

2011 HOUSE JUDICIARY

HB 1389

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1389
January 31, 2011
13700

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1389.

Rep. Klemin: Sponsor, support. I am going to defer to the AG's office.

Ken Sorenson, Asst. Attorney General: Support of HB 1389 on behalf of the Attorney General and the Crime Laboratory Division of the AG's Office. The changes that the Crime Lab is requesting, to the greater extent, deal with the sample collection process and the sample retention process. We've had the DNA collection process on the books since 1995. Since then the process has been moving forward. We've got law enforcement, parole and probation, corrections all actively engaged in collecting these samples. We do run into the occasional glitch where we don't get the sample, where we might have an insufficient sample, or there might be some question about whether it can be retained in the database or not. In my testimony (see attached 1) I talk about, besides the offenders that are listed in the statutes and we also have offenders subject to search warrants, we also have evidence coming in from crime scenes, we have DNA samples coming in from medical examinations, we also have DNA samples coming in from unidentified human remains, and they're also used in missing persons investigations. So the DNA is used for a lot of different reasons. The changes we're proposing are dealing with some of the issues we've been facing and some issues that other states have been dealing with also. Because a lot of this involves the COTIS, a federal DNA system, we also went through the FBI attorneys to make sure that we meet their quality assurance and control requirements to make sure that these changes are appropriate. They felt that they were not only appropriate, but they felt that they were necessary. I'll explain a couple of points on it in the bill. On page 2, subsection 4, this is where we are dealing with some enforcement and collection issues. We have current language that you will find under a strike through farther up. It says if the court has not previously ordered a sample of blood or other body fluids, the court retains jurisdiction. To some extent, and there have been a lot of criminal judgments that have not required the DNA collection, even though the statute requires this. We've had to go in after the fact, with criminal judgments that have not included that requirement. We're running into situations where people may have an

expired sentence, or an expired parole/probation, something like that and we still need the authority to go back and get that sample. Besides giving the court jurisdiction to order it, which typically works while they are in custody or under some type of supervised probation, this is giving the court the authority even after expiration of a sentence, or after expiration of probation, to order that person to provide a sample and if the person refuses to provide the sample, to give the court the authority to bring that person back into court and show cause. Another issue and we've got the Director of the Crime Lab and our state's top DNA scientist here and she could probably explain it better if necessary. But sometimes a DNA sample may not be sufficient to do a DNA analysis. Right now we don't have the authority to go back and collect another sample from the offenders. Again, this is something that other states have dealt with, other states have enacted similar legislation to allow this. It's not going to be the Crime Lab that's going to go out and getting it, it's going to be the people that collect the samples. The next provision we are making it clear in statute that they are going to retain the DNA in accordance with laboratory DNA retention procedures. As I mentioned, the DNA could come in because they are a qualified offender under the statute, it could come in as part of a crime investigation, medical examination, unidentified human remains, so it may be necessary to retain those DNA samples pretty close to indefinitely; they have the ability to do that. We want to make this clear in statute. The changes in section two of the bill, to a greater extent are housekeeping. The language that came in 1995, talked about anticipation of medical persons drawing blood to get the DNA. But the reality is that most DNA, almost all DNA that goes into the Crime Lab, is collected through a buccal swab, just scraping the inside of the cheek, it goes into a DNA kit and sent to the Crime Lab. Most of the individuals who are collecting this DNA, are going to law enforcement officers, parole and probation officers, correctional officials, I've even had the training myself. Part of this is getting rid of that language "qualified medical personnel" that we've had defined for a long time by administrative rule that qualified medical personnel are those persons who have completed the Crime Lab approved training, which has to meet the federal quality assurance requirements to upload this information into the databases. We're just cleaning up the language in there to make it clear that it isn't just medical people who are doing this; non-medical people who had that training for a long time. Again, it's not just the blood draw. The DNA sample may be obtained in other ways as well. Changes in the next statute, 31-13-07, there are a couple of situations that we've dealing with here. We've had provisions in the law for a long time, that if the DNA should not have been kept in the DNA database, there are provisions here to remove it. The Crime Lab does not always get notice of an Order authorizing the removal or expungement of that DNA information, so that it may stay there. We have the same situation with our criminal history record information. We may not get the proper notice that something is incorrect or should not be in the system. This, first of all, provides that if it is in the system, if it were lawfully obtained in the system, and the Crime Lab is maintaining it in the system in good faith, even if it might not have been in there because there might be some judicial process. If that resolves another offense, leaving it in the database won't affect the validity of that offense. The other part of it is, again, we're going to have situations where, because it's coming in from all kinds of different

