

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1208

2001 HOUSE JUDICIARY

HB 1208

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
Tape 1	x		2189 to 5478
Committee Clerk Signature <i>Joan Deers</i>			

Minutes: Chr DeKrey opened the hearing on HB 1208. Relating to DNA testing.

Rep Klemin: District 47 of Bismarek (see attached testimony).

Rep Delmore: Why did you make this so far reaching? The fiscal note on this is \$241,000.00, I am wondering if we need to be that broad. Are we covering all the crimes that are felonies in this state?

Rep Klemin: What we tried to do, is cover certain types of felons. If the committee wanted to is to narrow this bill, but it may defeat part of the purpose of the bill. I should point out that there a lot of misdemeanors included in the chapters, but they are not included in this.

Rep Delmore: I think your point is well taken, I just don't want to see this die by fiscal note.

Rep Klemin: The cost is small as opposed to the cost of the victims, if this could be used to determine the guilt or innocence of a person.

Rep Fairfield: How long is the DNA collected from the crime scene kept?

Rep Klemin: I don't know the answer.

Rep Fairfield: I assume the data base if kept indefinite, the reason I ask, I have heard of other states, getting rid of the DNA so that the criminals cannot reference it for an appeal.

Rep Klemm: I don't know the answer to your question. How long it is kept is not a part of this bill.

Vice Chr Kretschmar: A note in the bill, is DNA defined in the code?

Rep Klemm: It is defined in another section.

Rep Mahoney: District 33, Center, North Dakota. I am a States Attorney. In reference to Rep Kretschmars question, the name defines itself, it is a scientific term. This bill will move us into the 21st century. This is much better than finger printing. It is easier to take, with regard to the fiscal note, your local law enforcement takes it. I think this is something we should explore to bring down the fiscal note. The offenses that we are talking about are violent offenses. This is an excellent tool.

Rep Onstad: You mentioned ND CC 12.1-27, to performance by children, when a juvenile is involved, this goes into the data base, and is around for years, prior to 18, does this get scraped and they have a clean slate.

Rep Mahoney: If some one is a minor, who did the offense, they can be moved into adult court. If it is in juvenile court, I don't think that this would apply.

Rep Eckre: If convicted of DUI are they assessed the court costs for the testing?

Rep Mahoney: No, they are not.

John Olson: Representing the North Dakota States Attorney Association. And the North Dakota Peace Officers Association, here to register our support of HB 1208. Sometimes if a sample is taken that does not mean that they will do the test. Some of those tests are rather expensive. The

other comment that I have. In the original law, you are dealing with attempted sexual offenses, and you don't include that in the bill. Also attempted homicide should also be included at one grade lower.

Rep Delmore: Is there someone that can tell use about DNA testing and the fiscal note.

Ken Bullinger: Crime Lab Division with the North Dakota Department of Health. (see attached testimony).

Chr DeKrey: Is it going to be cheaper once we are certified here in North Dakota to do the testing?

Kevin Bullinger: We did some cost comparison, it would be more expensive to send them out. Cost less in house.

Rep Delmore: On the fiscal note why the drop in numbers?

Kevin Bullinger: That was a result of us having to profile all current offenders in custody as of July 31, 2000. That would get use caught up. It is estimated that we would have another 550 people to profile after that every year.

Rep Fairfield: Are the samples that you cross check with the crime scene collected or are they never cross checked?

Kevin Bullinger: we have a very strict procedures in the crime lab. All procedure are insured to be accurate.

Rep Fairfield: I am wondering if the collections from these people are then going to be cross checked with evidence?

Kevin Bullinger: The national data base, includes all offenders.

Rep Mahoney: There is a chain of evidence, have to show that the evidence is credible and taken from that person, profile is brought in etc. It is fair to say that your staff is overworked and probably understaffed.

Kevin Bullinger: We have added two people to our staff, so that has helped in the narcotic end. 70% of it is narcotic and the other 30% is in criminalistic. We are in the process of training people to pick up the slack.

Rep Mahoney: The fiscal note, is the major expense the actual testing costs, can it be brought down?

Kevin Bullinger: It is mostly staff costs, the actual cost of DNA testing is \$36.38 per sample for the supplies.

: Rep Mahoney Do you have a break down of offenders, if we need to par down the cost?

Kevin Bullinger: I am not the best person to ask, that question should be directed to the Department of Corrections.

Rep Maragos: Do you have a break down of first time offenders or repeat offenders?

Kevin Bullinger: I did not get those numbers, just the total.

Chr DeKrey: Any one else have questions, if not thank you for appearing in front of our committee. We will close the hearing on HB 1208. We will need a sub committee to work on the fiscal note. Rep Klemin, Rep Mahoney, Rep Delmore.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-06-01

Tape Number	Side A	Side B	Meter #
TAPE 1	x		4410 to 6157
Committee Clerk Signature <i>Juan Diers</i>			

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1208.

Rep Klemin has some amendments and he explained them. This bill will need a new fiscal note.

DISCUSSION.

Voice vote on the amendments, the amendments pass.

COMMITTEE ACTION

CHAIRMAN DeKrey: We have the bill before us, what are the wishes?

Rep Delmore moved a DO PASS as amended, seconded by Rep Disrud. The motion passes with

14 YES, 0 NO and 1 ABSENT.

Carrier Rep Fairfield.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208b

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE III	x		726 to 785
Committee Clerk Signature <i>John Davis</i>			

Minutes: Chairman DeKrey: HB 1208 will have to be referred to Appropriations.

Rep Eckre move to refer, seconded by Rep Delmore.

DISCUSSION

HB 1208 was passed as a DO PASS as amend and will be referred to Appropriations.

FISCAL NOTE
Requested by Legislative Council
04/04/2001

Bill/Resolution No.:

Amendment to: Reengrossed
 HB 1208

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

In section 1 of Reengrossed HB 1208 the number of samples collected from convicted felons increases by 1,500 in the 2001-03 biennium and by 1,100 in the 2003-05 biennium. There is also provision in section 2 of the bill that requests that governor's office apply for funds under the federal DNA Analysis Backlog Elimination Act of 2000 and limits the implementation of this Act to stay within the funds provided by legislative appropriation and from other public or private source in the department of corrections and the department of health.

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.*

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.*

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.*

Name:	Kathy J. Albin	Agency:	Department of Health
Phone Number:	328-2392	Date Prepared:	04/05/2001

FISCAL NOTE

Requested by Legislative Council
03/09/2001

Bill/Resolution No.:

Amendment to: Reengrossed
HB 1208

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0		\$0	
Expenditures			\$100,846		\$92,071	
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Second engrossment with Senate Amendments of HB 1208 requests that the governor shall apply for grant funds under the DNA Backlog Elimination Act of 2000. Upon receipt of the grant the funds may only be used for testing of samples. Funds would be paid directly by the federal government to a private laboratory. However, one additional staff person funded with general funds will be needed in the ND Crime Lab to provide training, coordinate the collection of samples, preparation of samples in accordance with FBI Quality Assurance Standards, review data to verify integrity, perform analysis, evaluate results of raw data, and upload data into Combined DNA Database System by a trained examiner. HB 1208 will also require a significant increase in the number of felons requiring DNA testing. Approximately 1500 felons will need DNA profiling the first biennium and an additional 1100 felons will need profiling in the 2003-2005 biennium.

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 shall assess the cost of the procedure against any person tested and any funds collected will be deposited into the general fund. It is uncertain at this time how much money might be collected.

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 Department of Health's fiscal impact (\$89,350) includes expenditures to fund an additional 1.0 FTE to train personnel and coordinate collection of samples from convicted felons; prepare samples according to the FBI Quality Assurance Standards; review data to verify integrity; perform random re-analysis on percentage of samples; evaluate results of raw data; and upload data into the Combined DNA Database System (CODIS) by trained CODIS examiner. Also included in the expenditures are costs incurred by the nursing staff of the state penitentiary to collect samples for the offenders (\$5,708) or a .25 FTE and increased time needed by the parole officers (\$5,788).

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 money needed to carry out the mandates of this legislation were not included in the ND Department of Health's appropriations bill SB 2004 or any other agencies impacted by this bill, so the Department's involved will need increased authority and funding.

Name:	Kathy J. Albin	Agency:	Department of Health
Phone Number:	328-2392	Date Prepared:	03/13/2001

FISCAL NOTE

Requested by Legislative Council
02/22/2001

Bill/Resolution No.:

Amendment to: Engrossed
HB 1208

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$148,230		\$134,379
Expenditures				\$148,230		\$134,379
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Upon certification by the Department of Correction that federal funds have been received and will be used to pay the cost of DNA testing ordered by the court. The court shall order any person convicted after July 31, 2001 for a felony violation in chapter 12.1-16, 12.1-17, 12.1-18, section 12.1-22-01 or chapter 12.1-27.2 or any person in custody of the department after July 31, 2001 convicted of one of these offenses shall be tested for DNA identification purposes and included in the law enforcement data base. It is estimated that approximately 497 offenders will need DNA profiling the first year of the biennium and approximately 252 additional offenders will need DNA profiling every year after the first year this legislation is effective.

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 revenue included in this fiscal note is **pending certification of federal funds** from the Department of Correction.

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.*

If federal funds are secured by the Department of Correction then the Department of Health's fiscal impact (\$142,496) includes expenditures to sample, analyze, review, and upload data on the offenders into

the Combined DNA Database System (CODIS). This includes funding for an additional 1.0 FTE to handle and analyze the samples, supervisory and computer coordinator support. Additional laboratory supplies and equipment maintenance costs are also included. Also included in the expenditures for this biennium are costs incurred by nursing staff to collect samples from the offenders (\$3,272) or a .25 FTE and increased time needed by parole officers (\$2,462) for a total of 1.25 FTE's.

Another option to carryout the mandates of this legislation is to outsource sample analysis to an independent accredited DNA laboratory. This option, however, increases the total fiscal impact to \$172,747 because of increased costs associated with analyzing the DNA samples in a private laboratory.

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.*

Funds are not included in the Health Department's appropriation bill SB 2004.

Name:	Kathy J. Albin	Agency:	Department of Health
Phone Number:	328-2392	Date Prepared:	03/02/2001

FISCAL NOTE
 Requested by Legislative Council
 02/07/2001

Bill/Resolution No.:

Amendment to: HB 1208

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$148,230		\$134,379	
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill will require any person convicted after July 31, 2001 for a felony violation in chapter 12.1-16, 12.1-17, 12.1-18, section 12.1-22-01 or chapter 12.1-27.2 or any person in custody of the department after July 31, 2001 convicted of one of these offenses shall be tested for DNA identification purposes and included in the law enforcement data base. It is estimated that approximately 497 offenders will need DNA profiling the first year of the biennium and approximately 252 additional offenders will need DNA profiling every year after the first year this legislation is effective.

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.*

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 Department of Health's fiscal impact (\$142,496) includes expenditures to sample, analyze, review, and upload data on the offenders into the Combined DNA Database System (CODIS). This includes funding for an additional 1.0 FTE to handle and analyze the samples, supervisory and computer coordinator support. Additional laboratory supplies and equipment maintenance costs are also included. Also included in the expenditures for this biennium are costs incurred by nursing staff to collect samples from the offenders (\$3,272) or a .25 FTE and increased time needed by parole officers (\$2,462) for a total of 1.25 FTE's.

