

**SENATE BILL NO. 2151**

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact a new section to chapter 54-12 of the North Dakota  
2 Century Code, relating to transferring the state crime laboratory division including the state  
3 toxicologist to the office of the attorney general and to provide for transfer of related  
4 administrative rules; to amend and reenact sections 19-01-10 and 19-03.1-37, subsection 2 of  
5 section 28-32-01, sections 31-13-01, 31-13-03, 31-13-04, 31-13-05, 31-13-07, 31-13-08, and  
6 31-13-09, and subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to  
7 the state crime laboratory, the state toxicologist, and DNA testing; and to repeal sections  
8 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code, relating to the bureau  
9 of criminal investigation and the state toxicologist; to provide an effective date; and to declare  
10 an emergency.

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

12 **SECTION 1. AMENDMENT.** Section 19-01-10 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **19-01-10. Department to make analyses, inspections, and examinations - Report**  
15 **of examination as evidence - Publication of report.** The department shall make, or cause to  
16 be made, analyses, examinations, and inspections of all products, articles, compositions, or  
17 things included under this title whenever such analyses, inspections, or examinations are  
18 necessary to determine whether any of such products, articles, compositions, or things violate  
19 this title relating to the products, articles, compositions, or things in question, or violate any  
20 definition, standard, tolerance, rule, or regulation issued with regard to such products, articles,  
21 compositions, or things pursuant to any provision contained in this title. ~~The department may~~  
22 ~~also~~ However, the state crime laboratory shall make or cause to be made, analysis,  
23 examination, inspection, or test of any product, article, composition, or thing at the request of  
24 any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when

1 such analysis, examination, inspection, or test is made in connection with an investigation into  
2 violations of the criminal law of this state. A copy of any report issued by the department or the  
3 state crime laboratory of the examination or analyses of any product, article, composition, or  
4 thing, duly authenticated by the ~~chemist~~ person making the analysis or examination, when  
5 given under oath, is prima facie evidence in all courts of the matters and facts therein  
6 contained. The department may collect samples of any product, article, composition, or thing  
7 for the purpose of making analyses, inspections, and investigations in connection with research  
8 carried on by it and may publish the reports thereof for the information of the public.

9 **SECTION 2. AMENDMENT.** Section 19-03.1-37 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **19-03.1-37. Burden of proof - Liabilities.**

- 12 1. It is not necessary for the state to negate any exemption or exception in this  
13 chapter in any complaint, information, indictment, or other pleading or in any trial,  
14 hearing, or other proceeding under this chapter. The burden of proof of any  
15 exemption or exception is upon the person claiming it.
- 16 2. In the absence of proof that a person is the duly authorized holder of an  
17 appropriate registration or order form issued under this chapter, the person is  
18 presumed not to be the holder of the registration or form. The burden of proof is  
19 upon the person to rebut the presumption.
- 20 3. No liability is imposed by this chapter upon any authorized state, county, or  
21 municipal officer engaged in the lawful performance of the officer's duties.
- 22 4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving  
23 the analysis of a substance or sample thereof, a certified copy of the analytical  
24 report signed by the state toxicologist, or the toxicologist's designee, or the director  
25 of the ~~forensic sciences division of the state department of health~~ crime laboratory,  
26 or the director's designee, must be accepted as prima facie evidence of the results  
27 of the analytical findings.
- 28 5. Notwithstanding any statute or rule to the contrary, a defendant who has been  
29 found to be indigent by the court in the criminal proceeding at issue may subpoena  
30 the state toxicologist or the director of the ~~forensic sciences division of the state~~  
31 ~~department of health~~ crime laboratory, or any employee of either, to testify at the

1 preliminary hearing and trial of the issue at no cost to the defendant. If the state  
2 toxicologist, the director of the ~~forensic sciences division of the state department of~~  
3 ~~health~~ crime laboratory, or any employee of either, is subpoenaed to testify by a  
4 defendant who is not indigent and the defendant does not call the witness to  
5 establish relevant evidence, the court shall order the defendant to pay costs to the  
6 witness as provided in section 31-01-16.

