

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1235

2005 HOUSE JUDICIARY

HB 1235

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1235

House Judiciary Committee

Conference Committee

Hearing Date 1/26/05

Tape Number	Side A	Side B	Meter #
1	xx		0-34.8
1	xx		37.4-39.4

Committee Clerk Signature *Naun Penrose*

Minutes: 12 members present, 2 members absent (Rep. Charging, Zaiser).

Chairman DeKrey: We will open the hearing on HB 1235.

Representative Klemin: Sponsor of bill, explained the bill (see written testimony).

Representative Koppelman: In looking at your testimony, the chart you referenced, on the face of it, your objective seems laudable. I think we all agree that DNA samples can be helpful in prosecuting crimes, or preventing future ones, or identifying criminals, but it appears from what the Supreme Court forwarded to you, it seems that there might be a reason why we don't cover all felonies. I see in the e-mail, please note that the spreadsheet lists all felony convictions, some of which may not be relevant to DNA testing. As I look at the list, I see things like ease dropping, exceeding the speed limit while passing a school, does it really make sense to collect DNA samples from folks that transgressed in those ways.

Representative Klemin: I think the numbers for those crimes are so low, and whether the writer of that e-mail thinks they are relevant or not, I might disagree with that. I just asked him

to give me the statistics. Another thing that we need to bear in mind here, is that if a person can afford to pay for this testing, this law already requires them to do that. If you look at the back page, page 2 of this bill, the court is to assess the cost of the testing against the person charged with the offense, and the Dept. of Corrections is then to collect it from that person. So if they are able to pay for it, then they have to do that under the existing law. I suppose we could go through this list and say this one applies and this one doesn't. I think that is unnecessarily complicated. I think we either go with all offenses, like the other 38 states have done so far, or we make an economic decision that it's not worth \$225,000 to solve some of these crimes.

Representative Onstad: In the course of some investigation, upon conviction, the sample is put into the database, what if the person is not convicted, what happens to the sample then, is it discarded.

Representative Klemin: I'm not sure. The law doesn't require it to go into the database unless there is a conviction. So if a person is charged with a crime, for which a DNA sample taken, the DNA sample proves that the person was innocent, and that's why he's not convicted, I don't know why they would want to put that into the DNA database; but I don't know exactly what they do with it. Maybe they keep it as part of the evidence of the case.

Representative Delmore: Are there other states that keep these samples and preserve them, has there ever been a constitutional challenge in doing that type of process, rather than running the whole test.

Representative Klemin: I'm not sure what other states are doing. I know that the language that I proposed as an amendment, is a concept that is being suggested in some other states that are looking at the cost too. What they've actually done with that, I don't know. I think it would

reduce the size of that fiscal note, down substantially, if we're looking at \$2/test, rather than \$40/test to run the sample. As far as the constitutional challenges, I know that in the ND Supreme Court, there were two cases that went. In those two cases, I was in the opinion, as part of the legislative history, in looking back at the testimony here as to what the intent was. The ND Supreme Court upheld the DNA testing in both of those cases. I don't think they were on constitutional grounds, but it might have been involved there.

Representative Delmore: You don't have any idea what the cost to preserve the samples would be.

Representative Klemin: I don't know what the cost would be. I would anticipate that we are looking at some kind of refrigeration system; I can't imagine it would be a \$200,000 refrigerator, but what would the cost of preserving be vs. the cost of testing. I have given that amendment to the AG's office, they were going to look into it.

Chairman DeKrey: Thank you.

Rep. Dave Monson: I support this bill. I was going through some of my NCSL legis briefs and saw that many other states around us were doing DNA testing, increasing the circumstances where we would take the DNA test. I thought we should be looking at that in ND. I talked to AG, and asked if anything was happening here. I signed on to Rep. Klemin's bill. One of the things that I was thinking of on the fiscal note that is attached to this, I would think that down the road, this could almost save us some money. If you've got a bank of DNA felons that you can quickly match up, you could save police time a lot of man-hours, looking for somebody. If you can match the DNA, you know exactly who you are going after. It may not save the state money on the front end, when we have to do the test; but down the road, when we start looking at all of

the other agencies that may be able to save money because they have this test on file. It might more than pay for itself. That's one of the cases I am going to make before my committee in the Appropriations.

Chairman DeKrey: Thank you. Further testimony in support.

Wayne Stenehjem, Attorney General: Thank you for the opportunity to be here and testify in support of HB 1235. I want to thank Representative Klemin for making this kind of cause of his over a number of years, to collect the maximum amount of DNA samples that we can, because the simple fact is that the technology, the science has improved so much over the years, that we are now at a point where we are often able to use this tremendous tool, that turns out to be a very accurate tool to 1) exonerate the innocent; and 2) to convict the guilty. I think this is something that we really need and can utilize here in ND. I am here because you chose to move the Crime Lab into the AG's office, as is done in most other states. We take our responsibility to oversee the work of the Crime Lab very seriously. The reason we've had problems in the past is because there is a cost to collecting the samples, to having them analyzed, and providing the personnel that are necessary to actually collect the information. We are attempting to do what we can to reduce the fiscal impact, so that we will wind up with the bill that will give law enforcement and the courts a tool that is really an essential one for helping to do that which this committee, more than any other, is responsible for, ensuring that North Dakotans receive justice in their court system. I urge passage of this bill, but it does come with a price tag. We will do our best to reduce it as much as possible, but there is an irreducible price tag to it. Rep. Klemin has an amendment to the bill that hopefully will reduce the fiscal impact, and Hope Olson is here to explain exactly what the costs of these amended bill would be.

Representative Delmore: In most states, do they collect DNA samples on every felon conviction. What's the need for that, and how many states collect them.

Wayne Stenehjem: I think Representative Klemin is correct, that you make a determination, if you're going to collect them from all felons, then you need to collect them for all felons. I look at the person driving through the school zone, that's an area where the speed limit is 20 mph, this person is going 40 miles over the speed limit, driving 60 mph, I don't know how much pity I would have for that person. You should decide whether that needs to be a felony, and then you could make your decision accordingly. It seems to me that if you start picking and choosing what felonies you are going to include or not, you are going to create an impossible task for yourselves, because there are hundreds of criminal offenses that are felonies and that are misdemeanors, if you want to start sorting through them, I think it would be a pretty tough task for yourselves.

Representative Boehning: What percent of felons will pay for the test, and how many states are charging the felons to pay for the tests.

Wayne Stenehjem: I don't know how many states charge the felons for the test. I think the fiscal note that Hope is giving us, will elucidate how many are going to pay for it.

Representative Meyer: Are there, in state law, any felony convictions that require DNA.

Wayne Stenehjem: Yes, sex offenses are all required to have DNA testing.

Representative Meyer: They are the only ones.

Representative Klemin: There are homicides, assaults, robbery.

Representative Meyer: The starred categories are required to have DNA testing.

Representative Klemin: Those are covered now.

Representative Kretschmar: Are there firms in the country that do this testing.

Wayne Stenehjem: What we are proposing in the fiscal note, with the amendments, is that it would lessen the requirement for us to hire additional people to do the analysis. We out source it, and there are firms that do that.

Representative Galvin: One of the bills pertained to DNA, what does the term "kiosk" mean.

Wayne Stenehjem: A kiosk is a little stand, like an ATM machine, for the sex offenders, they check in and register where they are and indicate if there have been any changes. There is an electronic device in it for entering information.

Representative Galvin: How many of these kiosks, is there one for each person.

Wayne Stenehjem: No, it would be like an ATM machine, and they would set it up in the larger police departments, in cities and multiple people would come in and that is where they make their report and do their updates.

Chairman DeKrey: Thank you. Further testimony in support of HB 1235.

Hope Olson, Director, Crime Lab: We are not against the bill. We are for the bill, because DNA is a tool for the prosecutors, we want to change that so it will be a tool for the law enforcement community. The more convicted offender samples you have in the database, the more likely you are going to have a hit in the database. Currently we collect 200-300 samples per year for convicted felons. With this law, it will increase to approx. 1500 per year. So you increase your chances of having a hit for the database and using it for a tool for law enforcement. The fiscal note is needed, because we need an administrative person to help streamline the sample collection, verify sample integrity, do the paperwork to process the sample for outsourcing, track the samples when they come back in and then we need a FTE, 30%, to review

the sample, verify the raw data, because we have to follow the quality assurance standards set forth by the FBI, otherwise we can't qualify for the National database.

Representative Onstad: In the investigation process, the person that is being prosecuted, can they refuse to give a DNA sample, so that we have to wait until they are convicted.

Hope Olson: Currently, this law just requires a sample from the convicted felons. During the investigation process, law enforcement officers can obtain a sample voluntarily or with a search warrant.

Representative Onstad: So that cost goes where.

Hope Olson: That cost is incurred upon the laboratory, currently.

Representative Onstad: So does the agency doing the investigation, do they have to pick up that cost.

Hope Olson: Currently, the cost is on the Crime Lab division. That cost is a laboratory operating cost.

Representative Onstad: So if they are convicted then, do you get that cost back.

Hope Olson: That's a different cost.

Representative Delmore: What is the cost to preserve the samples will be and if that is a fairly common practice. I can understand some of the premise of bringing down the price in doing that, if we do preserve them and something happens to all those samples, what is the back up.

Hope Olson: The cost is not in preserving, the cost is to the public in not providing them information by preventing a crime or convicting or preventing additional crime. We're seeing throughout the states, because 38 states currently with all felons, there are three states with all

arrestees, they are seeing that the smaller, lesser crimes are graduated up, and they are solving more cases.

Representative Delmore: I am asking what is the cost to preserve these samples, I'm not talking about the cost to society, if we're redoing the fiscal note, what will be the cost and what types of precautions we have for a back-up, it has to be more complicated than just taking a refrigerator and plugging it in. I would think you would need a back-up, because if something happened to electricity, would that invalidate it.

Hope Olson: Currently, the way we collect samples, the sample is transferred to a piece of filter paper, that preserves the sample in a refrigerator. We've seen in other states, that they were storing their samples until they had adequate funding and they had a serial rapist that could have been prevented. That causes concern.

Representative Klemin: I don't know if you had an opportunity to look at the amendment I had given to the AG's office, to try to reduce the cost of the fiscal note. Have you looked at that.

Hope Olson: Yes. We recalculated it, subtracting out the cost for outsourcing, and an on-site inspection, with the amendment it is approx. \$134,000/biennium and approx. \$140,000 in the 2007-2009 biennium. That would cover the administrative FTE and the forensic science training, and some proficiency tests.

Representative Koppelman: Under the offenses that are now covered, where you do collect the DNA samples currently, is there a provision where you charge the assailant or the felon, with the cost, like this bill hopes would happen.

