or the person was found not guilty. It is now easy to show that the privacy interest of a person who has been charged but has not been convicted is not outweighed by the state's interest in collecting and analyzing a DNA sample.

For these reasons, the American Civil Liberties Union requests you vote no on Reengrossed House Bill No. 1197.

Gregory Ian Runge
Legislative for the ACLU
(701) 222-1808

FOR DNA FOR ALL FELONY ARRESTEES - EFFECTIVE 8/1/2009

	2009-11 Biennium Estimate		Fiscal Note Effective 8/1/09 23 months	
	Scientist	Admin. Asst.		
SALARIES	80,315	47,784	128,099	
BENEFITS	33,249	27,157	60,406	C. FOCKE, S. FLE KSR
TOTAL	113,564	74,941	188,505	KSR
OPERATING EXPENSES				
ITD-DP	1,663	1,199	2,863	
Phone	1,284	1,284	2,568	KSR
Travel	1,605	107	1,712	KSR
Utilities	11,160	1,661	12,820	
IT Software	143,400	900	144,300	1 time + MS OFFICE
Dues & Prof. Develop.	5,880	525	6,405	
Operating Fees	1,000	-	1,000	
Office supplies	500	500	1,000	
Professional Services	500	-	500	
Repairs and service contracts	21,330	-	21,330	1 yr. free, next yr. pay for it
Insurance	118	118	235	
IT Contractual Services	50,000	-	50,000	CHER'S EST. - LIMS/CRIM. HIST.
Medical, Dental, Optical supplies	169,410	-	169,410	INCL. KITS
Office equipment	7,704	6,420	14,124	1 time
Misc. Supplies	3,424	749	4,173	printer
IT equip. less than \$5,000	2,037	2,037	4,075	
Total Operating	421,015	15,500	436,515	
3130 - GENETIC ANALYZER	98,440		98,440	
BUILDING ADDITION	188,760	218,140	406,900	C.A. incs. Complete Bldg. sprinkling at current location
CAPITAL ASSETS	287,200	218,140	505,340	Hope - would basically h/t double the receiving space for this
TOTAL FEDERAL FUNDS	821,779	308,581	1,130,360	many samples. - \$260/sq. ft.
FTE	1	1	2	all bldg. space - estimated @ \$260 PER SQ FT.