7 6. In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state  
8 is not required to prove or establish that a conspirator knew the other person to the  
9 agreement intended to deliver or possess with intent to deliver a controlled  
10 substance, an imitation controlled substance, or drug paraphernalia to a third  
11 person.

12 **SECTION 3. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota  
13 Century Code is amended and reenacted as follows:

- 14 2. "Administrative agency" or "agency" means each board, bureau, commission,  
15 department, or other administrative unit of the executive branch of state  
16 government, including one or more officers, employees, or other persons directly or  
17 indirectly purporting to act on behalf or under authority of the agency. An  
18 administrative unit located within or subordinate to an administrative agency must  
19 be treated as part of that agency to the extent it purports to exercise authority  
20 subject to this chapter. The term administrative agency does not include:
- 21 a. The office of management and budget except with respect to rules made  
22 under section 32-12.2-14, rules relating to conduct on the capitol grounds and  
23 in buildings located on the capitol grounds under section 54-21-18, rules  
24 relating to the central personnel system as authorized under section  
25 54-44.3-07, and rules relating to state purchasing practices as required under  
26 section 54-44.4-04.
  - 27 b. The adjutant general with respect to the division of emergency management.
  - 28 c. The council on the arts.
  - 29 d. The state auditor.
  - 30 e. The department of commerce with respect to the division of economic  
31 development and finance.

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- 1 f. The dairy promotion commission.
- 2 g. The education factfinding commission.
- 3 h. The educational technology council.
- 4 i. The board of equalization.
- 5 j. The board of higher education.
- 6 k. The Indian affairs commission.
- 7 l. The industrial commission with respect to the activities of the Bank of North  
8 Dakota, North Dakota housing finance agency, North Dakota municipal bond  
9 bank, North Dakota mill and elevator association, and North Dakota farm  
10 finance agency.
- 11 m. The department of corrections and rehabilitation except with respect to the  
12 activities of the division of adult services under chapter 54-23.4.
- 13 n. The pardon advisory board.
- 14 o. The parks and recreation department.
- 15 p. The parole board.
- 16 q. The state fair association.
- 17 r. The ~~state department of health~~ attorney general with respect to the state  
18 toxicologist.
- 19 s. The board of university and school lands except with respect to activities  
20 under chapter 47-30.1.
- 21 t. The administrative committee on veterans' affairs except with respect to rules  
22 relating to the supervision and government of the veterans' home and the  
23 implementation of programs or services provided by the veterans' home.
- 24 u. The industrial commission with respect to the lignite research fund except as  
25 required under section 57-61-01.5.
- 26 v. The secretary of state with respect to rules adopted for the presidential  
27 preference contest under section 16.1-11-02.3.
- 28 w. The attorney general with respect to guidelines adopted under section  
29 12.1-32-15 for the risk assessment of sexual offenders, the risk level review  
30 process, and public disclosure of information under section 12.1-32-15.

1           **SECTION 4. AMENDMENT.** Section 31-13-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **31-13-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 4           1. "Department" means the department of corrections and rehabilitation.
- 5           2. ~~"Division" means the forensic science division of the department of health.~~
- 6           ~~3.~~ "DNA" means deoxyribonucleic acid.
- 7           3. "Laboratory" means the state crime laboratory.

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

10           **31-13-03. (Effective through July 31, 2004) Persons to be tested - Costs.** The court  
11 shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted  
12 sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05,  
13 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or  
14 any other offense when the court finds at sentencing that the person engaged in a  
15 nonconsensual sexual act or sexual contact with another person during, in the course of, or as  
16 a result of, the offense and any person who is in the custody of the department after July 31,  
17 1995, as a result of a conviction of one of these offenses to have a sample of blood or other  
18 body fluids taken by the department for DNA law enforcement identification purposes and  
19 inclusion in law enforcement identification data bases. The court shall order any person  
20 convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or  
21 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 and any person who is in the custody of the  
22 department after July 31, 2001, as a result of a conviction for one of these offenses to have a  
23 sample of blood or other body fluids taken by the department for DNA law enforcement  
24 identification purposes and inclusion in the law enforcement identification data bases.  
25 Notwithstanding any other provision of law, if the sentencing court has not previously ordered a  
26 sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to  
27 enter an order that the convicted person provide a sample of blood or other body fluids as  
28 required by this section. Any person convicted after July 31, 1995, who is not sentenced to a  
29 term of confinement shall provide a sample of blood or other body fluids as a condition of the  
30 sentence or probation at a time and place specified by the sentencing court. The sentencing  
31 court shall assess the cost of the procedure against the person being tested. The department

1 shall collect the cost of the procedure from the person being tested and transfer the amount  
2 collected to the ~~state department of health~~ attorney general for deposit in the general fund.

