## Fifty-ninth Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 4, 2005

HOUSE BILL NO. 1288 (Representatives Klemin, Koppelman, Mueller) (Senators Kilzer, Traynor, Warner)

AN ACT to create and enact a new section to chapter 29-32.1 of the North Dakota Century Code, relating to the performance of DNA testing under the Uniform Post-Conviction Procedure Act.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 29-32.1 of the North Dakota Century Code is created and enacted as follows:

## Motion for DNA testing not available at trial.

- Without limitation on a court's authority to order discovery under section 29-32.1-08, a
  person convicted of a crime may make a motion for the performance of forensic DNA
  testing to demonstrate the person's actual innocence if:
  - a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and
  - b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.
- 2. A person who makes a motion under subsection 1 must present a prima facie case that:
  - a. Identity was an issue in the trial; and
  - b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.
- 3. The court shall order that the testing be performed if:
  - a. A prima facie case has been established under subsection 2;
  - b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and
  - c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

Sp	Speaker of the House  Chief Clerk of the House				President of the Senate			
Ch					Secretary of the Senate			
This certifies th Assembly of No	at the with orth Dakot	nin bill o a and is	riginated ir known on	n the Ho the rec	ouse of Reproords of that b	esentatives ody as Hou	of the Fifty-ninth Lecuse Bill No. 1288.	
House Vote:	Yeas	89	Nays	0	Absent	5		
Senate Vote:	Yeas	44	Nays	0	Absent	3		
					Chief	Clerk of the	e House	
Received by the Governor at M. on							, 2005.	
Approved at	N	1. on					, 2005.	
					Gove	rnor		
Filed in this office this day of							, 2005,	
at o'	clock	M.						
					Secre	tary of Stat	e	