Another option to carryout the mandates of this legislation is to outsource sample analysis to an independent accredited DNA laboratory. This option, however, increases the total fiscal impact to \$172,747 because of increased costs associated with analyzing the DNA samples in a private laboratory.

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 money needed to carry out the mandates of this legislation were not included in the ND Department of Health's appropriations bill SB 2004 or any other agencies impacted by this bill, so the Department's involved will need increased authority and funding.

Name:	Kathy J. Albin	Agency:	Health Department
Phone Number:	328-2392	Date Prepared:	02/15/2001

FISCAL NOTE
 Requested by Legislative Council
 01/18/01

Bill/Resolution No.: HB 1208

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$241,542		\$238,748	
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill will require any person convicted after July 31, 2001 for a felony violation in chapter 12.1-16, 12.1-17, 12.1-18, 12.1-22 or 12.1-27.2 or any person in custody of the department after July 31, 2001 convicted of one of these offenses shall be tested for DNA identification purposes and included in the law enforcement data base. It is estimated that approximately 950 offenders will need DNA profiling the first year of the biennium and approximately 535 additional offenders will need DNA profiling every year after the first year this legislation is effective.

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.*

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 Department of Health's fiscal impact (\$230,046) includes expenditures to sample, analyze, review, and upload data on the offenders into the Combined DNA Database System (CODIS). This includes funding for an additional 1.6 FTE's to handle and analyze the samples, supervisory and computer coordinator support. Additional laboratory supplies and equipment maintenance costs are also included. Also included in the expenditures for this biennium are costs incurred by nursing staff to collect samples from the offenders (\$5,708) or a .25 FTE and increased time needed by parole officers (\$5,788) or a .25 FTE for a

total of 2.1 FTE's

Another option to carry out the mandates of this legislation is to outsource sample analysis to an independent, accredited DNA laboratory. This option, however, increases the total fiscal impact to \$294,806 because of increased costs associated with analyzing the DNA samples in a private laboratory.

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 money needed to carry out the mandates of this legislation were not included in the ND Department of Health's appropriations bill SB 2004 or any other agency impacted by this bill, so the Department's involved will need increased authority.

Name:	Kathy J. Albin	Agency:	Health Department
Phone Number:	328-2392	Date Prepared:	01/22/2001

YK
2/7/01

HOUSE AMENDMENTS TO HB 1208 HOUSE JUDICIARY 02-07-01

Page 1, line 16, after the third underscored comma insert "or", replace "12.1-22" with "section 12.1-22-01", and after "or" insert "chapter"

HOUSE AMENDMENTS TO HB 1208 HOUSE JUDICIARY 02-07-01

Page 2, line 2, after "The" insert "sentencing court shall assess the"

Page 2, line 3, overstrike "must be assessed to" and insert immediately thereafter "against" and after the period insert "The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the state department of health for deposit in the general fund."

Renumber accordingly

Date: 02-06-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1208

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended + Refer

Motion Made By Rep Delmore Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos					
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Fairfield

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

REPORT OF STANDING COMMITTEE

HB 1208: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1208 was placed on the Sixth order on the calendar.

Page 1, line 16, after the third underscored comma insert "or", replace "12.1-22" with "section 12.1-22-01", and after "or" insert "chapter"

Page 2, line 2, after "The" insert "sentencing court shall assess the"

Page 2, line 3, overstrike "must be assessed to" and insert immediately thereafter "against" and after the period insert "The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the state department of health for deposit in the general fund."

Renumber accordingly

2001 HOUSE APPROPRIATIONS

HB 1203

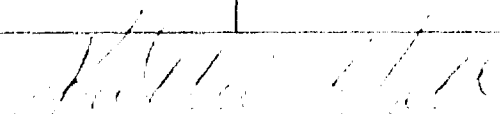
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208

House Appropriations Committee

☐ Conference Committee

Hearing Date February 16, 2001

Tape Number	Side A	Side B	Meter #
02-16-01 tape #1		70 - 2165	
Committee Clerk Signature 			

Minutes:

The committee was called to order, and opened the hearing on HB 1208.

Rep. John Mahoney: Is here in support of HB 1208. Rep. Klemin was going to be here to speak on the bill, but he had other hearings to attend. Rep. Klemin had prepared written testimony handed out. This is something that is being done across the country, DNA testing. It is a good tool not only for tracking criminals, convicting, but can also exculpate them, help prove their innocence. In previous years we had required DNA testing for sexual offenses, and now we are looking to expand that to violent crimes, and we had it more expansive in the original bill and it came back with a big fiscal note. We amended the bill to include just the most basic violent crimes and felony convictions of 12.1-16, 17, 18, 22, and 27, like murder and assaults. We also included the fact that the testing would be paid for by the defendant and that would be after someone is convicted. This is done and there are fees assessed to defendants. There is a concern and a remaining fiscal note because it is assumed that some of these defendants do not have

finances to pay for the testing and the department of corrections may not collect from all these people. Thinks it's an excellent bill and brings us up to speed. DNA testing is like the fingerprinting of the 20th century. The information goes into the computer and have it reported across the country. The fiscal note was \$148,000, dated 2/9/01, down by eliminating some of the offenses required. Not all defendants are unable to pay for the testing. The test costs are \$35 each, he thinks.

Rep. Aarsvold: Would this entail the sampling and the testing?

Rep. Mahoney: Yes. There is some lab costs, and the actual sampling is a very simple procedure. Just about any law enforcement agency could do the testing. That is very little to no cost. Most of the cost will be for lab costs and analysis.

Rep. Aarsvold: If funding becomes a major concern, is it at all possible to retain the sample for future use.

Rep. Mahoney: You should be able to retain the sample, and that could be a possibility.

Rep. Wald: In the bill it talks about inclusion in the law enforcement edification data bases. What is that.

Rep. Mahoney: We have had legislation before in regard to central filing of various criminal records, and the information goes into a computer that would be centrally located, probably through BCI. The information is in the state and national data base.

Rep. Carlisle: He was reading from Rep. Klemin's testimony, and it says that the fiscal note is fatally flawed in this case, and not reliable. In fairness, he would like to hear from the crime lab people in regard to the fiscal note, seeing that its changed.

Kenau Bullinger, Director Crime Lab Division, Dept. of Health: He provided written testimony, and read directly from it.

Chairman Timm: Who is paying for this? Can the department absorb these costs?

Kenan Bullinger: The majority of the fiscal impact is on the Crime Lab Division of the Health Department. The bill was amended to charge the cost of the testing to those convicted. Does not believe the department could absorb the costs without further funding. Would certainly need an additional FTE, or go further backlogged in their caseload.

Rep. Delzer: It might backlog you, but these do not seem to be high priority situations, when you can keep this on hand, and basically test it when you get to it.

Kenan Bullinger: Doesn't agree. These are important cases to get results on immediately whether it's a homicide or manslaughter case, or sexual assault. You want to get the tests analyzed and the DNA profiled as quickly as you can so you can get the people convicted.

Rep. Delzer: This is only after conviction, from what the bill says.

Chairman Timm: Is wondering if you have one FTE what are they going to be doing other times? I don't think you would have one of these tests done every day of the year.

Kenan Bullinger: The evidence collected will help convict someone, if its left at the scene. Right now the two people doing the DNA work in our lab are doing other things. They are doing narcotics identification, etc. This will increase workload, and this person would probably do mainly the DNA work. We would also have them cross trained in other things to help our current backlog.

Rep. Warner: Agrees with Rep. Delzer. Everything in this bill only refers to persons already convicted. This is not a law enforcement tool as much as a probation and parole tool. Does not see anything in this bill as obtaining evidence to obtain a conviction.

Kenan Bullinger: In most cases you are correct, but in some cases it would help convict as well.

Rep. Warner: That is not what he said. Understands that it would help convict people, but the change in the language for the appropriation only deals with previously convicted people.

Chairman Timm: Maybe you figured the figures in the fiscal note different, if you thought it covered everybody else.

Kenan Bullinger: It's still going to result in an increased workload to us, and the department of corrections in collecting the samples. Whether it's spanned out over months after conviction or not, I guess that possibly eliminates some of the crunch. We didn't ask for this bill, we just prepared the numbers to let you know it will impact us.

Rep. Glassheim: You already have all the equipment to do this, correct. About how much time does it take to analyze the sample once you have it?

Kenan Bullinger: Yes. It depends on if you can do a batching of samples. If you just do one sample, it would take about 1 1/2 hours.

Chairman Timm: This is just a fiscal note. There is no appropriation in this bill, so the fiscal note just shows a fiscal affect on your budget. You won't get any additional money from the legislature to cover this program. If you need a new FTE, you'll have to get them out of your present budget. There is no appropriation.

Rep. Byerly: If we pass this bill, the department of health's budget will be before the subsection and they will be there looking for an FTE, as well he should. He interprets the bill as requiring some backlog of information for gathering samples. He is convinced that MR. Bullinger is not pulling anything over the committees eyes about the fact that they will need another body.

Rep. Carlisle: Is there any possibility that the Corrections department when their budget comes over that they can coordinate and participate in the fiscal note effects.

Rep. Mahoney: Wanted to clarify some issues from what Rep. Byerly said. These new tests would go from July 1, 2001. Sampling and investigation are two different things. The investigation has all kinds of costs. DNA testing is a minor part of a full fledged investigation. It probably will be done whether we pass it or not. We may want to have it to plug into the current database. This only applies to people after they have been convicted.

Rep. Byerly: But at any crime scene that occurs there is going to be more DNA testing that is going to be required of these people, and that information will need to be checked against CODIS.

Elaine Little, Director of Department of Corrections and Rehabilitation: First, she addresses the collection of the fee as stated in the bill. Under current law the department of corrections was mandated to collect the fee. As the language is written at this point its asking the court to impose that fee, and then for the department to collect the fee. That fee would be added to the many other court costs and fees and support and supervision fees, etc. Very little of that fee would be collected. In prison it is under 10% of any fees that are imposed by the court are we able to collect. Very little is even collected from the community.

She asks the committee to consider a change to the last two lines of the bill. It states that the department shall collect a cost of the procedure from the person being tested and transfer the amount collected to the state department of health for deposit in the general fund. We were wondering if it would be better for the department to just collect the fee and deposit it into the general fund.

Rep. Skarphol: Maybe the health department needs a paper trail to know that the fee has been collected. Is that why it would be written that way?

Elaine Little: Doesn't think so. Their testing of the sample is really entirely separate.

We will have to forward the sample to them, and so they know its been collected. The fee as the language states is just deposited in the general fund.

Rep. Delzer: Of the people that would be involved in this bill, how many would be convicted to life without parole?

Elaine Little: We only have 6 offenders now who are sentenced to life without parole. It would be a very small number.

The chairman closed the hearing on this bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208

House Appropriations Committee

☐ Conference Committee

Hearing Date February 21, 2001

Tape Number	Side A	Side B	Meter #
02-21-01 tape #1		3310 - 4338	
Committee Clerk Signature <i>Robert L. Ball</i>			

Minutes:

The committee was called to order, and opened committee work on HB 1208, pertaining to DNA testing.