Hope Olson: Currently there is a provision in the law that we can collect from the offender. In the administrative rules that were proposed, that was not addressed due to the administration of that. We determined that it would be difficult to collect from the offender.

Representative Koppelman: If you're looking at a fiscal note, be it \$225,000 or \$130,000, how do you arrive at that. Are you assuming that under these provisions a certain amount would be collected from the felons. If so, what kind of percentage are you putting that.

Hope Olson: We did not assume that we could collect from the offender.

Representative Koppelman: So this fiscal note is just flat out cost.

Hope Olson: Flat out cost.

Representative Koppelman: No reimbursement at all.

Chairman DeKrey: Thank you.

Attorney General: We have a revised fiscal note, we'll continue to work with Rep. Klemm to see that we do whatever we can to possibly get this price down. We would hope that this committee would send it over to the Appropriations committee.

Chairman DeKrey: Thank you. Further testimony in support of HB 1235.

Tim Schuetzle, Director of Prison Division, Dept of Corrections: I wanted to make a couple of comments. The first is that the fiscal note from the AG's office is the cost for the state lab. There is a cost for collecting these samples, which falls, according to the bill, on the Dept of Corrections. It's not a great cost, we estimated that it would be about \$6,800 per biennium, but that is something that is not included in the fiscal note. The way the bill is written now, the majority of collections of the samples, are done by the Field Services for felons that don't come to the Penitentiary, or done by our staff at the Penitentiary. Last year, I think it was about 50-50

split. We had about 100, Field Services had about 100 that they collected in the field as well.

What the bill is going to do is to move it up, where at the prison we will probably be collecting 1,000 samples a year, because we have a 1,000 inmates coming in, and most of them are convicted felons. We project that we are going to have an increase growth of 100 more coming in next year. That's where we arrived at about 1,000 more samples. There is a time and cost involved in collecting those. The majority of the cost, however, is with the State Lab. I just wanted to make sure that you understand that the fiscal note is not all inclusive, we were not asked to present any kind of dollars to the fiscal note. The second part I wanted to comment on, I know that it says that the court can assess costs and that the Dept of Corrections, according to the way the law stands now, is responsible to collect those from inmates and turn the money in to the General Fund. What's happening, though, is that the court is not assessing the costs for the DNA test now. We just don't see on the sentencing paper from the courts, that they are charging the inmate for the DNA test, and I agree with Ms. Olson, when she talked about how difficult it is to collect money from inmates. They don't have a lot of money. Normally, when they have a judgment, they may have court costs and fines to pay, but that is usually not collected until well after they are released from the institution. There is an immediate cost to us and to the State Lab to do this bill, that will not be reimbursed for probably years down the road, if it can be collected at all.

Representative Koppelman: If you were change that "may" to a "shall", would it solve the issue of the court's not assessing the costs, don't you collect money from inmates for various reasons. I know that they are typically not earning money while incarcerated, but my impression was that there was a system in place, for example, for you to collect restitution, etc.

Tim Schuetzle: Right now, the bill does say "shall".

Representative Koppelman: Are we referring to current law then.

Tim Schuetzle: Current law says "shall". It is really difficult for us to collect money from inmates. There is a system in place, more on the Field Services side where they collect fees after the inmate has been released from prison, and is out in the community working, or they're a probationer, they are working. They are able to pay more so than they can pay on \$1.35/day, what they get paid from working in the prison. We do try to collect money from them at this point, you end up chasing nickels. You spend so much time trying to collect the money and running their accounts in the hole, and then they owe you so much, and it's more of an accounting issue. However, in some jurisdictions, some judges are writing right in the court order, that anytime the inmate's account exceeds \$100 or \$50, they will begin to pay their court costs, fines and restitution. There are about 3 judges in the state that are doing that. That makes it much easier for us in the Dept of Corrections, because then we have the order right there and we can take the money from the inmate's account and any other funds he has coming into the facility.

Representative Koppelman: Why would you need the judge to tell you that. If there is an obligation, such as court costs, fines, etc., could you just have a standing rule that if there is a restitution order or an obligation on the part of the inmate, that as soon as their account reaches \$100, that the policy of the State Penitentiary would begin docking that account for those costs.

Tim Schuetzle: I'm not sure if we could or not, because most sentencing papers say that they will pay these costs once they are released from custody. There are some judges that changed that.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1235.

Representative Maragos: I move the amendments.

Representative Delmore: Seconded.

Chairman DeKrey: Motion carried.

Representative Maragos: I move a Do Pass as amended and rerefer to Appropriations.

Representative Kingsbury: Seconded.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED & REREFER TO APPROPRIATIONS

CARRIER: Rep. Koppelman

FISCAL NOTE
Requested by Legislative Council
03/30/2005

Amendment to: Engrossed
HB 1235

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$133,679	\$0	\$140,363	\$0
Appropriations	\$0	\$0	\$133,679	\$0	\$140,363	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill allows the court to require individuals convicted of a felony offense to provide a DNA sample. The bill could result in an estimated additional 2,600 DNA samples for the biennium. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

The bill allows the Crime Lab collect the DNA samples, which may be preserved by the Crime Lab for subsequent analysis upon receipt of sufficient funding.

This fiscal note reflects the estimated cost of DNA testing for all felons, therefore no change is needed.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The sentencing court has the authority to assess the cost of the procedure against the person being tested. The department of corrections and rehabilitation has the authority to collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund (31-13-03).

These costs have never been enforced due to the difficulty of collecting fees from offenders.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The \$133,679 in general fund expenditures includes 1 full-time administrative assistant, a .3 FTE forensic scientist to collect and analyze DNA samples, and related expenses. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

Assuming federal funds are available, which is a fairly good possibility, the samples need to be processed in order to receive the federal funds. Although federal funds have paid for operating costs in the past, federal funds have not paid for FTE's. In this case it is anticipated federal funds would pay for outsourcing the DNA samples and for on-site

inspection, an anticipated cost of \$91,400 for the 2005-07 biennium. The 1.3 FTE's are needed to send out DNA kits, log and track the DNA samples, and perform the required analysis of DNA samples.

In order for samples to qualify for the National DNA Database, samples must be processed following the Quality Assurance Standards issued by the FBI. A qualified DNA analyst will be needed to evaluate raw data, conduct case review, and perform DNA testing on quality assurance samples. A qualified DNA analyst must attend training annually and complete two proficiency tests a year to maintain certification.

A full-time administrative assistant will be needed to coordinate mailing additional buccal swab collection kits to law enforcement agencies to expedite the overall collection process. Once the samples are collected, the administrative assistant will log in samples, verify sample integrity, and prepare buccal samples for DNA testing. The administrative assistant will also track the DNA samples processed by a private laboratory and streamline documentation in the DNA Unit.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The resources needed to carry out the mandates of this legislation were not included in the Executive Recommendation. The Office of Attorney General's appropriation will need increased general fund monies of \$133,679 to adequately perform the mandate of this bill.

Name: Kathy Roll
Phone Number: 328-3622

Agency: Office of Attorney General
Date Prepared: 03/30/2005

FISCAL NOTE
Requested by Legislative Council
03/04/2005

Amendment to: Engrossed
 HB 1235

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$133,679	\$0	\$140,363	\$0
Appropriations	\$0	\$0	\$133,679	\$0	\$140,363	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill allows the court to require individuals convicted of a felony offense to provide a DNA sample. The bill could result in an estimated additional 2,600 DNA samples for the biennium. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

The bill allows the Crime Lab collect the DNA samples, which may be preserved by the Crime Lab for subsequent analysis upon receipt of sufficient funding.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The sentencing court has the authority to assess the cost of the procedure against the person being tested. The department of corrections and rehabilitation has the authority to collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund (31-13-03).

These costs have never been enforced due to the difficulty of collecting fees from offenders.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The \$133,679 in general fund expenditures includes 1 full-time administrative assistant, a .3 FTE forensic scientist to collect and analyze DNA samples, and related expenses. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

Assuming federal funds are available, which is a fairly good possibility, the samples need to be processed in order to receive the federal funds. Although federal funds have paid for operating costs in the past, federal funds have not paid for FTE's. In this case it is anticipated federal funds would pay for outsourcing the DNA samples and for on-site inspection, an anticipated cost of \$91,400 for the 2005-07 biennium. The 1.3 FTE's are needed to send out DNA kits, log and track the DNA samples, and perform the required analysis of DNA samples.

In order for samples to qualify for the National DNA Database, samples must be processed following the Quality Assurance Standards issued by the FBI. A qualified DNA analyst will be needed to evaluate raw data, conduct case review, and perform DNA testing on quality assurance samples. A qualified DNA analyst must attend training annually and complete two proficiency tests a year to maintain certification.

A full-time administrative assistant will be needed to coordinate mailing additional buccal swab collection kits to law enforcement agencies to expedite the overall collection process. Once the samples are collected, the administrative assistant will log in samples, verify sample integrity, and prepare buccal samples for DNA testing. The administrative assistant will also track the DNA samples processed by a private laboratory and streamline documentation in the DNA Unit.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The resources needed to carry out the mandates of this legislation were not included in the Executive Recommendation. The Office of Attorney General's appropriation will need increased general fund monies of \$133,679 to adequately perform the mandate of this bill.

Name:	Hope Olson / Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-6359 328-3622	Date Prepared:	03/08/2005

FISCAL NOTE
Requested by Legislative Council
01/28/2005

Amendment to: HB 1235

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$134,239	\$91,400	\$140,951	\$95,970
Appropriations	\$0	\$0	\$134,239	\$91,400	\$140,951	\$95,970

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill requires individuals convicted of a felony offense to provide a DNA sample. The bill will result in an estimated additional 2,600 DNA samples for the biennium. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

As amended, the bill allows the Crime Lab collect the DNA samples, which may be preserved by the Crime Lab for subsequent analysis upon receipt of sufficient funding.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The sentencing court has the authority to assess the cost of the procedure against the person being tested. The department of corrections and rehabilitation has the authority to collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund (31-13-03).

These costs have never been enforced due to the difficulty of collecting fees from offenders.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The \$134,239 in general fund expenditures includes 1 full-time administrative assistant, a .3 FTE forensic scientist to collect and analyze DNA samples, and related expenses. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

The other funds of \$91,400 include the cost of outsourcing the DNA samples and an annual onsite visit. Assuming federal funds are available, which is a fairly good possibility, the samples need to be processed in order to receive the federal funds. Although federal funds have paid for operating costs in the past, federal funds have not paid for FTE's. In this case it is anticipated federal funds would pay for outsourcing the DNA samples and for on-site inspection, an anticipated cost of \$91,400 for the 2005-07 biennium. The 1.3 FTE's are needed to send out DNA kits, log and track the DNA samples, and perform the required analysis of DNA samples.

