

**Testimony of the Innocence Project**  
**North Dakota Senate Committee on State and Local Government**  
**Senate Bill 2131**  
**January 12, 2023**

The Innocence Project is a not-for-profit organization that represents the wrongfully convicted and works to reform the criminal legal system to prevent future injustice. Through this work, we have learned the power of forensic evidence. When forensic science is valid and reliable, it can free people who have been wrongfully convicted and lead to the identification of those who committed crimes. To date, at least 375 people in the United States owe their freedom to DNA testing. However, the misapplication of forensic science is the second leading contributing factor to wrongful convictions overturned by DNA evidence and has contributed to the wrongful convictions of nearly a quarter of the 3,357 people exonerated (through DNA and other means) to date. It is for this reason that the Innocence Project has been committed to supporting the advancement of scientifically rigorous, transparent, and independent forensic evidence across the country because our clients need every scientific tool available to demonstrate their innocence.

The forensic science crisis in North Dakota raises real concerns and has serious implications for public safety. Without question, forensic science backlogs and forensic laboratory capacity are a nationwide problem. In 2019, the U.S. Department of Justice published a national needs assessment of forensic science service providers across the nation.<sup>1</sup> The report found that seized drugs and toxicology disciplines were plagued by substantial increases in the turnaround times and backlogs between 2011 and 2017. The FY2022 West Virginia University FORESIGHT report, an annual report that provides business-guided performance metrics of forensic science service providers from around the world, found that between 2013 and 2020, the average growth in costs for forensic testing grew as backlogs across the nation grew.<sup>2</sup> Unfortunately, it appears that these cost increases and capacity strains coincided with the severe budget cuts at the North

---

<sup>1</sup> National Institute of Justice, *Report to Congress: Needs Assessment of Forensic Laboratories and Medical Examiner/Coroner Offices*, (2019), <https://www.ojp.gov/pdffiles1/nij/253626.pdf>.

<sup>2</sup> Between 2013-2020, costs of forensic testing for the following disciplines are listed here with growth in parentheses: DNA (1.5%), fire analysis (3.7%), and toxicology (antemortem) (10%). Between 2013-2020, annual growth in backlogs for the following disciplines are listed here with increases in parentheses: DNA (70.1%), fire analysis (70.6%), toxicology (antemortem) (110.3%), see Paul J Speaker, *Project FORESIGHT Annual Report, 2020-2021*, (2022), [https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=4027&context=faculty\\_publications](https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=4027&context=faculty_publications).

Dakota Office of the Attorney General Crime Laboratory Division back in 2017.<sup>3</sup> The root cause of the backlog issues and service limitations of the state's forensic services can be attributed to those untimely budget cuts which reduced staff capacity and cut two forensic science disciplines. We are gratified that Attorney General Wrigley has requested an increased forensic budget to provide the laboratory with future capacity to address its backlog and to expand the diversity of forensic services available to North Dakotans. Funding additional staff today will provide the crime laboratory with increased case processing capacity in approximately two years as these newly hired examiners are trained and achieve competency to conduct casework. The Crime Laboratory Division's high education and professional standards for its forensic personnel<sup>4</sup> will no doubt assure this smooth transition. Consequently, we implore that the Legislature continue to provide the long term support that is necessary to nurse this weakened laboratory back to health.

For these reasons, SB2131 does not appear necessary to establish the framework for a successful crime laboratory. A change in administrative leadership is a time intensive endeavor and may in fact exacerbate the capacity issues the State is trying to solve. The Crime Laboratory Division is an accredited laboratory and will need to make extensive revisions to its quality system manual to reflect its new workflow. Importantly, the Crime Laboratory Division's current administrative separation from law enforcement meets the recommendations of the 2009 National Academy of Sciences report (NAS report) on forensic science, a publication that is considered the scientific roadmap for forensic science.<sup>5</sup> Administrative independence from law enforcement enhances the validity and reliability of forensic evidence through scientific leadership, adherence to forensic science standards, presentation of evidence within its scientific parameters, insulation from cognitive biases that may impact forensic processes, and protection from conflicts both real and perceived. Indeed, the NAS report stated, "The best science is conducted in a scientific setting as opposed to a law enforcement setting. Because forensic scientists often are driven in their work by a need to answer a particular question related to the issues of a particular case, they sometimes face pressure to sacrifice appropriate methodology for the sake of expediency."<sup>6</sup>

