

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1197

Introduced by

Representatives Klemin, Carlisle, Monson

Senators Dever, Kilzer, Lyson

1 A BILL for an Act to amend and reenact sections 31-13-03 and 31-13-07 of the North Dakota
2 Century Code, relating to collection and testing of DNA samples for law enforcement
3 identification purposes; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **31-13-03. Persons to be tested - Costs.**

- 8 1. A person eighteen years of age or over who is arrested for the commission of a
9 felony shall provide correctional personnel upon booking a sample of blood or
10 other body fluids for DNA law enforcement identification purposes and inclusion in
11 the law enforcement identification data bases. If it is determined that the person's
12 DNA sample is included in the law enforcement identification data bases, an
13 additional sample is not required.
- 14 2. The provisions of this subsection apply only if a person's DNA sample is not
15 already included in the law enforcement identification data bases. The court shall
16 order any person convicted on or after August 1, 1995, of any sexual offense or
17 attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1,
18 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section
19 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at
20 sentencing that the person engaged in a nonconsensual sexual act or sexual
21 contact with another person during, in the course of, or as a result of, the offense
22 or any person who is in the custody of the department after July 31, 1995, as a
23 result of a conviction of one of these offenses to have a sample of blood or other
24 body fluids taken by the department for DNA law enforcement identification

purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses 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. 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. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court.

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3. If the person from whom a DNA sample is collected is convicted of a felony offense, the sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund.

SECTION 2. AMENDMENT. Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

31-13-07. Removal of DNA profiles from data base. A person whose DNA profile has been included in the data base pursuant to this chapter may petition the district court for expungement on the grounds that the arrest that led to the inclusion of the DNA profile has not resulted in a felony charge within one year or has been resolved by a dismissal, acquittal, or

1 misdemeanor conviction or the conviction on which the authority for including the DNA profile
2 was based has been reversed or the case dismissed. The laboratory shall expunge all
3 identifiable information in the data base pertaining to the person and destroy all samples from
4 the person upon receipt of a certified order. The detention, arrest, or conviction of a person
5 based upon data base information is not invalidated if it is later determined that the specimens
6 or samples were obtained or placed in the data base by mistake.

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