In order for samples to qualify for the National DNA Database, samples must be processed following the Quality Assurance Standards issued by the FBI. A qualified DNA analyst will be needed to evaluate raw data, conduct case review, and perform DNA testing on quality assurance samples. A qualified DNA analyst must attend training annually and complete two proficiency tests a year to maintain certification.

A full-time administrative assistant will be needed to coordinate mailing additional buccal swab collection kits to law enforcement agencies to expedite the overall collection process. Once the samples are collected, the administrative assistant will log in samples, verify sample integrity, and prepare buccal samples for DNA testing. The administrative assistant will also track the DNA samples processed by a private laboratory and streamline documentation in the DNA Unit.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The resources needed to carry out the mandates of this legislation were not included in the Executive Recommendation. The Office of Attorney General's appropriation will need increased general fund monies of \$134,239 and increased other funds of \$91,400, to adequately perform the mandate of this bill.

Name:	Hope Olson/Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-6359 328-3622	Date Prepared:	01/31/2005

FISCAL NOTE
Requested by Legislative Council
01/10/2005

Bill/Resolution No.: HB 1235

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$225,639	\$0	\$236,921	\$0
Appropriations	\$0	\$0	\$225,639	\$0	\$236,921	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill requires individuals convicted of a felony offense to provide a DNA sample. The bill will require an estimated additional 2,600 DNA samples to be tested for the biennium. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

Currently 38 states maintain DNA on all felons.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The sentencing court has the authority to assess the cost of the procedure against the person being tested. The department of corrections and rehabilitation has the authority to collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund (31-13-03).

These costs have never been enforced due to the difficulty of collecting fees from offenders.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The \$225,639 in general fund expenditures includes 1 full-time administrative assistant, a .3 FTE forensic scientist to collect and analyze the anticipated 2,600 DNA samples for all felons, and the cost to outsource the DNA analysis for the samples. Currently, the laboratory collects approximately 200 – 300 convicted offender samples per year.

In order for samples to qualify for the National DNA Database, samples must be processed following the Quality Assurance Standards issued by the FBI. These standards require an on-site laboratory inspection before samples are received at a private laboratory. In addition, a qualified DNA analyst is needed to evaluate raw data, conduct case review, and perform DNA testing on quality assurance samples. A qualified DNA analyst must attend training annually and complete two proficiency tests a year to maintain certification.

A full-time administrative assistant will be needed to coordinate mailing additional buccal swab collection kits to law enforcement agencies to expedite the overall collection process. Once the samples are collected, the administrative assistant will log in samples, verify sample integrity, and prepare buccal samples for DNA testing. Samples will be sent to a private laboratory for DNA testing. The administrative assistant will track the samples at the private laboratory and streamline documentation in the DNA Unit.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The resources needed to carry out the mandates of this legislation were not included in the Executive Recommendation. The Office of Attorney General's appropriation will need increased general fund monies of \$225,639 to adequately perform the mandate of this bill.

Name: Hope Olson/Kathy Roll
Phone Number: 328-6359 328-3622

Agency: Office of Attorney General
Date Prepared: 01/23/2005

VK
1/27/05

HOUSE -- AMENDMENTS TO HOUSE BILL NO. 1235 JUD 1-27-05

Page 1, line 23, after the underscored period insert "DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding."

Renumber accordingly

Date: 1/26/05,
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass as Amended

Motion Made By

Rep Maragos

Seconded By

Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes)

12

No

0

Absent

2

Floor Assignment

Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1235: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 23, after the underscored period insert "DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding."

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1235

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1235

House Appropriations Committee
Government Operations Division

Conference Committee

Hearing Date Wednesday, February 2, 2005

Tape Number	Side A	Side B	Meter #
1		X	1.7-11.2

Committee Clerk Signature

Rose W. Trumbert

Minutes:

Chairman Carlisle opened discussion on Engrossed HB 1235 regarding DNA testing of all felons which was referred to the Committee from the Judiciary Committee with a DO PASS, 12-0-2. **Ms. Kathy Roll, Director of Finance and Administrative Division,** and **Ms. Sandi Tabor, Attorney General Administration, Chief Deputy Attorney General** were present to assist the Committee.

Rep. Kempenich asked Deputy Tabor and Dir. Roll if the DOCR would be impacted by this bill as well. **Dir. Roll** stated that she was not aware that. She went on to explain that the fiscal note states that if funding becomes available, then the samples will be processed. The \$91,000 is assuming that there are federal funds available to process the samples. The \$134,239 is needed to mail out all the kits, receive and log samples, and send them away to a private laboratory. The FBI requires Quality Assurance Standards.

Rep. Timm stated he would not vote for appropriating this bill; he questions whether or not it's necessary. **Rep. Kempenich** asked if these are duplicated numbers. **Dir. Roll** said that if the Committee puts funding in for both bills, there is a small decrease which will happen in HB1235. That's because there are about 70 new offenders per year, so that would be a total of 140 that could be reduced from HB1235.

There was some discussion about the merits of the bill and **Dir. Roll** said she not here to defend the bill, but she did point out that 38 states have already passed similar legislation and that cross matches from a crime scene help to solve crime.

Rep. Williams asked for clarification on the \$134,239 and it's relationship to federal funds. **Dir. Roll** said the money isn't there now; this is contingent on whether or not federal funds are available. **Rep. Williams** asked what would happen if the Dept. did not receive the federal funds. **Dir. Roll** said the way the bill has been amended, those samples will be stored. **Rep. Williams** asked if there weren't costs involved to store samples and where that money comes from. **Dir. Roll** said there would be costs and that would come from the general fund. **Dir. Roll** said the Dept. won't get the federal funds unless the Dept. is going to processes them. The Federal funds pay for the actual, private lab, testing of those samples. **Rep. Williams** asked how much it would cost to put these samples in the closet. **Dir. Roll** said she'd have study further to provide that number and would be glad to do that.

Chairman Carlisle suggested that he ask for further information from Rep. Klemin. He asked **Mr. Allen Knudson, Legislative Council**, what would happen in the Committee didn't approve the appropriation. **Mr. Knudson** said the Attorney General will probably request money when it

Page 3

Government Operations Division

Bill/Resolution Number HB 1235

Hearing Date Wednesday, February 2, 2005

get to the Senate or a conference committee. If this bill passes and no money is added, they will have to find it somewhere else.

Rep. Kempenich said he is open to the concept, but questions whether or not there's duplication.

Dir. Roll said she'd provide the Committee with the overlap of that \$140 per biennium.

Rep. Kroeber said he's supportive of DNA sampling because it's 99% accurate and it helps solve crime and that's where everything's going.

Chairman Carlisle asked **Dir. Roll** to provide that analysis.

Rep. Williams restated that any amount of money to do something that will be put in the closet is like pouring money down a rat hole.

Chairman Carlisle deferred any further discussion on HB 1235 until later.

(Meter #11.2)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1235

House Appropriations Committee
Government Operations Division

Conference Committee

Hearing Date Friday, February 4, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-4.4

Committee Clerk Signature



Minutes:

Chairman Carlisle opened discussion on HB 1235 regarding DNA testing.

Chairman Carlisle commented to the Committee that the engrossed bill may be passed as is as a gesture of support for the idea, but without an amendment there would be no appropriation. He reminded the Committee that this bill is not a top priority for the Attorney General's Office at this time.

Rep. Thoreson moved DO PASS on HB 1235; **Rep. Williams** seconded. During discussion, **Rep. Timm** stated he would vote against the bill because he feels it is unnecessary. **Rep.**

Thoreson stated that the bill needs more work to make it more specific to certain crimes, but he that he will support it.

Chairman Carlisle called for a roll call vote (#1) which passed, 4-1-1.

Discussion on HB 1235 closed. (Meter #4.4)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1235
Offender DNA testing

House Appropriations Full Committee

Conference Committee

Hearing Date February 8, 2005

Tape Number	Side A	Side B	Meter #
1	X	X	#35.9 - end #0 - #6.0

Committee Clerk Signature

Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the hearing on HB1235.

Rep. Ron Carlisle explained that 38 states require DNA testing for all felons which for us means 2500 felons. Rep Carlisle commented that the committee thought this to be a good concept but there was no money added for the program and the Attorney General's budget does not cover this. The intention of the committee was to pass this on and see what comes of it but that there would be no moneys appropriated for it.

Rep. Mike Timm, Vice Chairman commented that he voted against this because it expanded the DNA testing for all felons and its unnecessary.

Rep. Ken Svedjan, Chairman summarizes that this broadens the base of who needs to be tested for DNA.

Rep. Al Carlson asked for clarification from Rep Carlisle. Is it true that there was no method to fund this project but the committee believes we should pass this anyway?

Rep. Ron Carlisle responded that the policy committee and the sub committee likes the concept of the bill but with the reductions already being done to the Attorney General's budget we did not want to stick the Attorney General with having to come up with the funding to pay for this project. We would like the bill to stay alive and see what happens to it on the floor.

Rep. Ron Carlisle moved a Do Pass motion on HB1235.

Rep. David Monson seconded.

Rep. David Monson commented that only new offenders would be subject to the DNA testing and if there is no money available to do the actual testing, the samples can be stored until either they have the money or there is a need for a specific sample to be tested. There is also a grant from the federal government to do the testing if there is a backlog of samples waiting to be tested.

Rep. Ken Svedjan, Chairman explains that Rep Monson's argument is to pass this bill in order to create the backlog of samples so that the state will be eligible for the federal grants to do the testing.

Rep. Mike Timm, Vice Chairman commented that there was still a cost to collect the samples and store them so someone must have to pay for this if we do not add any appropriations.

Rep. Bob Skarphol asked if his understanding of page 2 in the bill was correct where it says that the offender being tested would pay the cost of collecting the samples.

Rep. Ken Svedjan, Chairman said that the authorization is referenced in the fiscal note but that they never pursued it because apparently they collect nothing from it.

Rep. Jeff Delzer commented that he opposed this bill because if it were a good idea then we should fund it and we better spend the money elsewhere. And I believe the corrections budget has money there for testing violent offenders.

Rep. David Monson commented that if a burglar is tested when its only a burglary, then you will already have the sample if they ever commit a more serious or violent crime.

Rep. Al Carlson commented that we were putting a requirement on law enforcement agencies without providing for any of the funding to accomplish this requirement. Our job is to deal with the money. (meter Tape #1, side A, #44.4)

Rep. Ken Svedjan, Chairman explained that this bill is a policy issue and a do pass vote would pass the policy issue along to the house floor since the money is once again not the issue. For the critics who say that the appropriations committee delves into policy, here is a situation where we have no choice.

Rep. Ralph Metcalf asked if this committee needed to vote to pass the bill or could we just say that we would not appropriate any funds for it.

