

# JUDICIAL PROOF

## CHAPTER 276

### HOUSE BILL NO. 1235 (Representatives Klemin, Kretschmar) (Senator Dever)

#### LAW ENFORCEMENT DNA DATA BASE

AN ACT to amend and reenact sections 31-13-03, 31-13-05, and 31-13-07 of the North Dakota Century Code, relating to the law enforcement DNA data base.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>127</sup> **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-03. (Effective through July 31, 2004) Persons to be tested - Costs.** The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense ~~and~~ or any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 ~~and~~ or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The sentencing court shall assess the cost of the procedure against the person being tested. 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.

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<sup>127</sup> Section 31-13-03 was also amended by section 5 of Senate Bill No. 2151, chapter 469.

**(Effective after July 31, 2004) Persons to be tested - Costs.** The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 4 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

<sup>128</sup> **SECTION 2. AMENDMENT.** Section 31-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-05. DNA data base established - How utilized.** The division shall establish a centralized data base of DNA identification records ~~for convicted sexual offenders~~. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of ~~sex-related crimes~~ criminal offenses. The division shall receive, analyze, and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized data base for identification and statistical purposes. The division may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the division is admissible in any court as prima facie evidence of the facts stated in the report.

<sup>129</sup> **SECTION 3. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>128</sup> Section 31-13-05 was also amended by section 7 of Senate Bill No. 2151, chapter 469.

<sup>129</sup> Section 31-13-07 was also amended by section 8 of Senate Bill No. 2151, chapter 469.

**31-13-07. Removal of DNA profiles from data base.** A person whose DNA profile has been included in the data base pursuant to this chapter may petition the district court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The division shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order. The detention, arrest, or conviction of a person based upon data base information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the data base by mistake.

Approved March 27, 2003

Filed March 28, 2003