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SENATE BILL NO. 2131

TESTIMONY OF ATTORNEY GENERAL DREW WRIGLEY

SENATE STATE AND LOCAL GOVERNMENT COMMITTEE

Chairman Roers and Members of the Senate State and Local Government Committee:

I submit this testimony to supplement my January 12, 2023, oral testimony in support of Senate Bill No. 2131. As described in that testimony, this bill would simply provide flexibility for the Attorney General's Office to organize the Crime Lab and the Bureau of Criminal Investigations (BCI) – both of which report to the Attorney General already – in the most efficient, common, and practical manner to fulfill the missions of the office and serve the needs of the justice system. The bill, with the amendment Senator Myrdal introduced for me, also would provide civil service protections to the Crime Lab Director and State Toxicologist, both of whom are political appointees currently. As a result, this bill would enhance the independence of the scientists at the Crime Lab, improve communications and cooperation between the Crime Lab and law enforcement agencies around the state, and help reduce the backlogs of evidence waiting to be tested at the Crime Lab. The science will remain independent, and the mission for which that science exists will be elevated.

As noted throughout the hearing, law enforcement agencies and their representatives strongly support this bill and showed up in large numbers to demonstrate that support. They recognize the unique role BCI can play as a facilitator of communications between law enforcement officers and lab personnel. BCI has an intrinsic understanding of law enforcement work and can help the Crime Lab better prioritize its workflow and manage its administrative functions. At the same time, because of BCI's credibility with law enforcement agencies, BCI can credibly communicate the needs of the lab to the officers and agents who work with it day in and day out.

As I stressed at the hearing, BCI will not – and cannot – influence the objective, independent science at the Crime Lab. Our highly trained and experienced forensic scientists will still need to meet accreditation standards, will still have to testify to their rigorous standards and practices in court, will still have to attest to lab results, and would be supervised by a fellow scientist – one who would no longer be a political appointee but rather would be protected by civil service protections. A realignment of the Attorney General's Office simply would not result in a deterioration of the science carried out by the Crime Lab.

As a prosecutor with over 30 years of experience – and now as the Attorney General of North Dakota – I know first-hand the utmost importance of objective, independent forensic science to

our judicial system. Contrary to some of the testimony presented at the hearing, law enforcement, prosecutors, and crime victims would not benefit from tainted scientific practices or untruthful test results. Besides being antithetical to the values we all hold dear, such fraudulent practices would be exposed and undermine any prosecution. Senate Bill No. 2131, on the other hand, would align the objectives, incentives, and oversight of the lab to promote rigorous scientific excellence.

Some members of the committee asked about the number of state crime labs overseen by agencies with prosecutorial or law enforcement authority. Based on the information we have to date, at least 40 state crime labs have such an arrangement. For example:

- South Dakota's crime lab is under the authority of its Division of Criminal Investigations (DCI);
- Minnesota's is under the authority of its Bureau of Criminal Apprehension (BCA);
- Kansas's is under the authority of its Bureau of Investigations (KBI);
- Colorado's is under the authority of its Bureau of Investigations (CBI);
- Oklahoma's is under the authority of its State Bureau of Investigations (OSBI);
- Georgia's is under the authority of its Bureau of Investigations (GBI);
- Idaho's is under the authority of its State Police (ISP);
- Iowa's is under the authority of its Division of Criminal Investigation (DCI); and
- Many others.

DCI, BCA, KBI, CBI, OSBI, GBI, ISP, and DCI are parallel agencies to our BCI. Moreover, numerous cities with sufficient resources have crime labs under the authority of their police departments, and many federal agencies with parallel missions to the BCI – such as the Federal Bureau of Investigations (FBI) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) – have world-renowned labs under their authority.

The widespread organization of crime labs within criminal investigative and law enforcement agencies shows how trivial any concerns about perceived bias in jury trials really is. If this arrangement were such a problem, all the state, municipal, and federal agencies organized in this manner would long ago have changed their structure.

Indeed, North Dakota has many years of positive experience with BCI employing forensic scientists. The state's renowned cybercrime forensic scientists are BCI agents. These agents test many types of electronic devices in their laboratories, provide reports, and testify to their results in jury trials – just as their counterparts in the Crime Lab do. The Attorney General's Office is not aware of a single case, much less motion, lost because these scientists are BCI agents. It simply is not the concern it has been made out to be.