

JUDICIAL PROOF

CHAPTER 284

HOUSE BILL NO. 1333

(Representatives Klemin, Delmore, Dosch)
(Senators Erbele, Nelson, Nething)

EXPRESSIONS OF EMPATHY INADMISSIBLE

AN ACT to provide that expressions of empathy by health care providers are inadmissible in civil actions; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Expressions of empathy.

1. A statement, affirmation, gesture, or conduct of a health care provider, or health care provider's employee or agent, that expresses apology, sympathy, commiseration, condolence, compassion, or benevolence to a patient or to a patient's relative or representative is not admissible as evidence of liability or as an admission against interest in a civil action, arbitration proceeding, or administrative hearing regarding the health care provider.
2. For purposes of this section, unless the context otherwise requires:
 - a. "Health care provider" means:
 - (1) An individual licensed or certified by the state to deliver health care;
 - (2) A hospital or clinic, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, or a professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state; and
 - (3) A nursing, basic, or assisted living facility licensed by this state or by any other health care organization.
 - b. "Relative" means an individual who has a relationship to the patient by marriage, blood, or adoption.
 - c. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a health care directive, or any person recognized in law or custom as a patient's agent.

SECTION 2. APPLICATION. This Act applies to actions or other proceedings commenced on or after the effective date of this Act.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 285**HOUSE BILL NO. 1197**

(Representatives Klemin, Carlisle, Monson)

(Senators Dever, Kilzer, Lyson)

DNA COLLECTION AND TESTING

AN ACT to amend and reenact sections 31-13-03 and 31-13-07 of the North Dakota Century Code, relating to collection and testing of DNA samples for law enforcement identification purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵¹ **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A person 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 data bases. If it is determined that the person's DNA sample is included in the law enforcement identification data bases, an additional sample is not required.

2. The provisions of this subsection apply only if a person's DNA sample is not already included in the law enforcement identification data bases. 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 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 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. The court shall order an

¹⁵¹ Section 31-13-03 was also amended by section 1 of House Bill No. 1355, chapter 286.

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 data bases. 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 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~~

3. If the person 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 being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund.

¹⁵² **SECTION 2. 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 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 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. The laboratory 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.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on August 1, 2009.

Approved April 23, 2007
Filed April 27, 2007

¹⁵² Section 31-13-07 was also amended by section 3 of House Bill No. 1224, chapter 211.

CHAPTER 286

HOUSE BILL NO. 1355

(Representatives Klemin, Carlisle, Monson)

(Senators Dever, Kilzer, Lyson)

DNA TESTING UPON CONVICTION

AN ACT to amend and reenact section 31-13-03 of the North Dakota Century Code, relating to persons subject to DNA testing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. 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 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 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. The court shall order an individual convicted after July 31, 2005, of any felony offense 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. 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 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 attorney general for deposit in the general fund. For purposes of this section,

¹⁵³ Section 31-13-03 was also amended by section 1 of House Bill No. 1197, chapter 285.

"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.

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