sources, if it were lawfully obtained in the first place, we need to have it lawfully removed before the Crime Lab can be found liable. Finally, we've had on the books since 1995 the statute that if there was tampering with the DNA sample, it is a C felony. We're expanding on this right now. We've moved it out of the other statute and made it a standalone statute; besides tampering with a sample or attempting to tamper with a sample to affect a DNA testing process is a felony similar to what we've done with UA testing in anticipation of a problem with somebody may try to manipulate or substitute a DNA kit or DNA sample, even though there are procedures requiring identification and verification of an individual who is submitting a sample. Again, this is gone through the FBI that we also make it a violation. This DNA sample process is very important, so we also have it as a violation if they're going to do anything by way of a device, artificial sample, something like that, which are some of the same things that we have experienced with the urine to do the same thing with DNA, they can't do that.

Rep. Delmore: I'm glad you clarified the bill. When and why do we expunge some of the DNA. Is it in Code somewhere, I understand not being notified but I'm curious why it would be that we would expunge.

Ken Sorenson: Probably the #1 reason that I would know of is the underlying the criminal case has gone away. The case may have been dismissed, something like that, or in a felony arrest they are required to submit DNA. If the case was not prosecuted, if the case was dismissed before it went farther ahead, it may be that the state's attorney chose not to pursue the case. That would be one example, and another one was where a person has been found not guilty. If the underlying criminal case no longer exists, there is no longer the reason to keep it in the DNA database, unless they might be in there for another reason.

Rep. Delmore: In those cases, sometimes you're not notified to expunge the DNA.

Ken Sorenson: The Crime Lab director tells me that they don't always get the Orders. We have that same problem with our criminal history record information. Sometimes they don't get notified, Orders and information stays on the books for years and years until there is a background check and somebody says, wait a minute, we were never notified that there was an Order. I know it does happen.

Rep. Klemin: Page 4, subsection 3, line 20, where it says no criminal or civil liability may attach to any individual. Can it still be possible for there to be civil liability attaching to the State because of something that was done in the Crime Lab like this.

Ken Sorenson: That's a good point. I hadn't thought about it until your question.

Rep. Klemin: So many it should include the State here also.

Ken Sorenson: I think so, yes. I hadn't thought about that.

Rep. Klemin: Maybe you could give us a proposed amendment on that.

Ken Sorenson: We will do that.

Rep. Steiner: Why move from person to individual in here, is that the new term for person. How does that work.

Ken Sorenson: It reflects a LC drafting preference, that when we're going in and cleaning up a statute in other areas because a person, by state law, includes individuals, corporations, partnerships, limited liability corporations, so they like it whenever we're fixing up a statute in another areas, that we replace person with individual.

Chairman DeKrey: Thank you. Further testimony in support. Neutral testimony.

Rep. Koppelman: I heard something about expunging of records. When are these disposed of and can they be disposed of.

Hope Olson, Director, State Crime Lab Division: There are standard operating procedures approved by the FBI as to how we expunge a record. It's a detailed process and labor intensive. It takes many hours to do because it starts when the sample enters the lab, we have to delete any identifying information when we log in the sample, when we process the sample, and then the actual sample is destroyed. So all we left is the case file with the Order from the court. We've only done this, to the best of my knowledge, two or three times. I have one on my desk right now.

Rep. Koppelman: That was why I raised the question. We've had discussion in this committee and other bills regarding expungement or destruction of records. It seems to me that this is a particularly interesting area because we're requiring this of people not convicted of a crime, but being arrested for a crime. You could have a fair amount of people that have been arrested, a DNA sample has been taken, they've been found not guilty, and the fact that the State has no business retaining their DNA is pretty important. What we've been hearing is that it is virtually impossible to get rid of records with our computer age, etc. Do you have any concerns about that.

Hope Olson: When we destroy the record, we delete the computer record as well. It is deleted in the record and we have to go through our backup tapes to delete them as well. There's two months of backup tapes that we have to go through. It's a detailed process and we also get audited on that.

Rep. Koppelman: That's intriguing because we've been hearing from other agencies of government, including the other branches of government, the judiciary as well, is that once these things are in a computer, it's almost impossible to get rid of. We've had a flurry of proposals this session and last to get rid of this word "expunge"

because we can't really do it anyway. If your process is that thorough, maybe you should share it with the rest of State government and see if they can follow.

Hope Olson: We remove the DNA profile absolutely from the database; the backup files, the hidden files that we can't remove are still there, but it would take an enormous amount of work to get it back and we delete it to the point where we can't search the individual's name and figure out what file it is. You'd have to be very astute in computers to do that, and I'm not that.

