

**BEFORE THE ADMINISTRATIVE RULES COMMITTEE****March 9, 2010**

Chairman Jerry Klein, Members of the Administrative Rules Committee:

The following written testimony was prepared by Ken Sorenson, Assistant Attorney General, on behalf of the North Dakota Attorney General and is submitted in response to the February 16, 2010, request of John Walstad, Legislative Council Code Revisor.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The State Health Department first promulgated rules governing DNA collection and analysis pursuant to legislation enacted in 1995. See 1995 N.D. Sess. Laws ch. 325. In 2003, the Crime Laboratory was moved from the State Health Department to the Attorney General's office. 2003 N.D. Sess. Laws ch. 469, § 12. Effective May 1, 2004, the administrative rules regarding DNA collection and analysis were moved to chapter 10-17-01 of the Administrative Code. The present rules and amendments relate to legislation enacted by the Sixtieth Legislative Assembly, namely House Bill No. 1197. See 2007 N.D. Sess. Laws ch. 285; N.D.C.C. § 31-13-03. The legislation had an effective date of August 1, 2009. See 2007 N.D. Sess. Laws ch. 285, § 3.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

The present amendments are not directly related to any federal statute or regulation but instead implement N.D.C.C. ch. 31-13 in accordance with N.D.C.C. § 31-13-08, which directs the Attorney General to adopt rules necessary to carry out the provisions of the DNA database identification system.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

The Attorney General followed the statutory rulemaking procedures required under N.D.C.C. ch. 28-32. Public notice of the rulemaking was published in all official newspapers in accordance with the requirements of N.D.C.C. ch. 28-32. Notice of the rulemaking was provided to Representatives David Monson, Lawrence Klemin, and former Representative Ron Carlisle, and Senators Ralph Kilzer, Dick Dever, and Stanley Lyson, the sponsors of House Bill No. 1197. A public hearing was held at the offices of the Attorney General's Crime Laboratory

Division on December 10, 2009. The Attorney General issued his opinion approving the rules on January 19, 2010.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

The only written comment was provided by Representative Klemin, who stated he agreed with the proposed rule amendments.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost of publication for the public notice was \$1,415.94. Other than staff time, there were no other costs.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

In 1995, legislation was enacted requiring convicted sex offenders to submit samples of DNA for inclusion in a database for law enforcement identification purposes. See 1995 N.D. Sess. Laws ch. 325. This was expanded in 2001 to include offenders convicted of: homicide; felony offenses under chapter 12.1-17, including aggravated assault, reckless endangerment, terrorizing, stalking, and causing contact by bodily fluids; robbery; and sexual performances by children. See 2001 N.D. Sess. Laws ch. 302. In 2005, N.D.C.C. § 31-13-03 was amended to require all offenders convicted of any felony offense after July 31, 2005, to submit a DNA sample for inclusion in the DNA law enforcement database. The statute was amended again in 2007 to require all offenders arrested after July 31, 2009, to submit a DNA sample for inclusion in the DNA law enforcement database. See 2007 N.D. Sess. Laws ch. 285.

The Crime Laboratory Division has a centralized database of DNA identification records and participates with the Federal Bureau of Investigation's ("FBI") Combined DNA Identification System ("CODIS") in accordance with the FBI's DNA laboratory procedures.

7. Whether a regulatory analysis was required by N.D.C.C. § 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

A regulatory analysis was not required.

- 8.** Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

A regulatory analysis or economic impact statement of impact on small entities was not required.

- 9.** Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09. Please provide a copy if one was prepared.

A constitutional takings assessment was not required.

- 10.** If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not adopted as emergency rules.