Rep. Ken Svedjan, Chairman explained that the money is currently not in the Attorney General's budget.

Rep. Ralph Metcalf stated that we should develop a procedure to send bills out of appropriations with or without fiscal notes.

Rep. Ron Carlisle mentioned that the sub committee did not want to add an appropriation to the Attorney General's budget for this but that anyone in this full committee could add an amendment to their budget when we discuss this next week.

Rep. Ken Svedjan, Chairman explained that a Do Pass on this bill would mean that you support the policy with the recommendation of the referring committee. To vote no means to kill a policy and to be criticized for delving into policy.

Rep. Eliot Glassheim asked if it wouldn't be best to pass this bill along without recommendation. We have no particular interest in being for or against the policy and we have no intention of putting any money into this bill. (meter Tape #1, side A, #48.1)

Rep. Ken Svedjan, Chairman said that if we support the Do Pass motion we are saying the same thing

Rep. Jeff Delzer mentioned that there is no money in the bill but that there are costs somewhere in the process and that it is impossible to separate the two things.

Rep. Larry Bellew asked if the bill could be sent back to the policy committee.

Rep. Ken Svedjan, Chairman explained again that the bill is in appropriations because of the fiscal impact on the Attorney General.

Rep. David Monson If we pass this bill we spend 2-3 dollars per sample of 1300 people. It would mean \$3000-\$4000 to take samples and then we could let the federal moneys take care of testing the samples. Could we put in the bill that the federal funds would pay for the testing?

Rep. Ken Svedjan, Chairman asked if there was already language in this bill on lines 23-24 that says that the federal dollars would be used to do backlog testing?

Rep. Ole Aarsvold commented that there would be a cost savings through doing DNA testing rather than other long-term investigation procedures, which need to be considered in this as well.

Rep. Eliot Glassheim commented that we shouldn't require a department or agency to do something specific without funding those programs as well. By doing this we are actually appropriating since we are forcing them to find the funding within their existing appropriations.

Rep. Ken Svedjan, Chairman clarified that the Do Pass motion means we are supporting the notion and there is plenty of opportunity for others to add money to the program if they see fit. If we vote against this we are voting against the policy recommendation that came to us.

Rep. Mike Timm, Vice Chairman read for clarification, the rules regarding the fiscal impact of \$50,000 or more coming before the appropriations committee. There is no mention about there having to be an appropriation.

Rep. Ralph Metcalf asked if we shouldn't add an appropriation here.

Rep. Ron Carlisle commented that he would resist adding any money here because the Attorney General has several other priorities for their budget funds.

Rep. Ralph Metcalf asked if we could say something like "if the agency could find the funds within their budget?"

Rep. Jeff Delzer commented that the language in the bill is a shall and a must, not a may, so the agencies would be required to accomplish this if it is passed.

Rep. Ken Svedjan, Chairman called for a roll call vote on the Do Pass motion of HB1235.

The motion failed with a vote of 7 yeas, 13 neas, and 3 absences. (meter Tape #1. Side B, 2.7)

Rep. Ron Carlisle made a Do Not Pass motion to HB1235

Rep. Blair Thoreson seconded.

Page 6
House Appropriations Committee
Bill/Resolution Number HB1235
Hearing Date February 8, 2005

Rep. Ken Svedjan, Chairman called for a roll call vote on the Do Not Pass motion on HB1235. The motion carried with a vote of 14 yeas, 6 neas, and 3 absences. Rep Carlisle will carry the bill to the house floor.

Rep. Ken Svedjan, Chairman closed the discussion on HB1235.

Date: 2/4/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House House Appropriations Government Operations

Committee

Check here for Conference Committee

Legislative Council Amendment Number 50481.0200

Action Taken Do PASS Engrossed Bill 1235

Motion Made By Rep. Thoreson Seconded By Rep. Williams

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber		
Rep. Timm		✓	Rep. Williams	✓	
Rep. Kempenich	✓				
Rep. Thoreson	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: **February 8, 2005**
 Roll Call Vote #: **2**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1235

House Appropriations - Full Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken **DO NOT PASS**

Motion Made By **Rep Carlisle** Seconded By **Rep Thoreson**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson		X
Rep. Bob Martinson	X		Rep. Eliot Glassheim		X
Rep. Tom Brusegaard	AB		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert		X
Rep. Francis J. Wald	AB		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	AB		Rep. Alon C. Wieland	X	
Rep. Pam Gulleon		X	Rep. James Kerzman		X
Rep. Ron Carlisle	X		Rep. Ralph Metcalf		X
Rep. Keith Kempenich		X			
Rep. Blair Thoreson	X				
Rep. Joe Kroeber		X			
Rep. Clark Williams		X			
Rep. Al Carlson	X				

Total Yes **14** No **6**

Absent **3**

Floor Assignment **Rep Carlisle**

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 8, 2005 2:44 p.m.

Module No: HR-25-2170
Carrier: Carlisle
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1235, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **DO NOT PASS** (14 YEAS, 6 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1235 was placed on the Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1235

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1235

Senate Judiciary Committee

Conference Committee

Hearing Date March 2, 2005

Tape Number	Side A	Side B	Meter #
1	X		5517 - end 0.0 - 939

Committee Clerk Signature

Mona L Solberg

Minutes: Relating to which offenders are subject to NDA Testing.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Lawrence R. Klemin, Dist. #47 - Introduced the bill (meter 5517) Att. #1

Sen. Traynor asked if any of this appropriation been put in any other budget? No, not at this point. The house Judiciary committee recommend a unanimously. House appropriations killed it. The bill nevertheless pass out of the house with the majority of the vote. Referred to the last fiscal note.

Senator Dick Dever, Dist. #32 - (meter 230) Gave Testimony in support of the bill. The motivation I have on this bill was when I did a ride along with the parole officer that handles the sex offenders. They support this legislation in support of what they do on the street. The officer

also recommended a better "state transfer" of DNA information. This legislation would pay for itself down the line in solving cases down the line.

Wayne Stenehjem, ND Attorney General (meter 412) Sited his support on this legislation.

Spoke of an example of a sex offender in Grand Forks of a DNA samples that solved the case and several other ones. These cases went on for a long time on the campus. The people who have been the victims of these crimes are the real winners of this type of legislation. Without funding we can not do this.

Senator Triplett questioned her concern with the expansion this what are the privacy rights of the people. Session by session we erode at it. At what point do we stop? After we have the DNA of the new born? He replied that this is not in this bill... Senator Triplett responded that in some states they are doing this with everyone arrested and she is greatly concerned that we are heading this way. Not everyone arrested is guilty of everything and we certainly do not want to go that way! This bill to me is getting very close to the line of invading peoples privacy. If a person has embezzled money from a Cedit Union or a Bank, there is absolutely nothing to suggest that they every had been or ever will be a violent offender. Where is the technological connection that is going to draw the line that will stop this from going to the other places? It is this bill, he responded. I understand and agree with you. People who this legislation has been found guilty of serious offenses and denote them as felonies, have to realize that they give up certain parts of there rights. Among those are the rights that this bill proposes. I understand the "slippery slope" issues.

Sen. Trenbeath sited the conviction of a felony that results in incarceration for less then one year time served and then it is recorded as a misdemeanor, how would this be effected? The

Attorney General responded that this is probably more theoretical than actual. All of the things that result in this, for instance; the giving up of your firearms, you would still be convicted of a felony on this, even though they were no longer a felon- this would be similar to this type of legislation.

Sen. Nelson asked Hope Olson, Director of the Crime Lab to give the overview of how the process works (meter 939).

Committee discussed how the funds were handled including grants.

Testimony in Opposition of the Bill

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Senator John (Jack) T. Traynor, Chairman reopened the Hearing

Senator Triplett stated that current law was enough to do this and I am concerned for the people who have not committed this type of crime being tested. My other concern is that we are heading down the "slippery slop" of mandatory testing of DNA of everyone and there dog. **Senator Triplett** made the motion to DO NOT Pass and **Sen. Trenbeath** seconded the motion. All members, but the motioners, voted for this. Motion Fails

Sen. Trenbeath debated with the committee the progressional demise of the next generation and DNA testing. The assumption of re-offencing bothers him and **Senator Triplett**. Discussed how we are taking the judgment away for the judge by mandating that they do this. **Sen. Nelson** made the statement that she did not view this as a privacy issue but an identity issue. **Sen. Trenbeath** responded with a quote from Nazi Germany.

Senator Triplett made the motion to amend and change the court "may" instead of "shall" and

Sen. Trenbeath seconded the motion. All members were in favor and the motion passes.

Page 4
Senate Judiciary Committee
Bill/Resolution Number HB 1235
Hearing Date March 2, 2005

Sen. Nelson made the motion to Do Pass As Amended and **Senator Hacker** seconded the motion. All members except, for **Sen. Trenbeath** and **Senator Triplett**, were in favor and motion passes.

Carrier: **Senator Syverson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/2/05
Roll Call Vote #: ,

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1235

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Senator *Triplett* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor		✓	Sen. Nelson		✓
Senator Syverson		✓	Senator Triplett	✓	
Senator Hacker		✓			
Sen. Trenbeath	✓				

Total (Yes)

28 No

40

Absent

Motion Fails

0

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

Date: 3/2/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1235

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amend to "May" not "shall" order Test*

Motion Made By Senator *Triplett* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor			Sen. Nelson		
Senator Syverson			Senator Triplett		
Senator Hacker					
Sen. Trenbeath					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

Date: 3/2/05
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1235

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass As Amended*

Motion Made By Senator *Nelson* Seconded By Senator *Hacker*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett		X
Senator Hacker	✓				
Sen. Trenbeath		X			

Total (Yes) *4* ~~X~~ No *2* ~~0~~

Absent 0

Floor Assignment Senator *Syverson*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 3:00 p.m.

Module No: SR-39-4105
Carrier: Syverson
Insert LC: 50481.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1235, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 20, replace "shall" with "may"

Renumber accordingly

2005 SENATE APPROPRIATIONS

HB 1235

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1235

Senate Appropriations Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	a		3,915

Committee Clerk Signature



Minutes:

Chairman Bowman called the hearing to order on HB 1235.

Representative Lawrence R. Klemin, District 47, Bismarck, distributed handouts and testified in support of HB 1235 which relates to DNA testing of all felons and how approval of the bill would improve public safety. He provided a brief history of the bill giving examples of DNA samples, situations where collections had been made and crimes were solved, the backlog federal funding, the costs of DNA testing, and collecting the assessed costs.

Questions were raised about the courts assessing the cost of DNA testing and whether that would offset the general fund costs, the assessment of costs to the inmate, about changing the wording from shall to may, the fiscal impact this will have on the Attorney General's office and whether there was any testimony against the bill.