Chairman Timpy: Has a note from Rep. Klemin, with a federal law adopted last year, that provides grants to the states for DNA testing. There is \$170 million authorized for all the DNA testing grants over the next four years for all the states to share. The governors must apply. A copy of the federal bill has been given to Mr. Harms in the governor's office. I asked Rep. Klemin if he would draft an amendment to keep his bill alive, because there are some points in this bill that allow for additional DNA testing than there is allowed today. No amendments have been provided. He doesn't like the state paying for these tests.

Rep. Wald: Would it be your understanding that the governor's office can request the federal money without this bill?

Chairman Timm: Yes. However, this bill allows the DNA test to be taken on additional people that can be done today.

Rep. Delzer: It seems to me that this bill would make the court order the DNA test be done. We could consider to make this bill contingent on the state receiving the grant moneys.

Rep. Kempenich: Moves to adopt the amendment to add the contingency. Seconded by Rep. Carlisle.

Voice vote adopted the amendment.

Rep. Wald: Moves DO PASS AS AMENDED. Seconded by Rep. Carlisle.

Rep. Byerly: Wants to make sure that the amendment includes all financial obligations, including any new FTE's necessary to do the tests, as well as the cost for the tests.

(Any FTE and expenses should be accommodated in the budget bill).

Vote on Do Pass as Amended: 14 yes, 6 no, 1 absent and not voting.

Rep. Carlisle is assigned to carry this bill to the floor.

10327.0201
Title.

Prepared by the Legislative Council staff for
House Appropriations
February 21, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1208

Page 1, line 15, replace "The" with "Upon certification by the department that federal funds
have been received and will be used to pay the cost of DNA testing ordered by the
court, the"

Renumber accordingly

Date: 2-21-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1208

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 10327.0201

Action Taken to amend "if state gets fed money to do so"

Motion Made By Rep. Kempenich Seconded By Rep. Carlisle

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Gulleason			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kempenich					
Rep - Kerziman					
Rep - Kliniske					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Carried

Date: 2-21-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1208

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 10327.0201

Action Taken DO PASS AS AMENDED

Motion Made By Rep Wald Seconded By Rep Carlisle

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman		✓			
Wald - Vice Chairman					
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson		✓
Rep - Byerly		✓	Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol		✓
Rep - Delzer		✓	Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Gulleson	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz		✓
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske	✓				

Total (Yes) 14 No 6

Absent 1

Floor Assignment Rep. Carlisle

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

2001 SENATE JUDICIARY

HB 1208

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1208

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 5th, 2001

Tape Number	Side A	Side B	Meter #
1	x	x	55.8-end/0-21.6
March 6, 2001 tape 2	x		0-2.9
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on HB 1208: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 31-13-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DNA TESTING.

Rep. Klemln, district 47, (testimony attached) prime supporter of the bill.

Side b

Senator Trenbeath, I don't understand the necessity of accessing the cost, isn't the grant going to cover the cost?

Rep. Klemln, the way amendments read it would be used for the prospective cost. About half of these people are working, they need to pay for the cost. The cost of testing now is in the range of 36 dollars. The amount of grant would not be adequate. We would like to collect money from the criminal.

Senator Trenbeath, with respect to collection, of the sample, can that be done locally?

Rep. Klemln, it can be done at the jail.

Senator Traynor, the federal law refers to restrictions on the use of funds nonsupplementing funds made available to this section shall not be used to supplement state funds. Is there any requirement from the state?

Rep. Klemine, I don't know for sure that we even have a state fund.

Senator Nelson, do you see this working along with the finger print program? Would this replace finger printing?

Rep. Devlin, I don't know if it will replace finger printing. Certainly it will be another tool.

Kevin Bollinger, state crime lab, testifies on a neutral position regarding 1208. This bill has some impact on us. Will add a workload to the crime lab. It is tied now to federal funds. There are demands met on us. We need to have staff collecting.

Senator Traynor, have you produced a third fiscal note?

Kevin Bollinger, there are different grants and different means to get grants that would have an effect on the fiscal note.

Senator Traynor, another fiscal note would be appropriate.

Senator Traynor closed the hearing on HB 1208.

discussion followed march 6th, tape 2 side a

SENATOR WATNE MOTIONED TO AMEND AND ADOPT REP. KLEMINE'S AMENDMENTS, SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR WATNE MOTIONED TO DO PASS AS AMENDED, SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR WATNE VOLUNTEERED TO CARRY THE BILL.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1208

Page 1, line 2, after "testing" insert "; to provide an effective date; and to provide an expiration date"

Page 1, line 15, replace "Upon certification by the department that federal funds" with "The"

Page 1, remove line 16

Page 1, line 17, replace "for" with "of" and replace "violation" with "offense or attempted felony offense that is"

Page 1, line 18, remove the first "or", replace "section 12.1-22-01" with "12.1-22", and remove the second "chapter"

Page 2, after line 7, insert:

"SECTION 2. EFFECTIVE DATE - GRANT APPLICATION. The governor shall apply for grant funds available under the federal DNA Analysis Backlog Elimination Act of 2000 [Pub. L. 106-546; 114 Stat. 2726] and certify the offenses in section 31-13-03 as qualifying offenses. This Act becomes effective on the date the department of corrections certifies to the secretary of state and the legislative council that the department will receive sufficient federal funding under the federal DNA Analysis Backlog Elimination Act for the expected costs created by this Act which are not otherwise collected from a different source.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2004, and after that date is ineffective."

Renumber accordingly

Date: 3/6/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1208

Senate	Judiciary	Committee
--------	-----------	-----------

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Amend; adopt Klemine Amendments

Motion Made By Watne Seconded By Trebeath

[illegible]

Total (Yes) 5 No 0

Absent 2

Floor Assignment

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

Date: 3/6/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1208

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Watne Seconded By Trenbeath

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.					
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Watne

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

REPORT OF STANDING COMMITTEE

HB 1208, as reengrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1208 was placed on the Sixth order on the calendar.

Page 1, line 2, after "testing" insert "; to provide an effective date; and to provide an expiration date"

Page 1, line 15, replace "Upon certification by the department that federal funds" with "The"

Page 1, remove line 16

Page 1, line 17, replace "for" with "of" and replace "violation" with "offense or attempted felony offense that is"

Page 1, line 18, remove the first "or", replace "section 12.1-22-01" with "12.1-22", and remove the second "chapter"

Page 2, after line 7, insert:

"SECTION 2. EFFECTIVE DATE - GRANT APPLICATION. The governor shall apply for grant funds available under the federal DNA Analysis Backlog Elimination Act of 2000 [Pub. L. 106-546; 114 Stat. 2726] and certify the offenses in section 31-13-03 as qualifying offenses. This Act becomes effective on the date the department of corrections and rehabilitation certifies to the secretary of state and the legislative council that the department will receive sufficient federal funding under the federal DNA Analysis Backlog Elimination Act for the expected costs created by this Act which are not otherwise collected from a different source.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2004, and after that date is ineffective."

Renumber accordingly

2001 SENATE APPROPRIATIONS

HB 1208

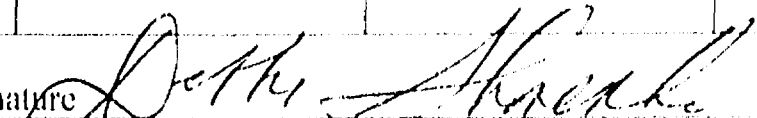
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1208

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
1	X		39.2-54.4
		X	0.0-12.0
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on HB 1208.

Representative Lawrence Klemin, District 47, Bismarck, testified (testimony attached) and explained that the fiscal note after the bill was passed in the House showed no net fiscal expenditures due to the federal grants. He also explained the Federal law and how it reads (attached), which applies to both state and federal grant programs. Also the sunset clause was added which will allow the Act to expire if we are unable to find state funds to pay for the program after the grants expire or if we decide not to continue with the program.

End Tape #1, Side A, meter 54.4

Start Tape #1, Side B, meter 0.0.

Introduced proposed amendments (attached) to the second engrossment of the reengrossed bill.

Senator Bowman: On page 2 of the engrossed bill, it states the courts are to assess the fee, then why is there a fiscal note?

Representative Klemm: I agree with that. In some cases they pay the fee but unknown how much state has collected.

Senator Schobinger: The samples taken, someone is charged a crime, samples taken through the system before they are convicted. Is this evidence different?

Representative Klemm: The DNA results are. The reason for the data base is for possible suspects. This is to get tests done on criminal and suspects for future use at crime scenes, etc.

Senator Solberg: Is the sample testing for DNA done when arrested?

Representative Klemm: Court orders testing. Required for a person that is convicted and only after convicted.

Senator Andrist: You do on an average 5 tests per day. I'm trying to understand if the Health Department sets up the system which was in the original fiscal, why is more needed, this is confusing?

Representative Klemm: We are both confused. There is no fiscal affect. The testing is paid by the offender or grants and it runs with the sunset clause.

Senator Solberg: We will check on the fiscal affect.

Ken Bollinger, Crime Bureau, testified and spoke on the changes from the House. There is confusion on the fiscal note. Explained there is a backlog now. This bill increases to 1500 samples per year. Not sure federal funding especially the first year. There is a lot of work involved with this, the voucher system and analysis done on samples. There will be a tremendous increase in work load from 60 samples to 1500. We received the additional worker and this person is needed. The federal grant was only for those states to apply with back log cases.

Senator Andrist: Are these blood samples drawn, the five per day and you need more people?

Page 3
Senate Appropriations Committee
Bill/Resolution Number HB 1208
Hearing Date March 19, 2001

Ken Bollinger: No we don't collect blood samples but swab samples. Average sample takes three hours when we do them. There is a lot of work after these results.

Pat Foley, State Penitentiary, spoke on the impact. Most offenders are only able to afford about 25% of their obligations and these obligations could shift with more imposed. Explained various expenditures by inmates and how hard it is to collect.

Representative Klein: Asked the committee to look at Section 1 of the bill again where it states upon certification by the department that federal funds have been received. Meaning no costs to the state.

With no further testimony, the hearing was closed on HB 1208.

Tape #1, Side B, meter 12.0.

March 20, 2001 Full Committee Action (Tape #2, Side A, Meter # 5.5 - 50.7 (2nd of 6)

Senator Nething reopened the hearing on HB1208 - Relating to DNA Testing.

Committee members reviewed and discussed the documentation. No consensus, therefore,

Senator Nething assigned it to a Subcommittee: Senator Andrist, Chair; Senators Grindberg and Lindaas.

Page 4
Senate Appropriations Committee
Bill/Resolution Number HB 1208
Hearing Date March 19, 2001

3-29-01 Full Committee Action (Tape #1, Side A, Meter # 17.6-22.8)

Senator Nethling reopened the hearing on HB1208 - Relating to DNA Testing.

Senator Andrist, Subcommittee Chair reviewed the bill, and presented amendments #10327,0302 as prepared for the Subcommittee following their discussions. Full Committee discussion.

Senator Andrist moved for the adoption of the amendments; Senator Lindaas seconded. Verbal vote moved the amendments.

Discussion on the bill.

Senator Andrist moved a DO PASS AS AMENDED; seconded by Senator Lindaas. Discussion; call for the vote. Roll Call Vote: 13 yes; 0 no; 1 absent and not voting.