Prior to 2009, five state crime laboratories operated as independent agencies or within an agency that does not share law enforcement or prosecutorial oversight.<sup>7</sup> After the publication of the NAS report, the District of Columbia (2011) and the state of Connecticut (2012) passed laws

---

<sup>3</sup> April Baumgarten, *18 rape kits from Fargo have gone untested for over a year; police chief "not satisfied,"* InForum (2022),

<https://www.inforum.com/news/fargo/18-rape-kits-from-fargo-have-gone-untested-for-over-a-year-police-chief-not-satisfied> (last visited Jan 10, 2023).

<sup>4</sup> North Dakota Office of Attorney General Crime Laboratory Division, *NDOAG-CLD Quality System Manual*, (2021).

<sup>5</sup> National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009), <http://www.nap.edu/catalog/12589> (last visited Oct 31, 2018).

<sup>6</sup> *Id.*, p. 23.

<sup>7</sup> Independent state labs and their year of establishment in parentheses: Alabama (1935), Rhode Island (1978), Arkansas (1981), Delaware (1988), and Virginia (2005), see National Conference of State Legislatures, *Administration of Forensic Science Departments*, (2013).

to create independent crime laboratories and North Carolina (2011) and Wisconsin (2019) moved to administratively separate their laboratories from law enforcement.<sup>8</sup> In Texas, scientific mismanagement by police agencies led to the creation of independent laboratories in the cities of Houston and Austin.<sup>9</sup> In all of these transitions, policymakers and legislators cited the guidance of the NAS report as their rationale.

The benefits of an independent, scientifically robust, and responsive crime laboratory is within reach of North Dakotans. We suggest that the commitment to maintaining the Crime Laboratory's independence be added as an amendment to assure stakeholders and the public that the laboratory will continue to operate independently and with scientific leadership. We also suggest that the Senate State and Local Government Committee commission a needs assessment by forensic science professionals to ascertain the volume and diversity of forensic science needs in North Dakota, translate these requirements into forensic science capacity, and issue any other recommendations that would ensure the efficient and scientifically rigorous production of the forensic science work product.

We encourage the Senate Committee on State and Local Government not to give up on the Crime Laboratory Division. At a time when forensic science services across the nation are losing staff and resources, you have an opportunity to write a different story for North Dakota. Your investment in strengthening forensic science will not only serve North Dakotans into the future, but will enhance public safety and ensure just outcomes for the innocent and survivors of crime.

---

<sup>8</sup> Connecticut Department of Emergency Services and Public Protection, *History*, CT.gov - Connecticut's Official State Website (2023), <https://portal.ct.gov/DESPP/Division-of-Scientific-Services/Division-History> (last visited Jan 10, 2023); Department of Forensic Sciences, D.C. Law 19-18, § 17, 58 DCR 5403 Code of the District of Columbia 15 (2011), <https://code.dccouncil.us/us/dc/council/code/titles/5/chapters/15> (last visited Jan 10, 2023); Phil Mendelson, Marion Barry & Mary M. Cheh, *Department of Forensic Sciences Establishment Act of 2011*, (2011), <http://lms.dccouncil.us/Download/25761/B19-0005-SignedAct.pdf> (last visited Feb 1, 2019); Josh Kaul, *DOJ Reorganized to Create Division of Forensic Sciences [Press Release]*, (2019), <https://urbanmilwaukee.com/pressrelease/doj-reorganized-to-create-division-of-forensic-sciences/> (last visited Jan 10, 2023).

<sup>9</sup> CSI Houston: How a Texas lab has remade the science of forensics, *Christian Science Monitor*, Apr. 2021, <https://www.csmonitor.com/USA/Justice/2021/0423/CSI-Houston-How-a-Texas-lab-has-remade-the-science-of-forensics?icid=rss> (last visited Apr 24, 2021); Brianna Hollis, *Forensics lab will soon be independent from Austin Police Department*, *KXAN Austin*, Aug. 24, 2022, <https://www.kxan.com/news/crime/forensics-lab-will-soon-be-independent-from-austin-police-department/> (last visited Jan 10, 2023).