Senator Stan Lyson, District 1, Williston, testified in support of HB 1235 and responded to the questions on charging back and changing the wording to shall from may.

Questions raised were about the similar concern of having the law in place and judges were not doing it, the changing in the wording, the concern of lawsuit of stating shall.

Wayne Stenehjem, Attorney General, testified in support of HB 1235 and stressed how important the DNA testing is to law enforcement and that lawsuits on DNA testing have been upheld by the Supreme Court rulings. He indicated that when the bill was put together, the Attorney General did not know about it and it was not allowed for in their budget or the optional budgets.

Questions were raised about whether this would save money as far as the cost of fingerprinting, whether this would replace fingerprinting, would the day come when all newborns have DNA testing, and more detailed information as to costs of DNA testing was requested.

Kathy Roll, Financial Administrator, Attorney General's Office, testified in response to questions asked on costs of DNA testing. She indicated the total cost of DNA testing is \$134, with the actual testing being outsourced.

Questions were raised as to whether this would be more cost effective if testing was left in-house, the cost per sample, why the law now provides \$51 per test be collected but the fiscal note shows no income, how much time will be saved in solving crimes, whether there is restitution, whether the testing could legally be done at the time of an arrest, individuals convicted of crimes are assessed fees, why are they not collected and there is an inherent problem with the fiscal note as there should be some income.

Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator, ND Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota, presented

Page 3

Senate Appropriations Committee

Bill/Resolution Number 1235

Hearing Date March 11, 2005

written testimony and testified in support of HB 1235. She discussed CODIS (Combined DNA Indexing System), the DNA database and crime statistics.

Chairman Holmberg closed the hearing on HB 1235.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1235

Senate Appropriations Committee

Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1		b	1,835

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the discussion on HB 1235 indicating this has to do with sexual offenders and DNA testing the courts may/shall order. He indicated an amendment had been prepared to make changes. He said we first have to strip away the amendments that are in the Senate Journal that the Senate put on the bill and make one other amendment changing an any to an. The effect will be placing the shall in the bill.

Senator Kringstad moved a do pass on the amendment, Senator Fischer seconded. A voice vote was taken with everyone present voting yes. The motion carried.

Senator Kringstad moved a do pass on the bill with the amendment, Senator Fischer seconded.

A roll call vote was taken with 13 yes, 0 no, and 2 absent.

Chairman Holmberg closed the discussion.

Date 3/22/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 1235

Senate SENATE APPROPRIATIONS

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass w amend

Motion Made By Kringstad Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	✓		SENATOR KRAUTER	✓	
VICE CHAIRMAN BOWMAN	✓		SENATOR LINDAAS	✓	
VICE CHAIRMAN GRINDBERG	✓		SENATOR MATHERN	✓	
SENATOR ANDRIST	✓		SENATOR ROBINSON	A	
SENATOR CHRISTMANN	✓		SEN. TALLACKSON	✓	
SENATOR FISCHER					
SENATOR KILZER	✓				
SENATOR KRINGSTAD	✓				
SENATOR SCHOBINGER	A				
SENATOR THANE	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Fed Sverson / of Holmberg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1235, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1235, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on page 701 of the Senate Journal, Engrossed House Bill No. 1235 is amended as follows:

Page 1, line 20, replace the first "any" with "an"

Renumber accordingly

2005 TESTIMONY

HB 1235

**HOUSE BILL NO. 1235
TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
JANUARY 26, 2005**

Mr. Chairman and Members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today to testify in support of House Bill 1235.

House Bill 1235 relates to those persons from whom DNA samples are to be taken for testing and analysis. The results of the DNA tests are then included in law enforcement identification data bases to aid in identification of persons who commit crimes in the future or who might have already committed other unsolved crimes. The DNA data base is typically used when law enforcement obtains DNA evidence from a serious crime scene for which there is no known suspect. The DNA evidence from the crime scene is then compared against the state's convicted offender DNA data base and can also be linked into the national DNA data base system where the data bases from the federal government and other states can also be searched. If a match occurs, then law enforcement has a suspect. The data base can also be used to exonerate suspects. It has also been used to gain the release of persons wrongly convicted of certain crimes in the past at a time when the technology for DNA testing was not available.

In the 1995 Legislative Session, Section 31-13-04 of the North Dakota Century Code was adopted to require that a sample of blood or other bodily fluids be taken from any person convicted of a sexual offense for inclusion in the DNA law enforcement identification data bases.

In the 2001 Legislative Session, I sponsored a bill to expand the requirements for DNA testing to include persons convicted of violent felonies included in Ch. 12.1-16 (homicide); Ch. 12.1-17 (assaults); Ch. 12.1-18 (kidnapping); Ch. 12.1-22 (robbery); and Ch. 12.1-27.2 (sexual performances by children). The collection of samples was to be taken not only from those newly convicted of these additional crimes, but also from those who had previously been convicted, but who were still in the custody of the Department of Corrections. That bill had a three year sunset clause due to concerns over the funding needed to collect and analyze the additional DNA samples.

In the 2003 Legislative Session, I sponsored a bill to remove the sunset clause and also to make certain other clarifications in the law. Coincidentally, the 2003 bill was also numbered as House Bill 1235, the same as the bill you have before you today.

The current bill proposes to again expand the offenses for DNA sampling purposes to include any individual convicted of *any felony* offense after July 31, 2005. This is known as an "all felons" bill. However, the collection requirement is prospective only. It does not include felons who are still in the custody of the Department of Corrections.

but who had been convicted of felonies that were not previously covered by the DNA law.

As of December 2004, 38 States have enacted legislation to require DNA from all convicted felons, including Montana, Minnesota, and South Dakota. A chart showing the States with such laws is attached to my testimony. In addition, it is my understanding that many of the remaining States are now considering "all felons" requirements for DNA testing.

Funding for the DNA testing is still a concern. For that reason, I have prepared a proposed amendment, which is attached to my testimony, to provide for the collection of the DNA samples immediately upon conviction, but to allow the Department of Corrections to preserve the samples until a later date, if necessary, when funding may become available for the testing. The idea is to collect now, but analyze later.

In 2004, Congress passed the *Justice for All Act*, which enacted *The President's Initiative to Advance Justice Through DNA Technology*. This initiative authorizes over \$750 million in forensic DNA grants over five years to cover costs associated with DNA backlogs and building crime lab capacity. However, the backlog grant program is solely for the purpose of "backlog" elimination. States must have a backlog of convicted offender DNA samples in order to be eligible to apply for this funding. By passing the "all felons" legislation proposed in House Bill 1235, and by collecting now for later analysis, we will create a backlog to qualify for the new federal funding. It is my understanding that using mouth swabs to collect the samples costs about \$2 per offender and that it costs about \$40 to complete the DNA analysis. North Dakota is currently in the process of seeking additional funding to expand our own crime lab capacity, so the cost of testing may be even less than \$40 in the future.

Mr. Chairman and Members of the Committee, I urge your support for House Bill 1235. It is time for North Dakota to join the majority of the States in requiring DNA samples from all felons.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 23, after the period insert "DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding."

Renumber accordingly

Benefits of Expanding Criminal DNA Databases

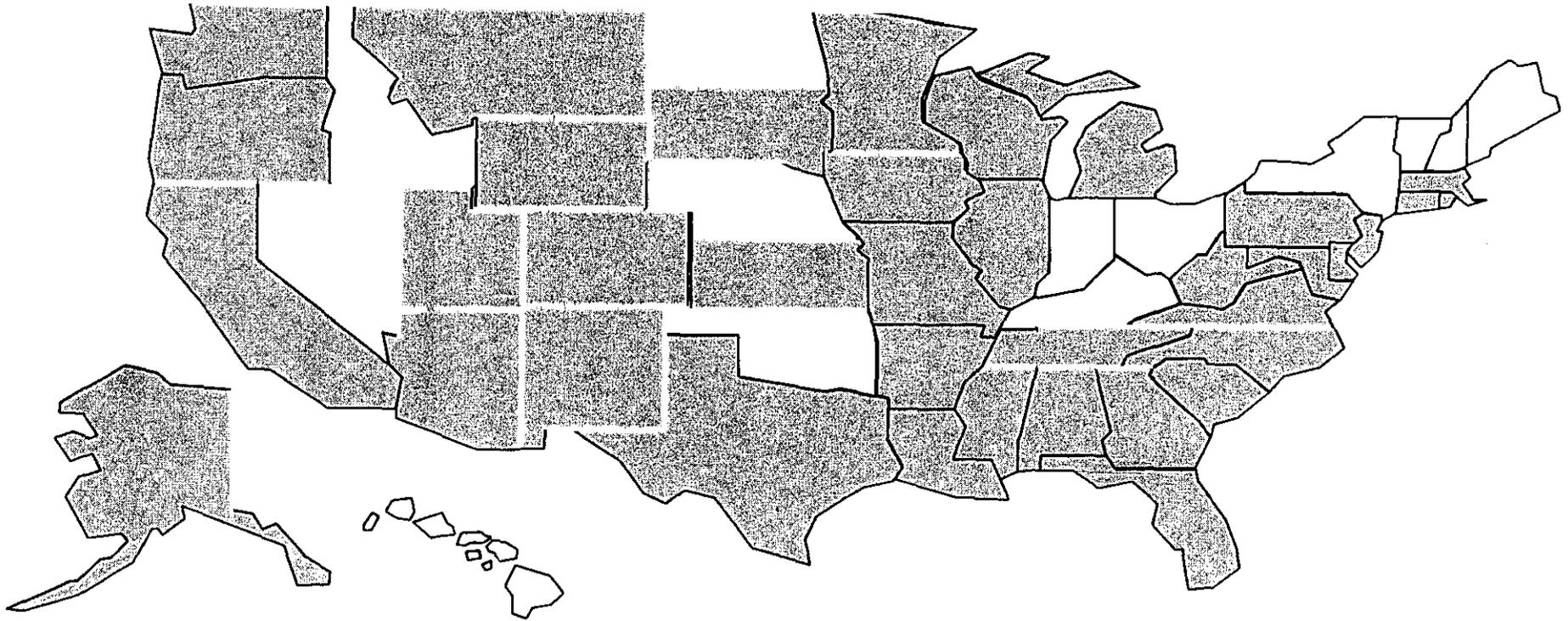
Most states have enacted legislation requiring the collection of DNA samples from all convicted felons. Once a sample has been collected, it is profiled and entered into secure state and federal databases. When law enforcement obtains DNA from a crime scene, the DNA is compared against the DNA databases. If the crime scene DNA matches a profile in the DNA database, then law enforcement has a suspect.