Floor assignment will go back to the Senate Committee who referred it to this Committee;

Senator Watne.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1208

In lieu of the amendments to Reengrossed House Bill No. 1208 as printed on page 742 of the Senate Journal, Reengrossed House Bill No. 1208 is amended as follows:

Page 1, line 2, after "testing" insert "; and to provide an expiration date"

Page 1, line 13, overstrike "and" and insert immediately thereafter "or"

Page 1, line 15, replace "Upon certification by the department that federal funds" with "The"

Page 1, remove line 16

Page 1, line 17, replace "for" with "of" and replace "violation" with "offense"

Page 1, line 20, replace "and" with "or"

Page 1, line 23, overstrike "and" and insert immediately thereafter "or"

Page 2, line 1, overstrike "and" and insert immediately thereafter "or"

Page 2, line 3, overstrike the first "and" and insert immediately thereafter "or"

Page 2, after line 7, insert:

"SECTION 2. GRANT APPLICATION - IMPLEMENTATION. The governor shall apply for grant funds available under the federal DNA Analysis Backlog Elimination Act of 2000 [Pub. L. 106-546; 114 Stat. 2726] and certify the offenses in section 31-13-03 as qualifying offenses. The department of corrections and rehabilitation and the forensic science division of the state department of health shall limit the implementation of this Act to stay within funds provided by legislative appropriation and from any other public or private source.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2004, and after that date is ineffective."

Renumber accordingly

Date: 3.29.01

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1238Senate Appropriations

Committee

☐ Subcommittee on _____

or

☐ Conference CommitteeLegislative Council Amendment Number 10327.0302Action Taken Do Pass in Committee

Motion Made By

Senator Watson

Seconded

By

Senator Watson

Senators	Yes	No	Senators	Yes	No
Dave Nothing, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson					
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 13No 0Absent 1

Floor Assignment

Senator Watson

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

REPORT OF STANDING COMMITTEE

HB 1208, as reengrossed and amended: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1208, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments to Reengrossed House Bill No. 1208 adopted by the Senate as printed on page 742 of the Senate Journal, Reengrossed House Bill No. 1208 is amended as follows:

Page 1, line 2, after "testing" insert "; and to provide an expiration date"

Page 1, line 13, overstrike "and" and insert immediately thereafter "or"

Page 1, line 15, replace "Upon certification by the department that federal funds" with "Tho"

Page 1, remove line 16

Page 1, line 17, replace "for" with "of" and replace "violation" with "offense"

Page 1, line 20, replace "and" with "or"

Page 1, line 23, overstrike "and" and insert immediately thereafter "or"

Page 2, line 1, overstrike "and" and insert immediately thereafter "or"

Page 2, line 3, overstrike the first "and" and insert immediately thereafter "or"

Page 2, after line 7, insert:

"SECTION 2. GRANT APPLICATION - IMPLEMENTATION. The governor shall apply for grant funds available under the federal DNA Analysis Backlog Elimination Act of 2000 [Pub. L. 106-546; 114 Stat. 2726] and certify the offenses in section 31-13-03 as qualifying offenses. The department of corrections and rehabilitation and the forensic science division of the state department of health shall limit the implementation of this Act to stay within funds provided by legislative appropriation and from any other public or private source.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2004, and after that date is ineffective."

Renumber accordingly

2001 TESTIMONY

HB 1208

TESTIMONY OF LAWRENCE R. KLEMIN
HOUSE BILL NO. 1208
HOUSE JUDICIARY COMMITTEE
JANUARY 24, 2001

Mr. Chairman and Members of the House Judiciary Committee,

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. North Dakota law currently requires DNA testing by the Department of Corrections only for those persons convicted of sex offenses. The results of the DNA tests are then included in law enforcement identification databases to aid in identification of persons who commit similar crimes in the future. The database can also be used to exonerate suspects. HB1208 expands the list of offenses for which DNA testing is required to include felony convictions for violations of the following additional crimes:

NDCC Ch. 12.1-16	Homicide
NDCC Ch. 12.1-17	Assaults
NDCC Ch. 12.1-18	Kidnapping
NDCC Ch. 12.1-22	Robbery
NDCC Ch. 12.1-27.2	Sexual Performances by Children

The DNA database 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 database and can also be linked into the national DNA database system where the databases from other states can also be searched. If a match occurs, then law enforcement has a suspect.

It is my understanding that North Dakota is one of 6 states that collects DNA samples only from sex offenders. 44 states also collect DNA samples from murderers; many states collect from all violent felons; and 7 states have passed laws to collect DNA samples from all felons. By expanding the DNA database to include additional crimes, we may increase the success rate of solving crimes, both crimes committed in North Dakota and elsewhere. We would have the capability of determining if criminals incarcerated here are also unidentified suspects of unsolved crimes committed in other states. Likewise, the North Dakota database would expand the national DNA database for the benefit of other states.

I urge a "Do Pass" recommendation on HB1208.

**Testimony on HB 1208
Presented by Kenan L. Bullinger
Director, Crime Lab Division
ND Department of Health
House Judiciary Committee
January 24, 2001**

Mr. Chairman and members of the committee, I am Kenan Bullinger with the Crime Lab Division with the ND Department of Health. Our division provides laboratory support and other technical assistance to various law enforcement agencies and others in the criminal justice system in the investigation of crime. I appear before you today to simply provide information in relation to the fiscal impacts to our department and other agencies should HB 1208 pass as currently written.

The Crime Lab Division is in the process of developing its' laboratory capabilities in the way of DNA testing. Currently, North Dakota Century Code mandates all qualified sexual offenders be profiled and uploaded into the Combined DNA Database System (CODIS). Mandating that all felons convicted under the sections of code stated in HB 1208 adds considerable additional workload to our laboratory resulting in our needing additional resources to meet those mandates. Hopefully the fiscal note that has been prepared and attached to HB 1208 is self-explanatory and includes costs incurred not only from our department but also the Department of Corrections in obtaining the samples and providing supervision to those on parole or probation.

DNA testing is a valuable tool to not only help in identifying and convicting suspects but also to exonerate wrongly accused individuals through the testing of blood and other body fluids. This fairly new laboratory technique comes with a price however. Our laboratory was able to obtain some federal dollars a few years back to purchase the equipment needed and get the personnel trained to carry out this important laboratory technique. We are still in the process of implementing and establishing our program by profiling qualified sexual offenders as mandated in North Dakota Century Code Chapter 31-13. We hope to have our laboratory certified to perform in-house DNA testing within the next 8-12 months. This will be an important tool for our laboratory but also for the entire criminal justice system.

I would be happy to answer any questions the committee may have in relation to the fiscal note attached to HB 1208.

State Department of Health Fiscal Note

Based on the proposed amendments to HB 1208, prepared on 2-7-01 here is the proposed fiscal impact.

Bill Number	1208
Amendment Number	Proposed amendments
Date of Request	2-7-01

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.

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$148,230		\$134,379	
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill will require any person convicted after July 31, 2001 for a felony violation in chapter 12.1-16, 12.1-17, 12.1-18, section 12.1-22-01 or chapter 12.1-27.2 or any person in custody of the department after July 31, 2001 convicted of one of these offenses shall be tested for DNA identification purposes and included in the law enforcement data base. It is estimated that approximately 497 offenders will need DNA profiling the first year of the biennium and approximately 252 additional offenders will need DNA profiling every year after the first year this legislation is effective.

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.

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 Department of Health's fiscal impact (\$136,734) includes expenditures to sample, analyze, review, and upload data on the offenders into the Combined DNA Database System (CODIS). This includes funding for an additional 1.0 FTE to handle and analyze the samples, supervisory and computer coordinator support. Additional laboratory supplies and equipment maintenance costs are also included. Also included in the expenditures for this biennium are costs incurred by nursing staff to collect samples from the offenders (\$5,708) or a .25 FTE and increased time needed by parole officers (\$5,788) or a .25 FTE for a total of 1.5 FTE's

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 money needed to carry out the mandates of this legislation were not included in the ND Department of Health's appropriations bill SB 2004 or any other agencies impacted by this bill, so the Department's involved will need increased authority and funding.

Name:	Kathy J. Albin	Department	Health Department
Phone Number:	328-2392	Date Prepared:	2-7-01



NORTH DAKOTA HOUSE OF REPRESENTATIVES

Representative Lawrence R. Klemin
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COMMITTEES:
Judiciary
Government and
Veterans Affairs

TO: Appropriations Committee
Government Operations Section
FROM: Rep. Lawrence R. Klemin
SUBJECT: HB1208 - DNA Testing - Fiscal Note
DATE: February 14, 2001

HB1208 expands the crimes for which DNA testing is required in North Dakota. The bill received a "Do Pass" recommendation from the House Judiciary committee by a vote of 14 to 0. The bill is supported by law enforcement and the State's Attorneys. Currently, DNA testing is only done for sex offenses, unlike most states which have much broader testing. North Dakota is far behind most other states in this regard. See Attachment A. The results of DNA testing are uploaded onto the Combined DNA Database System (CODIS) maintained by the federal government. The results of DNA testing from all of the states are then available to every state and the federal government through this system to solve crimes. The CODIS profiling is the successor to fingerprinting. DNA testing is a valuable tool to identify and convict suspects and is also used to exonerate wrongly accused individuals. The North Dakota Crime Lab Division of the Department of Health is in the process of becoming certified for DNA testing and should be certified within the next 8 months. The in-house cost of DNA testing is about \$36 per test according to the Crime Lab.

Originally, HB1208 had required DNA testing for approximately 950 offenders the first year with approximately 535 offenders each year thereafter, according to the fiscal note dated 01/18/01 prepared by the Department of Health (DOH). The reason the number is higher the first year is to take into account the present prison population and the present parole/probation population. The House Judiciary Committee requested a breakdown of the felonies from the Department of Corrections and Rehabilitation (DOCR) to use in order to determine if there were certain classes of felonies that could be eliminated in order to reduce the fiscal note. The breakdown is shown on Attachment B, which does not add up to the totals used in the first fiscal note prepared by DOH. This is the first flaw in the fiscal note.

HB1208 was amended and omitted DNA testing for property crimes, such as burglary, which reduced the number of offenders to be tested considerably, to 497 the first year and 252 for each year thereafter, according to the revised fiscal note dated 02/07/01, also prepared by DOH. This also is more than the totals found by DOCR in Attachment B. This is the second flaw in the fiscal note.

It should also be noted that more than half of the offenders tested are not even in prison, but are on parole/probation (284 vs 245) according to the breakdown of the offenses prepared by the DOCR on Attachment B. This is important because the amendments to HB1208 require the sentencing court to assess the cost of the DNA test against the felon. The amendment strengthens the procedure of existing law, which also required the felon to pay the cost. During the review of this matter by the Judiciary Committee, it was discovered that despite the assessment requirement of existing law, no one has been collecting the cost of the test from the felon because there was no mechanism for doing so provided in the law. HB1208, as amended, requires the sentencing court to assess the cost of the test against the felon; the cost of the test (\$36) is then to be collected from the person tested by DOCR; and the amount recovered is then to be transferred to the DOH for deposit in the general fund. Since more than half of the offenders are not even in prison and are out working in the community, it should be possible to collect the \$36 from most of them. Even many of the felons in prison earn some income and should be able to pay the \$36 over time. Obviously, the cost of the test will not be collected from some of the felons, but this should be the minority of the felons tested.