3 **(Effective after July 31, 2004) Persons to be tested - Costs.** The court shall order  
4 any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual  
5 offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06,  
6 subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other  
7 offense when the court finds at sentencing that the person engaged in a nonconsensual sexual  
8 act or sexual contact with another person during, in the course of, or as a result of, the offense  
9 and any person who is in the custody of the department on or after August 1, 1995, as a result  
10 of a conviction of one of these offenses to have a sample of blood and other body fluids taken  
11 by the department for DNA law enforcement identification purposes and inclusion in law  
12 enforcement identification data bases. Notwithstanding any other provision of law, if the  
13 sentencing court has not previously ordered a sample of blood and other body fluids to be  
14 taken, the court retains jurisdiction and authority to enter an order that the convicted person  
15 provide a sample of blood and other body fluids as required by this section. Any person  
16 convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall  
17 provide a sample of blood and other body fluids as a condition of the sentence or probation at a  
18 time and place specified by the sentencing court. The cost of the procedure must be assessed  
19 to the person being tested.

20 **SECTION 6. AMENDMENT.** Section 31-13-04 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **31-13-04. DNA testing - Procedure - Immunity - Penalty.** The samples of blood and  
23 other body fluids for DNA testing must be obtained in a medically approved manner by a  
24 physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or  
25 other qualified medical personnel approved by the ~~division,~~ laboratory and packaged and  
26 submitted in containers provided by the ~~division~~ laboratory and in accordance with rules  
27 adopted by the ~~division~~ laboratory. No civil or criminal liability may attach to any person  
28 authorized to draw blood and other body fluids as provided by this chapter as a result of the act  
29 of drawing blood and other body fluids from any person, provided the blood and other body  
30 fluids were drawn according to generally accepted medical procedures. Any person who

1 tampers or attempts to tamper with any sample of blood or other body fluids or the collection  
2 container without lawful authority is guilty of a class C felony.

3 **SECTION 7. AMENDMENT.** Section 31-13-05 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **31-13-05. DNA data base established - How utilized.** The ~~division~~ laboratory shall  
6 establish a centralized data base of DNA identification records for convicted sexual offenders.  
7 The established system must be compatible with the procedures set forth in the national DNA  
8 identification index to ensure data exchange on a national level. The centralized DNA data  
9 base must be used to assist federal, state, and local criminal justice and law enforcement  
10 agencies within and outside the state in the identification or prosecution of sex-related crimes.  
11 The ~~division~~ laboratory shall receive, analyze, and classify samples in compliance with section  
12 31-13-04 and shall record the DNA result in a centralized data base for identification and  
13 statistical purposes. The ~~division~~ laboratory may contract with another laboratory for the  
14 analysis and classification of the samples. A report of the analysis certified by the ~~division~~  
15 laboratory is admissible in any court as prima facie evidence of the facts stated in the report.

16 **SECTION 8. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **31-13-07. Removal of DNA profiles from data base.** A person whose DNA profile  
19 has been included in the data base pursuant to this chapter may petition the district court for  
20 expungement on the grounds that the conviction on which the authority for including the DNA  
21 profile was based has been reversed or the case dismissed. The ~~division~~ laboratory shall  
22 expunge all identifiable information in the data base pertaining to the person and destroy all  
23 samples from the person upon receipt of a certified order.

24 **SECTION 9. AMENDMENT.** Section 31-13-08 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **31-13-08. Rules.** The ~~state department of health~~ attorney general shall adopt rules  
27 pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification  
28 system. The rules must include procedures for collection, analysis, and classification of  
29 samples of blood and other body fluids, data base system usage and integrity, and methods for  
30 contracting with another laboratory for the analysis and classification of samples.