Rep. Koppelman: So then the forensic computer folks at BCI could potentially find it, you're saying it could still be found, but it probably couldn't be tied to an individual.

Hope Olson: That's correct. We do our good faith effort in deleting the information.

Rep. Klemin: The kind of file you have, like the profile, that's only on one person, there's not some other person mixed up with the same record.

Hope Olson: That's correct, the file is on one person, and actually the DNA profile is just a text file, an ASCII file that contains 26 characters. It's very small.

Rep. Klemin: Some of the other files we have heard about, have multiple names on the record and that would not be the case in your office.

Hope Olson: Yes, that's correct.

Chairman DeKrey: Thank you. Further testimony in support, opposition, we will close the hearing. Let's take a look at HB 1389. We have an amendment here from Ken Sorenson, AG's office.

Rep. Klemin: It looks like the top of the amendment shows the amendment, and then underneath there it shows how it would read if it were amended. This came up because when the AG's office prepared this bill, it looks like they left out the State, so all this does is to add in State or local government entity. I move the amendment.

Rep. Beadle: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended on HB 1389.

Rep. Maragos: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Guggisberg

January 31, 2011

VR
2/1/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1389

Page 4, line 20, replace "No civil" with "Civil"

Page 4, line 20, after "may" insert "not"

Page 4, line 20, after "individual" insert "or to any state or local governmental entity"

Page 4, line 22, replace "that" with "which"

Renumber accordingly

Date: 1/31/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1389

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8218.01001 02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Guggisberg

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

REPORT OF STANDING COMMITTEE

HB 1389: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1389 was placed on the Sixth order on the calendar.

Page 4, line 20, replace "No civil" with "Civil"

Page 4, line 20, after "may" insert "not"

Page 4, line 20, after "individual" insert "or to any state or local governmental entity"

Page 4, line 22, replace "that" with "which"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1389

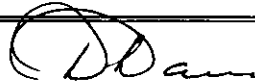
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1389
3/7/11
HB14995

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to tampering with DNA Sample

Minutes:

There is attached written testimony

Senator Nething – Chariman

Ken Sorenson – Assistant Attorney General – See written testimony.

Senator Olafson – Asks about the Federal reporting standards.

Hope Olson – Director of the Crime Lab – She explains their auditing system and how evidence is received and handled.

Senator Sitte – Asks how many convictions have been brought about with DNA testing, how relevant.

Sorenson – Replies it is very relevant, they have had a number hits that led to the resolution of a number of criminal investigations.

Olson – Responds the most famous of their cases would be the Mo Gibbs case. That was a DNA case that hit case to case. She said they have had 151 hits in their data base either case to case or offender to cases hits since 2004. In the last calendar year they have had 57 hits. She says it is becoming more and more useful as a tool for law enforcement.

Senator Sorvaag – Asks if the record is kept by mistake can it be used in criminal court.

Sorenson – Responds yes they can still use it. He says this amendment addresses the situation where the crime lab doesn't receive the information that the record or information should have been expunged or sealed and it may be used in another offense simply because someone did not submit that order to the court. He says they can use those hits. He said what happens is that the crime lab doesn't get notification from the court.

Senator Sitte – Asks for situations where DNA would be expunged.

Sorenson – Answers it could be expunged because the offense may have been reversed or the offense may have been reduced to a misdemeanor or offense is no longer subject to inclusion in the DNA data base.

Keith Witt – Chief of Police for Bismarck – Mentions that John Olson, NDPOA, will be bringing in an amendment.

Opposition – 0

Senator Nething will hold the hearing open for John Olson to propose his amendment.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1389
3/22/11
Job #15840

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to tampering with DNA Sample

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses the proposed amendment. Senator Sitte says she opposes collecting a DNA sample on being charged not upon be found guilty. Senator Sorvaag says it was explained that if they are found innocent the sample is destroyed. Senator Lyson says it is the same with fingerprints.

Senator Olafson moves to adopt the amendment

Senator Nelson seconds

Verbal vote – 5 yes, 1 no (Senator Sitte)

Senator Olafson moves a do pass as amended

Senator Nelson seconds

Roll call vote – 6 yes, 0 no

Senator Olafson will carry

Proposed Amendments to Engrossed House Bill 1389

Page 1, line 10, after “arrested”, insert “or summoned to appear before a magistrate”

Page 1, line 11, after “provide”, insert “to a law enforcement officer or”, after “personnel” insert “at the time of the individual’s arrest, appearance or”, after “booking” insert “into a correctional facility”.