However, the fiscal note dated 02/07/01 completely ignores the assessment of the cost of the test against the felon and calculates the effect on the general fund as if absolutely no costs are recouped. This is the third flaw in the fiscal note.

In addition, the difference between the first fiscal note and the second fiscal note cannot be explained when there is a reduction of 50% of the persons tested. The first fiscal note showed 1.6 FTE's to handle and analyze the samples. Despite a reduction of more than 50%, the second fiscal note still shows a need for 1.0 FTE's for this purpose.

The first fiscal note also shows .25 FTE's (\$5,708) for nursing staff to collect the samples and increased time by parole officers of .25 FTE's (\$5,788). It is arguable that nursing staff is even required since the collecting of the saliva is usually done at the jail by a simple method. The time to be spent by parole officers is also arguable for the same reason. However, regardless of whether or not nurses and parole officers are to be involved, the second fiscal note uses exactly the same figures as the first fiscal note, despite the 50% reduction in samples. This is the final flaw in the fiscal note.

I submit that the fiscal note process is fatally flawed in this case and is obviously not reliable. Most of the costs of the DNA testing should be recoverable from the felon, as provided in HB1208. Although there will be some costs associated with the DNA testing, it can be no where near the amount shown on the fiscal note. The benefits to be derived from the DNA testing and North Dakota's participation in the national database are far outweighed by the cost of the program. See Attachment C for a further description of the benefits of this program.

Please give this matter a favorable review as did the Judiciary Committee.

2-16-01
HB 1208

**Testimony on Engrossed HB 1208
Presented by Kenan L. Bullinger
Director, Crime Lab Division
ND Department of Health
House Appropriations Committee
February 15, 2001**

Mr. Chairman and members of the committee, I am Kenan Bullinger with the Crime Lab Division with the ND Department of Health. Our division provides laboratory support and other technical assistance to various law enforcement agencies and others in the criminal justice system in the investigation of crime. I appear before you today to provide information in relation to the revised fiscal impacts to our department and other agencies should HB 1208 pass as amended by the House Judiciary Committee and referred to you.

The Crime Lab Division is in the process of developing its' laboratory capabilities in the way of DNA testing. Currently, North Dakota Century Code mandates all qualified sexual offenders be profiled and uploaded into the Combined DNA Database System (CODIS). Mandating that all felons convicted under the sections of code as stated in the amended version HB 1208 still adds considerable additional workload to our laboratory resulting in our needing additional resources to meet those mandates. Hopefully the revised fiscal note that has been prepared and attached to HB 1208 is self-explanatory and includes costs incurred not only from our department but also the Department of Corrections in obtaining the samples and providing supervision to those on parole or probation. With the amended version of HB 1208, the resulting number of felons to be tested is virtually cut in half from that required in the original legislation and results in our department needing only 1 FTE to handle the increased workload.

DNA testing is a valuable tool to not only help in identifying and convicting suspects but also to exonerate wrongly accused individuals through the testing of blood and other body fluids. This fairly new laboratory technique comes with a price however. Our laboratory was able to obtain some federal dollars a few years back to purchase the equipment needed and get the personnel trained to carry out this important laboratory technique. We are still in the process of implementing and establishing our program by profiling qualified sexual offenders as mandated in North Dakota Century Code Chapter 31-13. We hope to have our laboratory certified to perform in-house DNA testing within the next 8-12 months. This will be an important tool for our laboratory but also for the entire criminal justice system.

I would be happy to answer any questions the committee may have in relation to the revised fiscal note attached to HB 1208 as amended.

2-16-01
HB1208



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES.
Judiciary
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TO: Appropriations Committee
FROM: Rep. Lawrence R. Klemln
RE: HB1208 - DNA Testing - Supplemental Information
DATE: February 15, 2001

I had sent you a memo yesterday asking you to consider on the merits of the fiscal note on this bill. For your further information, DNA legislation is currently being considered in many other states in addition to the states that have already approved it.

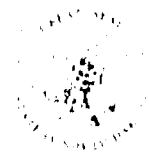
There are currently 33 bills to collect DNA from **all** convicted felons in 18 States. HB1208 in North Dakota is not this expansive, but only applies to violent felons.

Earlier this week, Montana House Bill 359 and Mississippi Senate Bill 2498 each passed all felons legislation from their house of origin. The Montana bill passed 97 - 2 and the Mississippi bill passed 52 - 0. Also this week, all felons bills in Arizona, Colorado, and Kentucky passed from their policy committees with strong majorities. These strong majorities are consistent with the seven states that passed the all felons legislation in previous legislative session. For example, Georgia's all felons bill last year passed both houses without a single no vote. It is clear that an overwhelming majority of legislators from around the country support collecting DNA from all convicted felons.

Since HB1208 requires the felon being tested to pay the cost, there is good reason to pass this bill. The fiscal effect should be much less than the fiscal note would suggest.



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TESTIMONY OF LAWRENCE R. KLEMIN HOUSE BILL NO. 1208 SENATE JUDICIARY COMMITTEE MARCH 5, 2001

Mr. Chairman and Members of the Senate Judiciary Committee.

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. North Dakota law currently requires DNA testing by the Department of Corrections only for those persons convicted of sex offenses. The results of the DNA tests are then included in law enforcement identification databases to aid in identification of persons who commit similar crimes in the future. The database can also be used to exonerate suspects. HB1208, as amended in the House, expands the list of offenses for which DNA testing is required to include convictions for violations of felonies as follows:

NDCC Ch. 12.1-16	Homicide
NDCC Ch. 12.1-17	Assaults
NDCC Ch. 12.1-18	Kidnapping
NDCC Sec. 12.1-22-01	Robbery
NDCC Ch. 12.1-27.2	Sexual Performances by Children

The DNA database 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 database and can also be linked into the national DNA database system where the databases from other states and the federal government can also be searched. If a match occurs, then law enforcement has a suspect.

North Dakota is one of 6 states that collects DNA samples **only** from sex offenders. 44 states also collect DNA samples from murderers; many states collect from all violent felons; and 7 states have passed laws to collect DNA samples from **all** felons. By expanding the DNA database to include additional crimes, we may increase the success rate of solving crimes, both crimes committed in North Dakota and elsewhere. We would have the capability of determining if criminals incarcerated here are also unidentified suspects of unsolved crimes committed in other states. Likewise, the North Dakota database would expand the national DNA database for the benefit of other states.

When HB1208 was originally introduced in the House, the bill would have been applied to all felonies in the chapters listed. However, the fiscal note showed the cost of collection and processing of the DNA samples to be about \$241,500 for the next biennium. The fiscal note was high even though the bill requires the court to assess the cost of the DNA testing against the felon. See page 2 of the bill. As a result of the fiscal note, the bill was amended to remove about half of the felonies from the list. This amendment reduced the size of the fiscal note to \$148,000. The bill received a unanimous "do pass" recommendation from the House Judiciary Committee. The bill was then sent to the House Appropriations Committee for further review.

While the bill was being considered in the Appropriations Committee, I found out about a federal law that was approved in December, 2000, the DNA Backlog Elimination Act of 2000. I have attached a copy of Section 2 of this federal law to my testimony. I will give a complete copy of the law to the Committee Clerk for inclusion in the record of this hearing. The federal law provides for grants to the States for DNA testing and updating of States Crime labs. The Governor's office is required to submit an application to the US Attorney General to obtain a grant for these purposes. Grants are available through federal fiscal year 2004. As a result of this federal law, the House Appropriations Committee amended the bill at page 1, lines 15 and 16 to provide that the new law would not take effect until federal funds were received for DNA testing. The last amendment was added a the deadline for reporting the bills out of the Appropriations Committee. HB1208 then passed the House unanimously.

Now that the bill is in the Senate, and since we are now aware of the federal grant program, I am proposing to further amend the bill. Attached to my testimony is a proposed amendment for the Committee to consider. The amendment provides for DNA testing of all felons, not just violent felons, which is the way this bill was originally introduced. The amendments also apply the testing requirement to "attempts" such as attempted murder and other felonies. The amendment also clarifies the provisions concerning the federal grant by adding a new Section 2, which provides that the Act is not effective until the grant monies are received. Finally, in order to alleviate any concern about continuing costs that can't be recovered after the grant program is ended, there is a new Section 3 to provide for a sunset of July 31, 2004, so that this law can be reviewed in the future given the continuing costs of the program.

I urge a "Do Pass" recommendation on HB1208.

Inmates

Current Population	New admissions in 1999	New admissions in 2000	
74	1	6	12.1-16 Murder
17	4	5	12.1-16 Manslaughter
6	16	9	12.1-17 Simple assault on police, co, fireman, ems
46	19	29	12.1-17 Aggravated assault
10	10	6	12.1-17 Reckless endangerment
34	22	23	12.1-17 Terrorizing
2	0	1	12.1-17 Stalking if charged as felony
6	4	0	12.1-18 Kidnapping
6	2	4	12.1-18 Felonious restraint
44	10	16	12.1-22 Robbery
113	68	92	12.1-22 Burglary
15	17	14	12.1-22 Criminal trespass if charged as felony
1	0	1	12.1-22 Surreptitious instution if charged as felony
23	18	16	12.1-22 Unlawful entry into vehicle
0	0	1	12.1-27.2 Use of minor in sexual performance
0	0	0	12.1-27.2 Promote or direct obscene sexual performance by minor
0	0	0	12.1-27.2 Promote a sexual performance by a minor
0	0	0	12.1-27.2 Possess motion picture, photograph...that includes sexual conduct by a minor if charged as a felony
0	0	0	Did I miss any?
397	191	223	Total

Cases that come straight to the Field Services Officer (not from prison)			
	New admissions in 1999	New admissions in 2000	
	2	1	12.1-16 Murder (both the 1999 and 2000 cases were attempted murder)
	6	4	12.1-16 Manslaughter
	0	0	12.1-17 Simple assault on police, co, fireman, ems
	53	53	12.1-17 Aggravated assault
	23	20	12.1-17 Reckless endangerment
	36	47	12.1-17 Terrorizing
	5	0	12.1-17 Stalking if charged as felony
	2	1	12.1-18 Kidnapping
	6	6	12.1-18 Felonious restraint
	12	7	12.1-22 Robbery
	208	143	12.1-22 Burglary
	64	48	12.1-22 Criminal trespass if charged as felony
	0	0	12.1-22 Sarreptitious instusion if charged as felony
	65	34	12.1-22 Unlawful entry into vehicle
	0	0	12.1-27.2 Use of minor in sexual performance
	0	0	12.1-27.2 Promote or direct obscene sexual performance by minor
	0	0	12.1-27.2 Promote a sexual performance by a minor
	0	0	12.1-27.2 Possess motion picture, photograph...that includes sexual conduct by a minor if charged as a felony
	0	0	Did I miss anything?
	482	364	Total

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DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

[[Page 114 STAT. 2726]]

Public Law 106-546
106th Congress

An Act

To make grants to States for carrying out DNA analyses for use in the Combined DNA Index System of the Federal Bureau of Investigation, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system, and for other purposes. <<NOTE: Dec. 19, 2000 - [H.R. 4640]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: DNA Analysis Backlog Elimination Act of 2000.>>

SECTION 1. SHORT <<NOTE: 42 USC 13701 note.>> TITLE.