1           **SECTION 10. AMENDMENT.** Section 31-13-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **31-13-09. DNA profiles to be available to law enforcement - Penalty.** Upon  
4 payment of a reasonable fee established by the ~~division~~ laboratory, the ~~division~~ laboratory shall  
5 provide, upon the request of appropriate law enforcement agencies for use for official purposes,  
6 an updated list of names of individuals whose DNA profiles are stored in the data base at the  
7 ~~division~~ laboratory. Any person who disseminates, receives, or otherwise uses or attempts to  
8 use information in the data base, knowing that the dissemination, receipt, or use is for a  
9 purpose other than as authorized by law, is guilty of a class A misdemeanor.

10           **SECTION 11. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12           9. Notwithstanding any statute or rule to the contrary, a defendant who has been  
13 found to be indigent by the court in the criminal proceeding at issue may subpoena,  
14 without cost to the defendant, the person who conducted the chemical analysis  
15 referred to in this section to testify at the trial on the issue of the amount of alcohol,  
16 drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at  
17 the time of the alleged act. If the state toxicologist, the director of the ~~forensic~~  
18 ~~sciences division of the state department of health~~ crime laboratory, or any  
19 employee of either, is subpoenaed to testify by a defendant who is not indigent and  
20 the defendant does not call the witness to establish relevant evidence, the court  
21 shall order the defendant to pay costs to the witness as provided in section  
22 31-01-16.

23           **SECTION 12.** A new section to chapter 54-12 of the North Dakota Century Code is  
24 created and enacted as follows:

25           **State crime laboratory division.**

26           1. A state crime laboratory is created as a division of the office of the attorney  
27 general. This division consists of a director, the state toxicologist, and such other  
28 personnel as may be appointed by the attorney general. The state crime  
29 laboratory may establish and charge fees for services rendered. The state crime  
30 laboratory must be administratively separated from the bureau of criminal  
31 investigation. The director serves at the pleasure of the attorney general and is

1           entitled to receive a salary set by the attorney general within the limits of legislative  
2           appropriation.

3           2. The state crime laboratory shall employ the services of a qualified toxicologist who  
4           must be the state toxicologist. The attorney general shall appoint the state  
5           toxicologist. The attorney general may appoint such qualified deputy state  
6           toxicologists as may be necessary to exercise the authority and responsibility  
7           prescribed by law for the state toxicologist. The results of toxicological or chemical  
8           testing or analysis, other than provided for in section 39-20-13, made by the state  
9           toxicologist at the request of law enforcement agencies for criminal investigation  
10           may not be disclosed directly or indirectly by the state toxicologist or any agent or  
11           employee of the attorney general to anyone other than the person or agency  
12           requesting the test or analysis or to any other person upon whom the toxicological  
13           or chemical test was performed or the person's authorized representative, except  
14           the state toxicologist may permit the inspection of the reports of any such test or  
15           analysis results by any other person having a proper interest therein as determined  
16           by the director of the state crime laboratory.

17           3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief  
18           of police, coroner, or other local, state, or federal law enforcement official, the  
19           attorney general may make available to the requesting official the state crime  
20           laboratory's facilities and personnel to assist in the investigation or detection of  
21           crimes and the apprehension or prosecution of criminals.

22           **SECTION 13. REPEAL.** Sections 12-60-21, 12-60-22, and 23-01-09.1 of the North  
23           Dakota Century Code are repealed.

24           **SECTION 14. ADMINISTRATIVE RULES RELATING TO THE STATE CRIME**  
25           **LABORATORY.** The legislative council shall transfer administrative rules that the attorney  
26           general designates as relating to the state crime laboratory from the title of the North Dakota  
27           Administrative Code relating to the state department of health to the title of the North Dakota  
28           Administrative Code relating to the attorney general. The legislative council, after consulting  
29           the attorney general, may change references in any administrative rules to conform to this Act.  
30           These rules continue in effectiveness without promulgation under chapter 28-32 of the North  
31           Dakota Century Code. Any certifications, designations, or approvals made by the state

1 toxicologist, including those made on or before the effective date of this Act, continue to be valid  
2 after the effective date.

3           **SECTION 15. EFFECTIVE DATE.** This Act is effective July 1, 2003.

4           **SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.