State legislators throughout the country have expanded DNA databases to include profiles from all convicted felons. This action comes as a result of data from some U.S. states and foreign countries indicating that an expanded DNA database doubles the chance of matching an unsolved crime to a known offender. These statistics suggest that expanded DNA databases have several benefits: First, more crimes are solved; second, more crimes are prevented; third, more innocent people are exonerated; and lastly, society realizes greater cost-efficiencies:

1. **Solve crimes** – DNA collection from all convicted felons, rather than just sex offenders and serious violent crimes, results in a monumental amount of violent crimes being solved. Statistics show that as many of half of the criminals that commit violent crimes have non-violent criminal histories. Therefore, offenders who are required to submit DNA when convicted of non-violent felonies will be identified as they leave DNA behind at a rape and murder scenes. *If a state takes DNA from violent offenders only, the likelihood of solving a particular rape or murder are reduced by 50%.*
2. **Prevent crimes** - Solving a crime -- and solving it quickly -- has a direct effect on preventing additional crimes by the same perpetrator. An offender who is not apprehended in a timely manner remains free to commit more crimes. For example, according to a study completed by the National Institute of Justice (US Department of Justice) the average rapist commits 8-12 sexual assaults. If law enforcement can apprehend the rapist after the first sexual offense, *then a minimum of 7 rapes would be prevented per offender.* When considering that *as many as half* of all violent criminals have a prior conviction for a non-violent crime, it becomes evident that expanding DNA database requirements to all convicted felons would significantly impact the number and frequency of rapes and other repeat violent crimes in this country.
3. **Exonerate the innocent** - Increasing the DNA database to those convicted of non-violent offenses reduces the occurrence of innocent people who are wrongly suspected, arrested and convicted of crimes they did not commit. Two common scenarios exemplify how a larger DNA database protects such innocent people:
 - *The guilty party is in the database* – Imagine that strong circumstantial evidence leads law enforcement to suspect an innocent person of a crime. An analysis of DNA evidence from the crime scene identifies someone else as the true perpetrator when it is matched against profiles in the state's database. The innocent person is dismissed as a suspect and the true perpetrator is arrested.
 - *The innocent party is in the database* – Imagine a situation where law enforcement has DNA from a crime scene that they know belongs to the true perpetrator. Now imagine that law enforcement has identified a probable suspect, but does not have enough cause to obtain a warrant for a DNA sample from the suspect. If this suspect's profile was already in the database due to a previous non-violent conviction, law enforcement could automatically check the database and subsequently eliminate the person as a suspect. This would reduce an immeasurable amount of needless embarrassment and stress brought upon innocent persons wrongly suspected of committing horrible crimes.
4. **Cost Efficiencies** – According to a study completed by the National Institute of Justice (U.S. Department of Justice) rape is the costliest crime, with victim costs totaling \$127 billion. The study estimated that when all factors are considered (including medical and mental health care, lost productivity and decreases in the quality of life) the estimated cost of rape *per victim* is \$87,000. If the average rapist commits 8 rapes, but a DNA databank stops the offender half way through his spree, then 4 rapes are prevented at a savings of \$348,000. We know that the federal DNA database system has matched crime scene evidence to a database profile on well over 1,200 sexual assault cases. If we assume that just 25% of these offenders would have committed only one more rape each, a minimum of \$26.1 million in savings would be realized.

ALL FELONS LEGISLATION IN 2004

As of November 2004, 37 states have enacted legislation to require DNA from all convicted felons



Listed below are the bill numbers from the 37 states that have passed all felons DNA legislation

AL SB 100 – Barron (1994)
AK HB 49 – Anderson (2003)
AR HB 1074 – Verkamp (2003)
AZ SB 1396 – Richardson (2002)
CA Prop 69 – Voters Initiative (2004)
CO HB 1130 – Grossman (2001)
CT HB 5022 – Berger (2003)
DE HB 4 – Ewing (2002)
FL SB 366 – Villalobos (2001)

GA SB 318 – Hecht (2000)
IA HF 2201 – Jud. Cmte (2002)
IL SB 2024 – Dillard (2002)
KS HB 2880 – App Cmte (2002)
LA SB 346 – Dardene (2003)
MA SB 187 – Jacques (2003)
MD HB 1053 – Doory (2002)
MI *MB* – Regenmorter (2001)
MN HF 2515 – Goodno (2002)

MO HB 1000 – Bartle (2004)
MS SB 2348 – Carlton (2003)
MT HB 359 – Clark (2001)
NJ HB 2617 – Johnson (2003)
NM SB 114 – McSorley (1997)
NC HB 79 – Alexander (2003)
OR HB 2664 – Winters (2001)
PA HB 835 – Maitland (2004)
RI SB 2921 – Damiani (2004)

SC HB 3594 – Jennings (2004)
SD SB 184 – Abdallah (2003)
TN HB 2884 – Westmoreland (1998)
TX HB 588 – Garcia (2001)
UT HB 154 – Way (2002)
VA SB 130 – Holland (1990)
WA HB 2468 – Miloscia (2002)
WI AB 133 – Durke (1999)
WV HB 4156 – Webster (2004)
WY HB 57 – Jud. Cmte (1997)

ONE PREVENTABLE RAPE

In June 2000, a woman in Fargo was sexually assaulted in her home by an unknown intruder. DNA evidence was collected from the crime scene, but was not matched to an offender. Police had identified a man as a possible suspect, but did not have sufficient cause to obtain a warrant for a DNA sample.

In August 2002, a teenager was sexually assaulted by an intruder in an apartment where she was babysitting. Several days later, police were finally able to obtain a warrant for a DNA sample from the suspect, and he was linked to both rapes.

The offender was convicted in Minnesota for felony possession of stolen property and burglary in September 1996, and for felony burglary in June 1997. At the time Minnesota did not require DNA from convicted burglars. North Dakota still does not require DNA from convicted burglars. If a DNA sample had been collected from the offender for either the 1996 or 1997 felony conviction, the June 2000 sexual assault could have been solved and the perpetrator apprehended, *thereby preventing one rape*. The offender also had a 1996 domestic assault misdemeanor conviction, which is also a DNA database crime in some states.

Klemin, Lawrence R.

Schmidt, Kurt T.
Tuesday, January 25, 2005 8:55 AM
To: Klemin, Lawrence R.
Cc: Ganje, Jim M.
Subject: 2004 convictions



Response_re
Klemin_2004_co

Representative Klemin,

Attached is a spreadsheet that lists felony convictions for calendar year 2004.

The left column is the description of the offense, the middle column contains the NDCC that is cited in the case and the right column is the number of convictions for that description/ndcc during 2004.

Please note that the spreadsheet lists all felony convictions, some of which may not be relevant to DNA testing.

If you have any questions, feel free to contact me.

Kurt T. Schmidt
Director of Technology
Judicial Branch
4218

response_rep_Klemin_2004_convictions.xls>>

2004 Felony Convictions

* covered by existing law

OFFENSE	CENTURY CODE	COUNT
EXCEED SPEED LIMIT WHILE PASSING SCHOOL-39 MPH		1
REGISTRATION OF SECURITIES	10-04-04	7
OFFERING FOR SALE/SELLING UNREGISTERED SECURITIES	10-04-10	4
FRAUDULENT PRACTICES	10-04-15	2
ORDERS, INJUNCTIONS, AND PROSECUTIONS FOR VIOLATIONS	10-04-16	3
ACCOMPLICES	12.1-03-01	52
CRIMINAL ATTEMPT	12.1-06-01	40
CRIMINAL FACILITATION	12.1-06-02	1
CRIMINAL SOLICITATION	12.1-06-03	2
CRIMINAL CONSPIRACY	12.1-06-04	133
PREVENTING ARREST OR DISCHARGE OF OTHER DUTIES	12.1-08-02	20
HINDERING LAW ENFORCEMENT	12.1-08-03	2
AIDING CONSUMMATION OF CRIME	12.1-08-04	1
FAILURE TO APPEAR AFTER RELEASE - BAIL JUMPING	12.1-08-05	43
ESCAPE	12.1-08-06	41
TAMPERING WITH WITNESSES AND INFORMANTS IN PROCEEDINGS	12.1-09-01	1
TAMPERING WITH PHYSICAL EVIDENCE	12.1-09-03	1
THREATENING PUBLIC SERVANTS	12.1-12-06	1
EAVESDROPPING/FC	12.1-15-02	1
MURDER	12.1-16-01	7 *
MANSLAUGHTER	12.1-16-02	5 *
NEGLIGENT HOMICIDE	12.1-16-03	6 *
SIMPLE ASSAULT	12.1-17-01	77 *
ASSAULT	12.1-17-01.1	6 *
AGGRAVATED ASSAULT	12.1-17-02	167 *
RECKLESS ENDANGERMENT	12.1-17-03	66 *
TERRORIZING	12.1-17-04	179 *
CONTACT BY BODILY FLUIDS OR EXCREMENT	12.1-17-11	38 *
ASSAULT OR HOMICIDE WHEN FLEEING A PEACE OFFICER	12.1-17-12	1 *
FELONIOUS RESTRAINT	12.1-18-02	9 *
UNLAWFUL IMPRISONMENT	12.1-18-03	1 *
PARENTAL KIDNAPPING	12.1-18-05	1 *
GROSS SEXUAL IMPOSITION	12.1-20-03	94 *
CONTINUOUS SEXUAL ABUSE OF A CHILD	12.1-20-03.1	6 *
SEXUAL IMPOSITION	12.1-20-04	3 *
CORRUPTION OR SOLICITATION OF MINORS	12.1-20-05	28 *

LURING MINORS BY COMPUTER	12.1-20-05.1	1
SEXUAL ASSAULT	12.1-20-07	17 *
INDECENT EXPOSURE	12.1-20-12.1	4
TRANSFER OF BODY FLUID BY PERSON W/AIDS	12.1-20-17	1
ARSON	12.1-21-01	9
ENDANGERING BY FIRE OR EXPLOSION	12.1-21-02	5
CRIMINAL MISCHIEF	12.1-21-05	45
INTERFERENCE WITH TELEPHONE DURING EMERGENCY CALL	12.1-21-06.1	48
ROBBERY	12.1-22-01	31 *
BURGLARY	12.1-22-02	301
CRIMINAL TRESPASS	12.1-22-03	102
BREAKING INTO A VEHICLE	12.1-22-04	92
THEFT OF PROPERTY	12.1-23-02	585
THEFT BY DECEPTION	12.1-23-02(2)	75
THEFT OF PROPERTY (POSSESSION)	12.1-23-02(3)	37
DISARMING A LAW ENFORCEMENT OFFICER/FC	12.1-23-02.1	3
THEFT OF SERVICES	12.1-23-03	9
THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE	12.1-23-04	1
THEFT OF PROPERTY (CHECK)	12.1-23-05	21
THEFT/FC	12.1-23-05(2)(D)	17
UNAUTHORIZED USE OF A VEHICLE	12.1-23-06	56
MISAPPLICATION OF ENTRUSTED PROPERTY	12.1-23-07	1
DEFRAUDING SECURED CREDITORS	12.1-23-08	2
DEALING IN STOLEN PROPERTY	12.1-23-08.3	5
UNAUTHORIZED USE OF PERSONAL IDENTIFYING INFORMATION	12.1-23-11	27
FORGERY OR COUNTERFEITING	12.1-24-01	297
DECEPTIVE WRITINGS	12.1-24-03	3
PROMOTING OBSCENITY TO MINORS	12.1-27.1-03	3
PROMOTING SEXUAL PERFORMANCE BY MINOR/FC	12.1-27.2-04	1 *
GAMBLING	12.1-28-02	1
UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA	12.1-31.1-03	73
UNLAWFUL MANUFACTURING/DELIVERY OF DRUG PARAPHERNALIA	12.1-31.1-04	1
EXPLOITATION OF A VULNERABLE ADULT	12.1-31-07.1	4
SEXUAL OFFENDER REGISTRATION REQUIREMENT	12.1-32-15	10
DRAG RACING	12-05-08 2A (CITY)	29
DRIVE UNDER THE INFLUENCE	12-10-01 (CITY)	1
POSS/CONT SUB IN JAIL/CORRECTIONAL FAC	12-44.1-21 CITY	3