This Act may be cited as the ``DNA Analysis Backlog Elimination Act of 2000''.

SEC. 2. AUTHOR <<NOTE: 42 USC 14135.>> IZATION OF GRANTS.

(a) Authorization of Grants.--The Attorney General may make grants to eligible States for use by the State for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3)).

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes.

(3) To increase the capacity of laboratories owned by the State or by units of local government within the State to carry out DNA analyses of samples specified in paragraph (2).

(b) Eligibility.--For a State to be eligible to receive a grant under this section, the chief executive officer of the State shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall--

(1) <<NOTE: Deadline.>> provide assurances that the State has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 210304(b)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3));

(3) include a certification that the State has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

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(4) specify the allocation that the State shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) and samples specified in subsection (a)(2); and

(5) specify that portion of grant amounts that the State shall use for the purpose specified in subsection (a)(3).

(c) Crimes Without Suspects.--A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) for the purposes specified in paragraph (2) or (3) of subsection (a) shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.

(d) Analysis of Samples.--

(1) In general.--The plan shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is--

(A) operated by the State or a unit of local government within the State; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government within the State.

(2) Quality assurance standards.--(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 210304(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)).

(3) Use of vouchers for certain purposes.--A grant for the purposes specified in paragraph (1) or (2) of subsection (a) may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j).

(e) Restrictions on Use of Funds.--

(1) Nonsupplanting.--Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources for the purposes of this Act.

(2) Administrative costs.--A State may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General.--Each State which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains--

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

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(2) such other information as the Attorney General may require.

(g) <<NOTE: Deadline.>> Reports to Congress.--Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes--

- (1) the aggregate amount of grants made under this section to each State for such fiscal year; and
- (2) a summary of the information provided by States receiving grants under this section.

(h) Expenditure Records.--

(1) In general.--Each State which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) Access.--Each State which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

(i) Definition.--For purposes of this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(j) Authorization of Appropriations.--Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) as follows:

(1) For grants for the purposes specified in paragraph (1) of such subsection--

- (A) \$15,000,000 for fiscal year 2001;
- (B) \$15,000,000 for fiscal year 2002; and
- (C) \$15,000,000 for fiscal year 2003.

(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection--

- (A) \$25,000,000 for fiscal year 2001;
- (B) \$50,000,000 for fiscal year 2002;
- (C) \$25,000,000 for fiscal year 2003; and
- (D) \$25,000,000 for fiscal year 2004.

SEC. 3. <<NOTE: 42 USC 14135a.>> COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.

(a) Collection of DNA Samples.--

(1) From individuals in custody.--The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10, United States Code.

(2) From individuals on release, parole, or probation.--The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10, United States Code.

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(3) Individuals already in codis.--For each individual

described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, United States Code, the Director of the Bureau of Prisons or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures.--(A) The Director of the Bureau of Prisons or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty.--An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be--

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18, United States Code.

(b) Analysis and Use of Samples.--The Director of the Bureau of Prisons or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions.--In this section:

(1) The term "DNA sample" means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term "DNA analysis" means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying Federal Offenses.--(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, United States Code, as determined by the Attorney General:

(A) Murder (as described in section 1111 of such title), voluntary manslaughter (as described in section 1112 of such title), or other offense relating to homicide (as described in chapter 51 of such title, sections 1113, 1114, 1116, 1118, 1119, 1120, and 1121).

(B) An offense relating to sexual abuse (as described in chapter 109A of such title, sections 2241 through 2245), to sexual exploitation or other abuse of children (as described in chapter 110 of such title, sections 2251 through 2252), or to transportation for illegal sexual activity (as described in chapter 117 of such title, sections 2421, 2422, 2423, and 2425).

(C) An offense relating to peonage and slavery (as described in chapter 77 of such title).

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(D) Kidnapping (as defined in section 3559(c)(2)(E) of such title).

(E) An offense involving robbery or burglary (as described in chapter 103 of such title, sections 2111 through 2114, 2116,

and 2118 through 2119).

(F) Any violation of section 1153 involving murder, manslaughter, kidnapping, maiming, a felony offense relating to sexual abuse (as described in chapter 109A), incest, arson, burglary, or robbery.

(G) Any attempt or conspiracy to commit any of the above offenses.

(2) <<NOTE: Deadline.>> The initial determination of qualifying Federal offenses shall be made not later than 120 days after the date of the enactment of this Act.

(e) Regulations.--

(1) In general.--Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) Probation officers.--The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) <<NOTE: Deadline.>> Commencement of Collection.--Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

SEC. 4. <<NOTE: 42 USC 14135b.>> COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN DISTRICT OF COLUMBIA OFFENDERS.

(a) Collection of DNA Samples.--

(1) From individuals in custody.--The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(2) From individuals on release, parole, or probation.--The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(3) Individuals already in codis.--For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures.--(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for

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the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty.--An individual from whom the collection of a DNA sample is authorized under this subsection

who fails to cooperate in the collection of that sample shall be--

- (A) guilty of a class A misdemeanor; and
- (B) punished in accordance with title 18, United States Code.

(b) Analysis and Use of Samples.--The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions.--In this section:

(1) The term "DNA sample" means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term "DNA analysis" means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying District of Columbia Offenses.--The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) <<NOTE: Deadline.>> Commencement of Collection.--Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

(f) Authorization of Appropriations.--There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

SEC. 5. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN OFFENDERS IN THE ARMED FORCES.

(a) In General.--(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"Sec. 1565. DNA identification information: collection from certain offenders; use

"(a) Collection of DNA Samples.--(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

"(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

"(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private

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entities to provide for the collection of samples described in paragraph (1).

"(b) Analysis and Use of Samples.--The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall--

- (1) carry out a DNA analysis on each such DNA sample in a

manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

“(c) Definitions.--In this section:

“(1) The term ‘DNA sample’ means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

“(2) The term ‘DNA analysis’ means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

“(d) Qualifying Military Offenses.--(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

“(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.

“(e) Expungement.--(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

“(2) For purposes of paragraph (1), the term ‘qualifying offense’ means any of the following offenses:

“(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

“(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

“(C) A qualifying military offense.

“(3) For purposes of paragraph (1), a court order is not ‘final’ if time remains for an appeal or application for discretionary review with respect to the order.

“(f) Regulations.--This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Transportation and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.”

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1565. DNA identification information: collection from certain offenders; use.”

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(b) <<NOTE: Deadline. 10 USC 1565 note.>> Initial Determination of Qualifying Military Offenses.--The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act.

(c) <<NOTE: 10 USC 1565 note.>> Commencement of Collection.--Collection of DNA samples under section 1565(a) of such title, as added

by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b).

SEC. 6. EXPANSION OF DNA IDENTIFICATION INDEX.

(a) Use of Certain Funds.--Section 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. 531 note) is amended to read as follows:

“(2) the Director of the Federal Bureau of Investigation shall expand the combined DNA Identification System (CODIS) to include analyses of DNA samples collected from--

“(A) individuals convicted of a qualifying Federal offense, as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000;

“(B) individuals convicted of a qualifying District of Columbia offense, as determined under section 4(d) of the DNA Analysis Backlog Elimination Act of 2000; and

“(C) members of the Armed Forces convicted of a qualifying military offense, as determined under section 1565(d) of title 10, United States Code.”.

(b) Index To Facilitate Law Enforcement Exchange of DNA Identification Information.--Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132) is amended--

(1) in subsection (b)(1), by inserting after “criminal justice agency” the following: “(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)”;

(2) in subsection (b)(2), by striking “, at regular intervals of not to exceed 180 days,” and inserting “semiannual”;

(3) in subsection (b)(3), by inserting after “criminal justice agencies” in the matter preceding subparagraph (A) the following: “(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)”; and

(4) by adding at the end the following new subsection:

“(d) Expungement of Records.--

“(1) By director.--(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

“(B) For purposes of subparagraph (A), the term ‘qualifying offense’ means any of the following offenses:

“(i) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

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“(ii) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

“(iii) A qualifying military offense, as determined under section 1565 of title 10, United States Code.

“(C) For purposes of subparagraph (A), a court order is not ‘final’ if time remains for an appeal or application for

discretionary review with respect to the order.

“(2) By states.--(A) As a condition of access to the index described in subsection (a), a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State if the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned.

“(B) For purposes of subparagraph (A), a court order is not ‘final’ if time remains for an appeal or application for discretionary review with respect to the order.”.

SEC. 7. CONDITIONS OF RELEASE.

(a) Conditions of Probation.--Section 3563(a) of title 18, United States Code, is amended--

(1) in paragraph (7), by striking ‘and’ at the end;

(2) in paragraph (8), by striking the period at the end and inserting ‘; and’; and

(3) by inserting after paragraph (8) the following:

“(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.”.

(b) Conditions of Supervised Release.--Section 3583(d) of title 18, United States Code, is amended by inserting before ‘The court shall also order’ the following: ‘The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.’.

(c) Conditions of Parole.--Section 4209 of title 18, United States Code, insofar as such section remains in effect with respect to certain individuals, is amended by inserting before ‘In every case, the Commission shall also impose’ the following: ‘In every case, the Commission shall impose as a condition of parole that the parolee cooperate in the collection of a DNA sample from the parolee, if the collection of such a sample is authorized pursuant to section 3 or section 4 of the DNA Analysis Backlog Elimination Act of 2000 or section 1565 of title 10.’.

(d) <<NOTE: 42 USC 14135c.>> Conditions of Release Generally.--If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 3 or 4 of this Act or section 1565 of title 10, United States Code, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Drug Control and System Improvement Grants.--Section 503(a)(12)(C) of title I of the Omnibus Crime Control and

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Safe Streets Act of 1968 (42 U.S.C. 3753(a)(12)(C)) is amended by striking ‘, at regular intervals of not to exceed 180 days,’ and inserting ‘semiannual’.

(b) DNA Identification Grants.--Section 2403(3) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk-2(3)) is amended by striking ‘, at regular intervals not exceeding 180 days,’ and inserting ‘semiannual’.

(c) Federal Bureau of Investigation.--Section 210305(a)(1)(A) of the

Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14133(a)(1)(A)) is amended by striking "", at regular intervals of not to exceed 180 days," and inserting "semiannual".

SEC. 9. <<NOTE: 42 USC 14135d.>> AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such Act, as determined by the Attorney General) such sums as may be necessary.

SEC. 10. <<NOTE: 42 USC 14135e.>> PRIVACY PROTECTION STANDARDS.

(a) In General.--Except as provided in subsection (b), any sample collected under, or any result of any analysis carried out under, section 2, 3, or 4 may be used only for a purpose specified in such section.

(b) Permissive Uses.--A sample or result described in subsection (a) may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 210304(b)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3)).

(c) Criminal Penalty.--A person who knowingly--

- (1) discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it; or
- (2) obtains, without authorization, a sample or result described in subsection (a),

shall be fined not more than \$100,000.

SEC. 11. <<NOTE: 42 USC 14135 note.>> SENSE OF THE CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES.