A person eighteen years of age or over who is arrested or summoned to appear before a magistrate for the commission of a felony shall provide to a law enforcement officer or correctional personnel at the time of the individual’s arrest, appearance or upon booking into a correctional facility a sample of blood or other body fluids for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. If it is determined that the person’s DNA sample is included in the law enforcement identification databases, an additional sample is not required.

Date: 3/22/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1389

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson	1	
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte		1			
Ronald Sorvaag	1				

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - 5 yes, 1 no Sitte

Date: 3/22/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1389

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Olafson

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

REPORT OF STANDING COMMITTEE

HB 1389, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1389 was placed on the Sixth order on the calendar.

Page 1, line 10, after "arrested" insert "or summoned to appear before a magistrate"

Page 1, line 11, after "provide" insert "to a law enforcement officer or"

Page 1, line 11, after "personnel" insert "at the time of the individual's arrest or appearance
or"

Page 1, line 11, after "booking" insert "into a correctional facility"

Renumber accordingly

2011 TESTIMONY

HB 1389

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HOUSE BILL 1389
HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
January 26th, 2011

Ken Sorenson, Assistant Attorney General
On behalf of the Crime Laboratory Division of the Office of the Attorney General

At the present time, N.D.C.C. § 31-13-03 requires the following classes of offenders to submit DNA samples for inclusion in the law enforcement data bases:

- a. Felony arrestees over the age of 18 and booked into a correctional facility after July 31, 2009.
- b. Sex offenders in custody as of July 31, 1995, or convicted on or after August 1, 1995.
- c. Violent offenders in custody as of July 31, 2001, or convicted on or after August 1, 2001.
- d. Any individual convicted after July 31, 2005 of any felony offense.

Sex offenders and felony offenders against children are also required to submit a DNA sample as part of the registration process under N.D.C.C. § 12.1-32-15 if a DNA sample has not already been submitted under N.D.C.C. § 31-13-03. Offenders subject to search warrants and evidence from crime scenes may also result in DNA samples being included in the law enforcement data bases.

If the sentencing court has not previously ordered an offender to submit a DNA sample, the sentencing court retains jurisdiction under the present statute to enter an order requiring the offender to submit a sample. When an offender refuses to provide a sample, or when the offender is no longer in custody or on supervision, additional enforcement mechanisms are necessary to collect the required DNA sample from the offender. The proposed amendment to subsection 4 of Section 31-13-03 in Section 1 of HB 1389 gives the court additional authority to address these situations, including also authorizing the court to order an offender who is not incarcerated or is not on probation to submit a sample, or to order an offender back before the court to show cause why the offender should not be required to submit a DNA sample.

Samples collected for DNA analysis may not always contain sufficient material to obtain accurate DNA identification. There is no statutory authority to go back to the offender to collect a sample that has sufficient material for testing if a previous sample

does not have sufficient material for testing. The amendment in Subsection 5 of Section 31-13-03 in Section 1 of HB 1389 authorizes the Crime Laboratory to obtain another sample from an offender if that becomes necessary.

The amendments to N.D.C.C. § 31-13-04 in Section 2 of HB 1389 are technical housekeeping changes to reflect that DNA samples are collected not only through blood draws by medical professionals, but in most cases, the samples are collected by law enforcement officers and correctional officers who have completed training by the Crime Laboratory in approved sample collection techniques. It is necessary for the Crime Laboratory to meet federal quality assurance requirements in order to upload the DNA profiles into the law enforcement data bases. The Crime Laboratory's approved sampling techniques meet the federal quality assurance requirements.

The amendments to N.D.C.C. § 31-13-07 in Section 3 of HB 1389 address several concerns by the Crime Laboratory regarding the retention of DNA database information. A court may have issued an order to expunge database information, but the Crime Laboratory might not have been served with a copy of the order and the data base information will remain in the system. In that case, if the data base information leads to the detention, arrest, or conviction of an individual, the detention, arrest, or conviction will not be invalidated. Section 3 of HB 1389 also adds a new subsection to Section 31-13-07 to make it express that if legally obtained DNA identifying information has been entered or retained in the law enforcement identification data base in good faith, no civil or criminal liability attaches to the individual who included or retained the DNA information in the data base.

Section 31-13-04 relates to the DNA sample collection process and includes a provision making it a class C felony to tamper with, or attempt to tamper with, a DNA sample or DNA sample collection kit without proper authority. Section 4 of HB 1389 makes tampering with the DNA sample collection process to alter the outcome of DNA testing a part of a stand-alone statute. Section 4 also includes a new provision to make it a class C ^{felony to} sample to possess, distribute, or assist in the use of a device, chemical, or real or artificial sample of blood to alter the outcome of DNA testing.