POSS OF CONTROLLED SUBSTANCE/ALCOHOLIC BEVERAGE BY AN INMATE	12-44.1-21(2)	1
DELIVER ALCOHOL OR CONTROLLED SUBSTANCE TO INMATE	12-47-21(1)	3
POSSESSION OF ALCOHOL OR CONTROLLED SUBSTANCE BY INMATE	12-47-21(2)	2
PROTECTION ORDER VIOLATION	14-07.1-06	30
CHILD NEGLECT OR ABUSE	14-09-22	95
PARK VIOLATION	15-25-21 (1)	1
DELIVERY OF COCAINE	19-01.1-07 (3)	4
POSSESSION OF A CONTROLLED SUBSTANCE, METH	19-03.1-02	9
POSS OF MARIJUANA W/INTENT TO DELIVER/FB	19-03.1-05	19
CONSPIRACY TO DELIVER A CONTROLLED SUBST	19-03.1-07	2
DELIVERY OF A CONTROLLED SUBSTANCE/FB	19-03.1-07	39
DELIVERY OF CONTROLLED SUBSTANCE (B)	19-03.1-07 (B)	9
ENDANGERMENT OF CHILD	19-03.1-22.2	24
PROHIBITED ACTS A/CONTROLLED SUBSTANCES	19-03.1-23	391
MANUFACTURE, DELIVER, OR POSSESS W/ INTENT - CONTROLLED SUB.	19-03.1-23(1)	236
MANUFACTURE, DELIVER, OR POSSES W/INTENT-CONTROLLED SUBSTANCE	19-03.1-23(1)(D)	1
CREATE, DELIVER, OR POSSESS W/ INTENT - COUNTERFEIT SUBSTANC	19-03.1-23(2)	16
POSSESSION OF A CONTROLLED SUBSTANCE/*	19-03.1-23(3)	26
POSSESSION OF CONTROLLED SUBSTANCE	19-03.1-23(6)	353
AGGRAVATING FACTORS IN DRUG OFFENSES	19-03.1-23.1	11
MAINTAIN DWELLING FOR USING CONTROLLED SUBSTANCE	19-03.1-24	2
PROHIBITED ACTS C/REGISTRANT VIOLATIONS	19-03.1-25	33
PROHIBITED ACTS - IMITATION CONTROLLED SUBSTANCE	19-03.2-03	11
CITY OF FARGO	19-03.3-23(1)(B)	1
POSSESSION OF DRUG PARAPHERNALIA	19-03.4-03	645
MANUFACTURING OF DRUG PARAPHERNALIA	19-03.4-04	1
POSSESSION OF DRUG PARAPHERNALIA W/INTENT TO DELIVER-FELONY	19-3.4-04	2
FUGITIVE FROM JUSTICE	29-30.3	3
DUTIES OF BOARD-MAY MAKE RULES & REGULATIONS	36-01-08	1
VIOLATION OF COMPLIANCE WITH REGISTRATION PROVIS.	39-04-17	1
ALTERING/FORGING CERTIFICATE OF TITLE/FC	39-05-11	1
DROVE OR IN ACTUAL PHYSICAL CONTROL OF MOTOR VEHICLE	39-08-01	13
DRIVING UNDER THE INFLUENCE OF LIQUOR OR DRUGS	39-08-01	24
LEAVING SCENE OF ACCIDENT INVOLVING DEATH/PERSONAL INJURY	39-08-04	2
FLEEING OR ATTEMPTING TO ELUDE POLICE	39-10-71	11
ENGAGING IN A FRAUDULENT SCHEME OR TECHNIQUE/GAME OF CHANCE	53-06.1-16.1	1
THEFT OF GAMING FUNDS	53-06.1-16.1(2)	1

CRIMINAL TRESPASS
THEFT OF PROPERTY
ISSUING CHECK OR DRAFT WITHOUT SUFFICIENT FUNDS OR CREDIT
ISSUING CHECK OR DRAFT WITHOUT AN ACCOUNT
NO ACCOUNT/NSF PRIOR CONVICTION OR \$10,000.
CARRYING A CONCEALED FIREARM/WEAPON
PROHIBITED/POSSESS FIREARM
POSSESS SHORT BARREL WEAPON
POSSISION OF EXPLOSIVES
POSSESS AUTOMATIC RIFLE-SILENCER-BOMB
FILING FALSE CLAIM OR FALSE STATEMENTS

6-04-04 (CITY)	1
6-04-06 (CITY)	1
6-08-16	156
6-08-16.1	31
6-08-16.2	98
62.1-01-01	1
62.1-02-01	20
62.1-02-03	2
62.1-02-11	1
62.1-05-01	1
65-05-33	3
TOTAL	<u>5311</u>

* 746 covered

4565 not covered

AH #1

**HOUSE BILL NO. 1235
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 2, 2005**

Mr. Chairman and Members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today to testify in support of House Bill 1235.

House Bill 1235 relates to those persons from whom DNA samples are to be taken for testing and analysis. The results of the DNA tests are then included in law enforcement identification data bases to aid in identification of persons who commit crimes in the future or who might have already committed other unsolved crimes. The DNA data base is typically used when law enforcement obtains DNA evidence from a serious crime scene for which there is no known suspect. The DNA evidence from the crime scene is then compared against the samples in the DNA data base system where the data bases from North Dakota, the federal government and other states can be searched. If a match occurs, then law enforcement has a suspect. The data base can also be used to exonerate suspects. It has also been used to gain the release of persons wrongly convicted of certain crimes in the past at a time when the technology for DNA testing was not available. A short paper on the benefits of expanding criminal DNA data bases is also attached to my testimony.

In the 1995 Legislative Session, Section 31-13-03 of the North Dakota Century Code was adopted to require that a sample of blood or other bodily fluids be taken from any person convicted of a sexual offense for inclusion in the DNA law enforcement identification data bases. In the 2001 Legislative Session, I sponsored a bill to expand the requirements for DNA testing to include persons convicted of violent felonies included in Ch. 12.1-16 (homicide); Ch. 12.1-17 (assaults); Ch. 12.1-18 (kidnapping); Ch. 12.1-22 (robbery); and Ch. 12.1-27.2 (sexual performances by children). The collection of samples was to be taken not only from those newly convicted of these additional crimes, but also from those who had previously been convicted, but who were still in the custody of the Department of Corrections. That bill had a sunset clause due to concerns over the funding needed to collect and analyze the additional DNA samples. In the 2003 Legislative Session, I sponsored a bill to remove the sunset clause and also to make certain other clarifications in the law.

The current bill proposes to expand the offenses for DNA sampling purposes to include any individual convicted of *any felony* offense after July 31, 2005. This is known as an "all felons" DNA bill. However, the collection requirement is prospective only. It does not include felons who are under the supervision of the Department of Corrections (in prison, on probation, or on parole), but who had been convicted of felonies that were not previously covered by the DNA law. The bill does affect the work of the State Crime Lab, which is now a part of the Attorney General's office.

As of December 2004, 38 States have enacted legislation to require DNA from all convicted felons, including Montana, Minnesota, and South Dakota. A chart showing the States with

such laws is attached to my testimony. In addition, it is my understanding that many of the remaining States are now considering "all felons" requirements for DNA testing. Some States also require a DNA sample from all persons convicted of misdemeanors. There is one State that even takes DNA samples from all persons arrested.

There is at least one documented case in North Dakota where an "all felons" bill could have prevented a rape. I have attached a handout to my testimony which provides the details on that case. Please refer to the back page of this testimony. If North Dakota had adopted an "all felons" bill in the past, we could have prevented the rape of a babysitter in Fargo in 2002. There are many similar examples of how DNA evidence is used to solve and prevent crimes from around the nation which are arising every day in those states with "all felons" statutes.

Funding for the DNA testing has been a concern. In the past, the DNA testing costs were mainly handled through federal grants, which are now available only for backlogs. For that reason, the bill provides for the collection of the DNA samples immediately upon conviction, but allows the samples to be preserved until a later date, when funding may become available for the testing. The idea is to collect now, but analyze later, if necessary.

In 2004, Congress passed the *Justice for All Act*, which enacted *The President's Initiative to Advance Justice Through DNA Technology*. This initiative authorizes over \$750 million in forensic DNA grants over five years to cover costs associated with DNA backlogs and building crime lab capacity. However, the backlog grant program is solely for the purpose of "backlog" elimination. States must have a backlog of convicted offender DNA samples in order to be eligible to apply for this funding. By passing the "all felons" legislation proposed in House Bill 1235, and by collecting now for later analysis, we will create a backlog to qualify for the new federal funding. It is my understanding that using mouth swabs to collect the samples costs about \$2 per offender and that it costs about \$30 to \$40 to complete the DNA analysis.

The fiscal note dated January 28, 2005, estimates that \$134,239 in State funds will be necessary for the biennium, along with \$91,400 of other funds, which could be obtained from federal funds. The cost to the State would be \$67,120 per year, which equals about 10 cents per year per person in North Dakota. That's a small price to pay for something that can benefit everybody in the State to keep crimes from occurring that could have been prevented, such as the rape of the babysitter in Fargo.

Mr. Chairman and Members of the Committee, I urge your support for House Bill 1235. It is time for North Dakota to join the majority of the States in requiring DNA samples from all felons.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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Chairperson Holmberg and Members of the Senate Appropriations Committee

Re: Testimony in support of HB 1235

Date: Friday, March 11, 2005

For the record, my name is Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of HB 1235 and encourage the committee to fully appropriate funding for this bill.