(a) Findings.--Congress finds that--

(1) over the past decade, deoxyribo-nucleic acid testing (referred to in this section as "DNA testing") has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

(4) DNA testing was not widely available in cases tried prior to 1994;

(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not

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previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public

safety by providing evidence that led to the apprehension of the actual perpetrator;

(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

(11) only a few States have adopted post-conviction DNA testing procedures;

(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in the United States;

(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

(16) providing quality representation to defendants facing the loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

(b) Sense of the Congress.--It is the sense of the Congress that--

(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases; and

(2) Congress should work with the States to improve the quality of legal representation in capital cases through the

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establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of those proceedings.

Approved December 19, 2000.

LEGISLATIVE HISTORY--H.R. 4640:

HOUSE REPORTS: No. 106-900, Pt. 1 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 146 (2000):

Oct. 2, considered and passed House.

Dec. 6, considered and passed Senate, amended.

Dec. 7, House concurred in Senate amendment.

<all>

Department of Health Fiscal Impact on Proposed Amendments

Based on the proposed amendments to HB 1208, prepared on 3-2-01 here is the proposed fiscal impact.

Bill Number	1208
Amendment Number	Proposed amendments
Date of Request	3-5-01

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.

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			0		0	
Expenditures			\$100,846		\$92,071	
Appropriations						

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

Based on proposed amendments to HB 1208, given to the Senate Judicial Committee on 3-5-01 and prepared on 3-2-01 the federal funds available under the DNA Backlog Elimination Act of 2000 would provide funding for sample testing only. Funds would be paid directly by the federal government to a private laboratory. However, one additional staff person will be needed in the ND Crime Lab to provide training and coordinate the collection of samples, prepare samples in accordance with FBI Quality Assurance Standards, review data to verify integrity, perform analysis, evaluate results of raw data, and upload data into Combined DNA Database System by a trained examiner. The proposed amendments to HB 1208 will require a significant increase in the number of felons requiring DNA testing. Approximately 1500 felons will need DNA profiling the first biennium and an additional 1100 felons will need profiling in the 2003-2005 biennium.

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 shall assess the cost of the procedure against any person tested and any funds collected will be deposited into the general fund. It is not know at

this time how much money may be collected.

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 Department of Health's fiscal impact (\$89,350) includes expenditures to fund an additional 1.0 FTE to train personnel and coordinate collection of samples from convicted felons; prepare samples according to the FBI Quality Assurance Standards; review data to verify integrity; perform random re-analysis on percentage of samples; evaluate results of raw data; and upload data into the Combined DNA Database System (CODIS) by trained CODIS examiner. Also included in the expenditures are costs incurred by the nursing staff of the state penitentiary to collect samples for the offenders (\$5,708) or a .25 FTE and increased time needed by the parole officers (\$5,788).

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 money needed to carry out the mandates of this legislation were not included in the ND Department of Health's appropriations bill SB 2004 or any other agencies impacted by this bill, so the Department's involved will need increased authority and funding.

Name:	Kathy J. Albin	Department	Department of Health
Phone Number:	328-2392	Date Prepared:	3-7-01

HB 1208



NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Lawrence R. Klemin
District 47
1709 Montego Drive
Bismarck, ND 58501

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES
Judiciary
Government and
Veterans Affairs

TESTIMONY OF LAWRENCE R. KLEMIN HOUSE BILL NO. 1208 SENATE APPROPRIATIONS COMMITTEE MARCH 19, 2001

Mr. Chairman and Members of the Senate Appropriations Committee.

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. North Dakota law currently requires DNA testing by the Department of Corrections only for those persons convicted of sex offenses. The results of the DNA tests are then included in law enforcement identification databases to aid in identification of persons who commit similar crimes in the future. The database can also be used to exonerate suspects. Reengrossed HB1208, as amended in the House, expanded the list of offenses for which DNA testing is required to include convictions for violations of felonies as follows:

NDCC Ch. 12.1-16	Homicide
NDCC Ch. 12.1-17	Assaults
NDCC Ch. 12.1-18	Kidnapping
NDCC Sec. 12.1-22-01	Robbery
NDCC Ch. 12.1-27.2	Sexual Performances by Children

The Second Engrossment of Reengrossed House Bill No. 1208, with the Senate amendments that were included at my suggestion, expands the list of felonies further to include burglary and other property crimes in NDCC Ch. 12.1-22, as well as attempted felonies of the felonies in these chapters, such as attempted murder.

The DNA database 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 database and can also be linked into the national FBI DNA database system where the databases from other states and the federal government can also be searched. If a match occurs, then law enforcement has a suspect.

North Dakota is one of 6 states that collects DNA samples **only** from sex offenders. 44 states also collect DNA samples from murderers; many states collect from all violent felons; and 7 states have passed laws to collect DNA samples from **all** felons. By expanding the DNA database to include additional crimes, we may increase the success rate of solving crimes, both crimes committed in North Dakota and elsewhere. We would have the capability of determining if criminals incarcerated here are also

unidentified suspects of unsolved crimes committed in other states. Likewise, the North Dakota database would expand the national DNA database for the benefit of other states. The DNA database can also be used to exonerate persons who have been convicted of crimes if the DNA from a crime scene shows that the crime was committed by someone else whose DNA has been entered in the database.

On December 19, 2000, the federal government approved the DNA Backlog Elimination Act of 2000. I have attached a copy of this federal law to my testimony. The federal law provides for grants to the States for DNA testing and updating of State crime labs. Under this federal law, the Governor's office is required to submit an application to the US Attorney General to obtain grants for these purposes. Grants are available through federal fiscal year 2004. HB1208, as amended, passed the House unanimously after review by the House Appropriations Committee. The fiscal note at that time showed no net fiscal expenditures due to the federal grants.

Section 2 of the bill requires the Governor's office to apply for the federal grant funds. The Act does not become effective until federal funding is received. Since the federal grants are only available through federal fiscal year 2004, Section 3 provides for an expiration date of July 31, 2004. The sunset clause will allow the Act to expire if we are unable to find state funds to pay for the program after the grants expire or if we decide not to continue with the program.

The new fiscal note for HB 1208 shows expenditures of \$100,846 in the 2001-2003 biennium and \$92,071 in the 2003-2005 biennium. The expenditure of state funds at this time is not the intent of this bill. The new fiscal note states that the grant funds "may only be used for testing of samples" and that the "funds would be paid directly by the federal government to a private laboratory." I disagree with these conclusions.

Section 2(a) of the federal law authorizes grants to the States for the following purposes:

- (1) To carry out DNA analyses of samples taken from convicted individuals;
- (2) To carry out DNA analyses from crime scenes; and
- (3) To increase the capacities of State labs to carry out the DNA analyses.

Section 2(d)(1) of the federal law provides that the DNA analyses can be done at:

- (A) A laboratory operated by the State or a unit of local government with the State; or
- (B) A laboratory operated by a private entity pursuant to a contract within the State.

Section 2(d)(3) provides an alternative to the State or contract laboratory analyses of

Section 2(d)(1)(A) and (B), as described above, and provides that "vouchers" may be used for the analyses, which may be redeemed at private laboratories.

Despite the contention in the fiscal note, there is nothing in this federal law which says that the federal grants can only be used for testing of samples. There is nothing in the federal law which says that the "funds would be paid directly by the federal government to a private laboratory." You can read the federal law and the sections I have cited and decide this issue yourself.

According to information available from the FBI, the cost of obtaining samples by drawing blood is about \$20 per sample. The cost could be much lower if a mouth swab is used. The cost of the testing and analyses is about \$40 per sample. The fiscal note says one additional staff person is needed to do the work, funded with general fund dollars at the rate of \$50,423 per year ($\$100,846 \div 2 = \$50,423$). According to the fiscal note, the additional staff person paid with State funds would review data, perform analysis, evaluate results, and upload data into the FBI database. What's the point of the federal grant if we have to pay a State employee \$50,000 a year to do the same thing? I think the fiscal note is faulty.

Attached to my testimony are two alternative amendments. Amendment number 1 should be used so that the sample can either be a blood sample or other bodily fluids, not blood and other bodily fluids. You don't need both for a sample.

Amendment number 2 incorporates amendment number 1, also amends the bill to reduce the number of felony classifications, and excludes "attempted" felonies. According to information previously provided to me by the Department of Corrections, amendment number 2 would reduce the total number of felons tested from 1500 to about 500 in the next biennium. If the committee is concerned that the State would need to pay the costs of the DNA program, as stated in the fiscal note, despite the language of the federal law, and despite the fact that the bill requires the sentencing court to assess the cost against the person tested, then reducing the kinds of felonies to those in amendment number 2 would significantly reduce the cost.

DNA testing is the modern method to solve crimes. North Dakota is way behind the other States in this regard. Attached to my testimony is a chart showing the qualifying offenses in the various States as of the end of 2000. Since the time the chart was prepared, additional States have expanded their laws to include more crimes. In addition, DNA expansion bills are now pending in many other States. North Dakota needs to get into the mainstream for DNA testing, along with the other States.

I urge a "Do Pass" recommendation on HB1208.

March 19, 2001
Amendment 1
Representative Klemin

**PROPOSED AMENDMENTS TO THE SECOND ENGROSSMENT OF
REENGROSSED HOUSE BILL NO. 1208**

Page 1, line 13, replace "and" with "or"

Page 1, line 19, replace "and" with "or"

Page 1, line 22 , replace the first "and" with "or"

Page 1, line 23, replace "and" with "or"

Page 2, line 1, replace "and" with "or"

Renumber accordingly

March 19, 2001
Amendment 2
Representative Klemin

**PROPOSED AMENDMENTS TO THE SECOND ENGROSSMENT OF
REENGROSSED HOUSE BILL NO. 1208**

Page 1, line 13, replace "and" with "or"

Page 1, line 16, remove "or attempted felony offense"

Page 1, line 17, after "12.1-17," insert "or", replace "12.1-22" with "section 12.1-22-01",
and after "or" insert "chapter"

Page 1, line 19, replace "and" with "or"

Page 1, line 22 , replace the first "and" with "or"

Page 1, line 23, replace "and" with "or"

Page 2, line 1, replace "and" with "or"

Renumber accordingly

STATE DNA DATABASE LAWS QUALIFYING OFFENSES

[illegible]

State	Sex Offenses	Offenses Against Children	Murder	Assault & Battery	Robbery	Kidnapping	Burglary	Attempts	Juvenile	All Felonies
MICHIGAN	✓		✓			✓				
MINNESOTA	✓		✓	✓	✓	✓	✓	✓	✓	
MISSISSIPPI	✓	✓								
MISSOURI	✓	✓	✓	✓		✓				
MONTANA	✓	✓	✓	✓	✓	✓		✓	✓	
NEBRASKA	✓	✓	✓							
NEVADA	✓	✓	✓	✓			✓	✓		
NEW HAMPSHIRE	✓								✓	
NEW JERSEY	✓	✓	✓	✓		✓		✓	✓	
NEW MEXICO	✓	✓	✓	✓	✓	✓	✓		✓	✓
NEW YORK	✓		✓	✓	✓	✓	✓			
NORTH CAROLINA	✓		✓	✓	✓	✓				
NORTH DAKOTA	✓	✓						✓		
OHIO	✓	✓	✓			✓		✓	✓	
OKLAHOMA	✓	✓	✓	✓						
OREGON	✓	✓	✓				✓	✓	✓	
PENNSYLVANIA	✓	✓	✓					✓	✓	
RHODE ISLAND	✓	✓	✓							
SOUTH CAROLINA	✓	✓	✓	✓	✓	✓	✓		✓	
SOUTH DAKOTA	✓	✓	✓	✓	✓	✓	✓	✓		
TENNESSEE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
TEXAS	✓	✓	✓	✓			✓		✓	
UTAH	✓	✓	✓	✓		✓				