The Attorney General requests this Committee's favorable consideration and a "Do Pass" recommendation for House Bill 1389.

Proposed Amendment to House Bill 1389

AG's
Office

Page 4, line 20, after "individual" insert "or to any state or local governmental entity"

Renumber accordingly

3. No civil or criminal liability may attach to any individual or to any state or local governmental entity for the good faith inclusion and retention of identifiable information in the database from a sample of blood or other body fluids that has been legally obtained.

①
1389

**HOUSE BILL 1389
SENATE JUDICIARY COMMITTEE
SENATOR DAVID NETHING, CHAIRMAN
MARCH 7th, 2011**

Ken Sorenson, Assistant Attorney General
On behalf of the Crime Laboratory Division of the Office of the Attorney General

At the present time, N.D.C.C. § 31-13-03 requires the following classes of offenders to submit DNA samples for inclusion in the law enforcement data bases:

- a. Felony arrestees over the age of 18 and booked into a correctional facility after July 31, 2009.
- b. Sex offenders in custody as of July 31, 1995, or convicted on or after August 1, 1995.
- c. Violent offenders in custody as of July 31, 2001, or convicted on or after August 1, 2001.
- d. Any individual convicted after July 31, 2005 of any felony offense.

Sex offenders and felony offenders against children are also required to submit a DNA sample as part of the registration process under N.D.C.C. § 12.1-32-15 if a DNA sample has not already been submitted under N.D.C.C. § 31-13-03. Offenders subject to search warrants and evidence from crime scenes may also result in DNA samples being included in the law enforcement data bases.

I. HB 1389, SECTION 1

If the sentencing court has not previously ordered an offender to submit a DNA sample, the sentencing court retains jurisdiction under the present statute to enter an order requiring the offender to submit a sample. When an offender refuses to provide a sample, or when the offender is no longer in custody or on supervision, additional enforcement mechanisms are necessary to collect the required DNA sample from the offender. The proposed amendment to subsection 4 of Section 31-13-03 in Section 1 of HB 1389 gives the court additional authority to address these situations, including also authorizing the court to order an offender who is not incarcerated or is not on probation to submit a sample, or to order an offender back before the court to show cause why the offender should not be required to submit a DNA sample.

Samples collected for DNA analysis may not always contain sufficient material to obtain accurate DNA identification. There is no statutory authority to go back to the offender to collect a sample that has sufficient material for testing if a previous sample does not have sufficient material for testing. The amendment in Subsection 5 of Section

31-13-03 in Section 1 of HB 1389 authorizes the Crime Laboratory to obtain another sample from an offender if that becomes necessary.

II. HB 1389, SECTION 2

The amendments to N.D.C.C. § 31-13-04 in Section 2 of HB 1389 are technical housekeeping changes to reflect that DNA samples are collected not only through blood draws by medical professionals, but in most cases, the samples are collected by law enforcement officers and correctional officers who have completed training by the Crime Laboratory in approved sample collection techniques. It is necessary for the Crime Laboratory to meet federal quality assurance requirements in order to upload the DNA profiles into the law enforcement data bases. The Crime Laboratory's approved sampling techniques meet the federal quality assurance requirements.

III. HB 1389, SECTION 3

The amendments to N.D.C.C. § 31-13-07 in Section 3 of HB 1389 address concerns by the Crime Laboratory regarding the retention of DNA database information. A court may have issued an order to expunge database information, but the Crime Laboratory might not have been served with a copy of the order and the data base information will remain in the system. In that case, if the data base information leads to the detention, arrest, or conviction of an individual, the detention, arrest, or conviction will not be invalidated. Section 3 of HB 1389 also adds a new subsection to Section 31-13-07 to make it express that if legally obtained DNA identifying information has been entered or retained in the law enforcement identification data base in good faith, no civil or criminal liability attaches to the individual who included or retained the DNA information in the data base.

IV. HB 1389, SECTION 4

Section 31-13-04 relates to the DNA sample collection process and includes a provision making it a class C felony to tamper with, or attempt to tamper with, a DNA sample or DNA sample collection kit without proper authority. Section 4 of HB 1389 makes tampering with the DNA sample collection process to alter the outcome of DNA testing a part of a stand-alone statute. Section 4 also includes a new provision to make it a class C sample to possess, distribute, or assist in the use of a device, chemical, or real or artificial sample of blood to alter the outcome of DNA testing.

The Attorney General requests this Committee's favorable consideration and a "Do Pass" recommendation for House Bill 1389.