DNA technology has been one of the greatest advancements in criminal justice in the last century. For victims of crimes, especially sexual assault, it has resulted in the identification of rapists in hundreds of cases across the country. To reduce the number of victims, it is crucial that criminals be identified, prosecuted and incarcerated.

Currently in North Dakota, the DNA database and CODIS (Combined DNA Indexing System) are being used on individual cases for prosecution to connect an offender to a specific crime. Nationally, we see CODIS being used by law enforcement to connect cases that have the same offender. CODIS works like a computer system. Software in – information out. Your computer only works if you have installed the program to make the information you want. CODIS is the same, data in – data out. In other words, a DNA database can only solve crimes to the extent that it has enough data in it to represent the full pool of suspects.

So what's the problem? After all, North Dakota already collects DNA from convicted sex offenders. Here is the problem. The Department of Justice Bureau of Justice Statistics indicates that rapists are not just rapists, but commit a multitude of other crimes. According to the most recent recidivism data, 46% of rapist who were released from prison were rearrested in 3 years for a new crime. 18.6% were rearrested for a new violent offense, 8.7% for new non-sexual offense, 11.2% for a drug offense, and just 2.5% for another rape. This indicates that violent offenders, drug offenders, and other

violent criminals engage in rape. In other words, rapists commit all kinds of crimes, and all kinds of criminals commit rape.

Let me give you an example of the impact of all-felons policy. According to the FBI, North Dakota had 2 investigations aided by CODIS. Montana, with approximately the same size and population, has had more than double the investigations aided by CODIS; 9 investigations total. The difference, Montana collects DNA from all felons.

Another example I would like to share with you. In the state of Virginia, of all the "cold hits" – defined as a match with DNA from a crime scene to a DNA profile in the database- 85% would have been missed if the databank was limited to only violent offenders. And nearly everyone would have been missed had the database contained only sexual offenders.

Simply put, by collecting and fully utilizing DNA samples from all convicted felony offenders, we have the opportunity to solve more crimes by linking them through the offenders DNA, and less expensively than continuing to investigate individual crimes that are committed by the same offender, but never linked because we don't have the data in CODIS.

Supporting this bill makes North Dakota safer. It will protect people, families, and prevent crime.

Thank you for your time and I am willing to answer any questions.

HOUSE BILL NO. 1235
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE APPROPRIATIONS COMMITTEE
MARCH 11, 2005

Mr. Chairman and Members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today to testify in support of House Bill 1235. The purpose of House Bill 1235^s is improve public safety.

House Bill 1235 relates to those persons from whom DNA¹ samples are to be taken for testing and analysis. The results of the DNA tests are then included in law enforcement identification data bases to aid in identification of persons who commit crimes in the future or who might have already committed other unsolved crimes. The DNA data base is typically used when law enforcement obtains DNA evidence from a serious crime scene for which there is no known suspect. The DNA evidence from the crime scene is then compared against the samples in the DNA data base system where the data bases from North Dakota, the federal government, and other states can be searched. If a match occurs, then law enforcement has a suspect. The data base can also be used to exonerate suspects. It has also been used to gain the release of persons wrongly convicted of certain crimes in the past at a time when the technology for DNA testing was not available.

In the 1995 Legislative Session, Section 31-13-03 of the North Dakota Century Code was adopted to require that a sample of blood or other bodily fluids be taken from any person convicted of a sexual offense for inclusion in the DNA law enforcement identification data bases. In the 2001 Legislative Session, I sponsored a bill to expand the requirements for DNA testing to include persons convicted of violent felonies included in Ch. 12.1-16 (homicide); Ch. 12.1-17 (assaults); Ch. 12.1-18 (kidnapping); Ch. 12.1-22 (robbery); and Ch. 12.1-27.2 (sexual performances by children). The collection of samples was to be taken not only from those newly convicted of these additional crimes, but also from those who had previously been convicted, but who were still in the custody of the Department of Corrections. That bill had a sunset clause due to concerns over the funding needed to collect and analyze the additional DNA samples. In the 2003 Legislative Session, I sponsored a bill to remove the sunset clause and also to make certain other clarifications in the law.

¹**DNA** - Deoxyribonucleic acid; a nucleic acid that consists of two long chains of nucleotides twisted together into a double helix and joined by hydrogen bonds between complementary bases adenine and thymine or cytosine and guanine; it carries the cell's genetic information and hereditary characteristics via its nucleotides and their sequence and is capable of self-replication and RNA synthesis.

The current bill proposes to expand the offenses for DNA sampling purposes to include any individual convicted of *any felony* offense after July 31, 2005. This is known as an "all felons" DNA bill. However, the collection requirement is prospective only. It does not include felons who are under the supervision of the Department of Corrections (in prison, on probation, or on parole), but who had been convicted of felonies that were not previously covered by the DNA law. The bill does affect the work of the State Crime Lab, which is now a part of the Attorney General's office.

As of December 2004, 38 States have enacted legislation to require DNA samples from all convicted felons, including Montana, Minnesota, and South Dakota. A chart showing the States with such laws is attached to my testimony. In addition, many of the remaining States are now considering "all felons" requirements for DNA testing and others are expanding their requirements. The DNA data bases are becoming an increasingly useful law enforcement tool.

In addition to solving crimes, DNA testing can result in the prevention of future crime. Solving a crime has a direct effect on preventing additional crimes by the same perpetrator. For example, there is a documented case in North Dakota where an "all felons" bill could have prevented a rape. In June 2000, a woman in Fargo was sexually assaulted in her home by an unknown intruder. DNA evidence was collected from the crime scene, but was not matched to an offender. Police had identified a possible suspect, but did not have sufficient cause to obtain a warrant for a DNA sample. In August 2002, a teenager was sexually assaulted by an intruder in an apartment where she was babysitting. Several days later, police were finally able to obtain a warrant for a DNA sample from the suspect and he was linked to both rapes.

In this case the offender had been convicted in Minnesota for felony possession of stolen property and burglary in September 1996, and for felony burglary in June 1997. At that time, Minnesota did not require DNA from convicted burglars, as it does now. North Dakota still does not require DNA from convicted burglars. If a DNA sample had been collected from the offender for either the 1996 or 1997 felony conviction, the June 2000 sexual assault could have been solved and the perpetrator apprehended. If North Dakota had adopted an "all felons" bill in the past, ***we could have prevented the rape of the babysitter in Fargo in 2002 by this same perpetrator.*** How many other crimes could we have prevented?

There are many similar examples of how DNA evidence is used to solve and prevent crimes from around the nation which are arising every day in those states with "all felons" statutes. An online DNA Resource Report provides updates of what is happening in DNA throughout the nation and the world. In the February 25 report, several instances of the use of DNA were reported.

Idaho – DNA evidence from a hair found on a gun was linked to a suspect in a murder trial.

Maryland – Database hit lead to an arrest in two sexual assault cases, which have been linked to two more cases in Pennsylvania.

New York – Database hit linked a man to a 1995 rape, and also linked a burglar to a sexual assault.

Washington – Database hit on a burglar lead to murder and rape charges.

Nonviolent felonies have often been linked to violent crimes. Examples include felony bad checks and forgeries. These felons aren't convicted of felony forgery because they passed one bad check at the convenience store -- either they are a repeat offender, or the amount was very high. Virginia's crime lab (which has the longest-standing all-felons DNA database in the country) has linked at least 47 previously unsolved crimes to persons included on the data base due to felony forgery convictions. Of these crimes, 24 were violent crimes (12 sex offenses, 8 homicides, 1 rape/murder, 1 car jacking, 1 assault, 1 robbery), and the rest were property crimes. These were crimes that would have remained unsolved if not for the DNA data base hits.

In the past, DNA testing costs in North Dakota were mainly handled through federal grants, which are now available only for backlogs. For that reason, the bill provides for the collection of the DNA samples immediately upon conviction, but allows the samples to be preserved until a later date, when funding may become available for the testing. The idea is to collect now, but analyze later, if necessary. We can build up a backlog to use to obtain federal funds for the cost of the testing.

In 2004, Congress passed the *Justice for All Act*, which enacted *The President's Initiative to Advance Justice Through DNA Technology*. This initiative authorizes over \$750 million in forensic DNA grants over five years to cover costs associated with DNA backlogs and building crime lab capacity. However, the backlog grant program is solely for the purpose of "backlog" elimination. States must have a backlog of convicted offender DNA samples in order to be eligible to apply for this funding. By passing the "all felons" legislation proposed in House Bill 1235, and by collecting now for later analysis, we will create a backlog to qualify for the new federal funding. It is my understanding that using mouth swabs to collect the samples costs about \$2 per offender and that it costs about \$30 to \$40 to complete the DNA analysis.

The fiscal note dated January 28, 2005, estimates that \$134,239 in State funds will be

necessary for the next biennium, along with \$91,400 of other funds, which could be obtained from federal funds. However, the fiscal note does not take into account the fact that the current law requires the sentencing court to assess the cost of the procedure against the person being tested. See page 2 of House Bill 1235 on lines 6 and 7. When this bill was heard in the House Judiciary Committee, we were informed by the warden at the State penitentiary that only a few of the judges in the State were doing this. I then contacted the State Court Administrator who sent a letter to all of the District Judges reminding them that they were required to assess this cost against felons at the time of sentencing. Consequently, although some of this cost will undoubtedly be uncollectible, some of it will be collected and will reduce the cost set out in the fiscal note.

Under the fiscal note, if all of the money had to be paid by the State, the cost to the State would be only \$67,120 per year, which equals about 10 cents per year per person in North Dakota. That's a small price to pay for something that can benefit everybody in the State to keep crimes from occurring that could have been prevented, such as the rape of the babysitter in Fargo.

Can we afford to do this? I submit that we can't afford not to do this. Our families and our citizens deserve this added protection, particularly at such a small cost. Our public safety deserves it.

North Dakota has prided itself on the safety of our citizens, but we are now an island in a sea of "all felons" DNA states. We've bragged about how North Dakota was one of only a few states that didn't have a budget deficit. Yet other states have passed "all felons" DNA bills and we haven't. We spend millions on correction and rehabilitation. Let's spend a little more on prevention.

A recent crime report shows how property crimes have been increasing in North Dakota, yet we do not include property crimes in the DNA testing. There has also been a rapid increase in crimes relating to the unlawful use of methamphetamine and other controlled substances, which can lead to the commission of other crimes, but we do not include these crimes in the DNA database in North Dakota, while most of the other states do.

Mr. Chairman and Members of the Committee, I urge your support for House Bill 1235. It is time for North Dakota to join the majority of the States in requiring DNA samples from all felons. Let's make North Dakota the 39th State to approve this legislation.