<i>State</i>	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault & Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juveniles</i>	<i>All Felonies</i>
VERMONT	✓	✓	✓	✓	✓	✓	✓	✓		
VIRGINIA	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
WASHINGTON	✓	✓	✓	✓	✓	✓		✓	✓	
WEST VIRGINIA	✓	✓	✓	✓	✓	✓	✓			
WISCONSIN	✓	✓	✓	✓	✓	✓	✓			✓
WYOMING	✓	✓	✓	✓	✓	✓	✓	✓		✓
TOTALS	50	41	44	35	27	30	24	28	23	7

Attachment B

Inmates			
Current Population	New admissions in 1999	New admissions in 2000	
74	1	6	12.1-16 Murder
17	4	5	12.1-16 Manslaughter
6	16	9	12.1-17 Simple assault on police, co, fireman, ems
46	19	29	12.1-17 Aggravated assault
10	10	6	12.1-17 Reckless endangerment
34	22	23	12.1-17 Terrorizing
2	0	1	12.1-17 Stalking if charged as felony
6	4	0	12.1-18 Kidnapping
6	2	4	12.1-18 Felonious restraint
44	10	16	12.1-22 Robbery
113	68	92	12.1-22 Burglary
15	17	14	12.1-22 Criminal trespass if charged as felony
1	0	1	12.1-22 Surveillances-investigation if charged as felony
23	18	16	12.1-22 Unlawful entry into vehicle
0	0	1	12.1-27.2 Use of minor in sexual performance
0	0	0	12.1-27.2 Promote or direct obscene sexual performance by minor
0	0	0	12.1-27.2 Promote a sexual performance by a minor
0	0	0	12.1-27.2 Possess motion picture, photograph...that includes sexual conduct by a minor if charged as a felony
0	0	0	Did I miss any?
397	191	223	Total
245	88	100	

deleted from HHS 1208

Cases that come straight to the Field Services Officer (not from prison)		
New admissions in 1999	New admissions in 2000	
2	1	12.1-16 Murder (both the 1999 and 2000 cases were attempted murder)
6	4	12.1-16 Manslaughter
0	0	12.1-17 Simple assault on police, co, fireman, ems
53	53	12.1-17 Aggravated assault
23	20	12.1-17 Reckless endangerment
36	47	12.1-17 Terrorizing
5	0	12.1-17 Stalking if charged as felony
2	1	12.1-18 Kidnapping
6	6	12.1-18 Felonious restraint
12	7	12.1-22 Robbery
208	143	12.1-23 Burglary
64	48	12.1-22 Criminal trespass if charged as felony
0	0	12.1-22 Sarapitionous intrusion if charged as felony
65	34	12.1-22 Unlawful entry into vehicle
0	0	12.1-27.2 Use of minor in sexual performance
0	0	12.1-27.2 Promote or direct obscene sexual performance by minor
0	0	12.1-27.2 Promote a sexual performance by a minor
0	0	12.1-27.2 Possess motion picture, photograph... that includes sexual conduct by a minor if charged as a felony
0	0	Did I miss anything?
482	364	Total

deleted from HBS 1208

145 139

Attachment C

Benefits of Expanding Criminal DNA Databases

HB 17-08

Most states have enacted legislation requiring the collection of DNA samples from violent criminals. Once a sample has been collected, it is profiled and entered into secure state and federal databases. These databases are an irreplaceable investigation tool for law enforcement. When law enforcement obtains DNA from a crime scene, the DNA is compared against the state and federal databases. If the crime scene DNA matches a profile in the DNA database, then law enforcement has a suspect.

Recently, state legislators throughout the country have questioned why the DNA databases of violent offenders are not being expanded to include all convicted offenders. This comes as some U.S. states and foreign countries have discovered that expanding DNA databases beyond violent criminals could double the chances of matching a suspect against the state and federal databases.

Expanding the state databases to include all convicted offenders would have several benefits: First, more crimes would be solved; second, more crimes would be prevented; third, more innocent people would be exonerated; and lastly, society would realize greater cost-efficiencies:

1. **Solve crimes** -- DNA collection from all convicted felons, rather than just sex offenders and serious violent crimes, would result in a monumental amount of violent crimes being solved. Statistics show that as many as half of the criminals that commit violent crimes have non-violent criminal histories (see Virginia and Great Britain study). 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 could immediately 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 crime in this country.
3. **Exonerate the innocent** - Increasing the DNA database to those convicted of non-violent offenses would reduce 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 in America 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 at least 100 sexual assault cases. If we assume that just 25% of these offenders would have committed only one more rape each, a minimum of \$2.17 million in savings would be realized.

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Comments

Thursday, January 4, 2001

DNA helps warden catch suspected elk poachers

VIRGINIA GRANTIER, Bismarck Tribune

It took guts, and the science of DNA, for a North Dakota game warden to track down two Mandan residents suspected of killing two bull elk in November in Morton County.

"He (game warden Jeff Violett) has done the best investigation I have ever had brought to me," said Assistant State's Attorney Ladd Erickson on Wednesday.

Erickson said Violett used a sample from the left-behind gut pile of one elk to make a DNA match with meat being processed at a Mandan game processing plant.

Erickson filed charges Wednesday against two suspects, Calvin Schmidt, 45, and a 16-year-old male.

Schmidt faces a misdemeanor charge of illegal possession of a big-game animal. A snowmobile and two high-caliber rifles, thought to have been used in the crime, have been confiscated.

The 16-year-old has been cited for illegally shooting two elk and will be processed through juvenile court.

Erickson said the elk were shot north of Crown Butte Reservoir, possibly on Nov. 22. Officials found out about it when someone called in and reported seeing a dead elk.

Erickson said one elk had been left and eaten by coyotes. The other apparently had been packed out and taken to Mandan for processing.

As you can see, DNA tests can be very useful.

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NORTH DAKOTA, but there are only a handful of licenses awarded through a lottery system and the hunting takes place only in a small area of the Badlands and Turtle Mountain area.

Erickson said the two full-grown bull elk probably just wandered into the area.

"It's a real tragedy that somebody did this," he said.
"They were probably the only two elk in Morton County."

Violett said that without the help of DNA, he might have been able to find the poachers, but probably not easily.

"It would have been pretty difficult," he said.

Without the DNA, even if Violett would have been able to track down the right meat, he still would have needed a confession from the poacher.

"I would have had to have gotten an admission," he said.

But Violett said DNA isn't used often, "more or less due to the expense and time."

Erickson said evidence indicates that Schmidt had an unused Montana elk tag and had put it on the horns of the elk brought into the Mandan processing plant.

Violett also was able to do ballistics testing on rifle cartridges left at the scene. Also helping with the investigation was Doug Olson, a warden based in Hazen.

If convicted, Schmidt faces a maximum penalty of one year in jail and a \$2,000 fine, and could be prohibited from hunting for up to three years.

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NORTH DAKOTA HOUSE OF REPRESENTATIVES

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MEMORANDUM

TO: SENATE APPROPRIATIONS COMMITTEE
RE: HOUSE BILL NO. 1208 - DNA TESTING
DATE: MARCH 20, 2001

At the hearing on March 19, I provided you with a copy of the federal DNA Backlog Elimination Act, Public Law 106-546, approved December 19, 2001. I want to point out that the State must specify by statute the offenses that qualify for the DNA grants from the federal government and that Section 2(b)(3) of the Act requires a certification in this regard. The offenses are those which should be listed in the final version of House Bill No. 1208, whether those are the felonies listed in the current version of the bill, or the reduced number of felonies as listed in the proposed amendment number 2 that I gave you with my written testimony.

Although the federal Act provides grants for the DNA testing and upgrading of State labs, I also want to point out that there are restrictions on the use of the federal funds as specified in Section (2)(e), which states that the grant funds cannot be used to supplant State funds that would otherwise be available for DNA testing. In addition, a State may not use more than 3% of the federal funds for administrative expenses. Therefore, it may be that the federal funds can't be used to analyze samples taken after the grant application is made, but some of the funds can be used for administrative expenses, as well as for upgrading the lab.

I am not certain of the extent to which the Department of Health or the Department of Corrections already has funds specified in their budgets for the DNA testing of sexual offenders under the existing law in N.D.C.C. §31-13-03, which was enacted in 1995. Ken Bullinger from the State crime lab stated that there is a backlog of DNA samples to test and analyze. If the federal funds cannot be used for the testing of new samples, but only for the backlog, then I suggest a phased approach to the DNA testing. The grant application under Section 2(a) would seek funds to: (1) test the existing backlog of samples; (2) for the DNA analysis of evidence from crime scenes; and (3) for the upgrading of the State crime lab. An appropriation could be made for the limited purpose of taking samples from the felons convicted of the crimes included in House Bill No. 1208, but not enough to test the samples. The cost of taking samples by means of a mouth swab should be much less than the \$20 estimate for a blood test. There are about 500 current felons who would have samples taken if only violent felons

are considered. If samples are taken from all current felons, the estimated number increases to 1500. Those samples could then be stored until funds become available for the testing or until after the lab has been upgraded through the use of the federal grant funds. Samples can be stored for years. Funds would become available for specific felons upon payment of the assessed cost as ordered by the sentencing court under the bill. Funds may also become available from subsequent federal grants, which could be applied for, since the grant program is currently scheduled through the end of federal fiscal year 2004, or from future State legislative appropriations.

In order to accomplish the purposes of the bill in the manner I have described, Section 2 of the bill would require amendment to provide that the testing and analysis would be done to the extent funds are available through legislative appropriation, through the receipt of federal grant funds, or through the receipt of funds paid by the convicted felons as ordered by the court. Section 2 should not state, as it does now, that the Act does not become effective at all until sufficient federal funding becomes available to do all of the testing, because we would want to start collecting samples and because the courts should start assessing the costs to the convicted felons. At least some of them will be able to pay the costs.

It is my impression that the sense of the Legislature is to approve this bill if the fiscal effects can be worked out. Perhaps there will be a need for some State funding if federal funding will not pay for everything. I will be contacting the Legislative Council to draft an appropriate amendment for your review that would accomplish the goals of this bill with the least fiscal effect for the State.

Representative Lawrence R. Klemin



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MEMORANDUM

TO: SENATE APPROPRIATIONS COMMITTEE
RE: HOUSE BILL NO. 1208 - DNA TESTING
DATE: MARCH 21, 2001

Attached are the amendments to HB1208 that I referred to in my memo to you of March 20. I hope these amendments clarify the fiscal part of this bill. I would be happy to meet further with your committee to discuss these amendments. Thank you.

Rep. Lawrence R. Klemin