

JUDICIAL PROOF

CHAPTER 325

SENATE BILL NO. 2358

(Senators DeMers, W. Stenehjem)
(Representatives Kretschmar, Delmore)

DNA TESTING AND DATA BASE

AN ACT to provide for DNA analysis and a DNA data base; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Department" means the department of corrections and rehabilitation.
2. "Division" means the forensic science division of the department of health and consolidated laboratories.
3. "DNA" means deoxyribonucleic acid.

SECTION 2. DNA testing - Admissibility as evidence. In any court proceeding, DNA testing is deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison must be admitted as prima facie evidence to prove or disprove the identity of any person. This section does not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider other relevant evidence of the identity of the person as is admissible in evidence.

SECTION 3. Persons to be tested - Costs. The court shall order any person convicted on or after the effective date of this Act of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after the effective date of this Act as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and 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 and other body fluids as required by this section. Any person convicted on or after the effective date of this Act who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified

by the sentencing court. The cost of the procedure must be assessed to the person being tested.

SECTION 4. DNA testing - Procedure - Immunity - Penalty. The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the division, and packaged and submitted in containers provided by the division and in accordance with rules adopted by the division. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this Act as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

SECTION 5. DNA data base established - How utilized. The division shall establish a centralized data base of DNA identification records for convicted sexual offenders. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of sex-related crimes. The division shall receive, analyze, and classify samples in compliance with section 4 of this Act, and shall record the DNA result in a centralized data base for identification and statistical purposes. The division may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the division is admissible in any court as prima facie evidence of the facts stated in the report.

SECTION 6. Confidentiality of records. Notwithstanding section 44-04-18, except as necessary for law enforcement purposes, all records produced from the samples taken as provided in this Act must be securely stored and are confidential. However, the records must be available to:

1. Any person who is the subject of a record.
2. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's official duties.
3. A court whenever the court determines that the information is necessary for the determination of an issue before the court.

SECTION 7. Removal of DNA profiles from data base. A person whose DNA profile has been included in the data base pursuant to this Act may petition the district court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The division shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order.

SECTION 8. Rules. The department of health and consolidated laboratories shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other

body fluids, data base system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

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

Approved April 3, 1995

Filed April 3, 1995