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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1389

Introduced by

Representatives Klemin, Dahl, Guggisberg

Senators Erbele, Oehlke

A BILL for an Act to create and enact a new section to chapter 31-13 of the North Dakota Century Code, relating to tampering with a DNA sample; to amend and reenact sections 31-13-03, 31-13-04, and 31-13-07 of the North Dakota Century Code, relating to the collection and testing of DNA samples for law enforcement identification purposes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. ~~Persons~~Individuals to be tested - Costs.

1. ~~A person~~An individual eighteen years of age or over who is arrested for the commission of a felony shall provide correctional personnel upon booking 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~~individual's DNA sample is included in the law enforcement identification databases, an additional sample is not required.
2. The provisions of this subsection apply only if ~~a person's~~an individual's DNA sample is not already included in the law enforcement identification databases. The court shall order any ~~person~~individual convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, or 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~~individual engaged in a nonconsensual sexual act or sexual contact with another ~~person~~individual during, in the course of, or as a result of, the offense or any ~~person~~individual 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 databases. The court shall order any ~~person~~individual 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 or any ~~person~~individual 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 databases. The court shall order an individual convicted after July 31, 2005, of any felony offense or an individual arrested for the commission of a felony offense after July 31, 2009, 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 databases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. ~~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~~individual 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.

3. If the ~~person~~individual from whom a DNA sample is collected is convicted of a felony offense, the sentencing court shall assess the cost of the procedure against the ~~person~~individual being tested. The department shall collect the cost of the procedure from the ~~person~~individual being tested and transfer the amount collected to the attorney general for deposit in the general fund.

4. If the sentencing court has not ordered an individual to provide a sample of blood or other body fluids under this section, or if an individual required to provide a sample of blood or other body fluids under this section has refused to submit a sample of blood or other body fluids, the sentencing court retains jurisdiction to order the individual,

including an individual whose sentence to incarceration or supervised probation has expired, to submit a sample of blood or other body fluids for DNA law enforcement identification purposes, or to order the individual to show cause why the individual should not be required to submit a sample of blood or other body fluids for DNA law enforcement identification purposes.

5. If a sample of blood or body fluids collected under this section does not contain sufficient material necessary to obtain accurate DNA identification, the crime laboratory may collect another sample for analysis and inclusion in the law enforcement identification databases.

6. The laboratory shall retain DNA samples in accordance with laboratory DNA sample retention procedures.

7. For purposes of this section, "conviction" and "convicted" means a plea of guilty or a finding of guilt by a court or a jury of one of the above-mentioned crimes, notwithstanding that the court suspended execution of sentence or deferred imposition of sentence in accordance with subsection 3 or 4 of section 12.1-32-02, or a felony offense was reduced to a misdemeanor offense in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1.

SECTION 2. AMENDMENT. Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

31-13-04. DNA testing - Procedure - Immunity ~~- Penalty~~.

~~The samples~~Samples of blood ~~and~~or other body fluids for DNA testing ~~must~~may only be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or by other qualified ~~medical~~ personnel approved by the laboratory, and packaged and submitted in ~~containers~~kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory. No civil or criminal liability may attach to any ~~person~~individual authorized to draw or obtain a sample of blood ~~and~~or other body fluids ~~as provided by this chapter as a result of the act of drawing blood and other body fluids~~ from any ~~person~~individual for DNA testing, provided the sample of blood ~~and~~or other body fluids ~~were~~was drawn or obtained according to ~~generally accepted medical procedures~~sampling techniques approved by the laboratory. ~~Any person who tampers or attempts to tamper with any~~

~~sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.~~

SECTION 3. AMENDMENT. Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

31-13-07. Removal of DNA profiles from database.

~~A person~~

1. An individual whose DNA profile has been included in the database under this chapter may petition the district court to seal the court record on the grounds that the arrest that led to the inclusion of the DNA profile has not resulted in a felony charge within one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; has not resulted in a felony conviction; or the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed.
2. The laboratory shall expunge all identifiable information in the database pertaining to the ~~person~~individual and destroy all samples from the ~~person~~individual upon receipt of a certified order. The detention, arrest, or conviction of ~~a person~~an individual based upon database information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the database by mistake or if the specimens or samples should have been expunged. The sealed record may not be opened even by order of the court.
3. Civil or criminal liability may not 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 which has been legally obtained.

SECTION 4. A new section to chapter 31-13 of the North Dakota Century Code is created and enacted as follows:

Tampering with DNA sample testing - Penalty.

An individual who willfully tampers or attempts to tamper with a sample of blood or body fluids or a collection device or kit to alter the outcome of DNA testing is guilty of a class C felony. An individual who willfully possesses, distributes, or assists in the use of a device, chemical, or real or artificial sample of blood or body fluids intended to be used to alter the outcome of DNA testing is guilty of a class C felony.