

HOUSE BILL NO. 1288

Introduced by

Representatives Klemin, Koppelman, Mueller

Senators Kilzer, Traynor, Warner

1 A BILL for an Act to create and enact a new section to chapter 29-32.1 of the North Dakota
2 Century Code, relating to the performance of DNA testing under the Uniform Post-Conviction
3 Procedure Act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 29-32.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Motion for DNA testing not available at trial.**

- 8 1. Without limitation on a court's authority to order discovery under section
9 29-32.1-08, a person convicted of a crime may make a motion for the performance
10 of forensic DNA testing to demonstrate the person's actual innocence if:
- 11 a. The testing is to be performed on evidence secured in relation to the trial
12 which resulted in the conviction; and
 - 13 b. The evidence was not subject to the testing because either the technology for
14 the testing was not available at the time of the trial or the testing was not
15 available as evidence at the time of the trial.
- 16 2. A person who makes a motion under subsection 1 must present a prima facie case
17 that:
- 18 a. Identity was an issue in the trial; and
 - 19 b. The evidence to be tested has been subject to a chain of custody sufficient to
20 establish that it has not been substituted, tampered with, replaced, or altered
21 in any material aspect.
- 22 3. The court shall order that the testing be performed if:
- 23 a. A prima facie case has been established under subsection 2;

- 1 b. The testing has the scientific potential to produce new, noncumulative
- 2 evidence materially relevant to the defendant's assertion of actual innocence;
- 3 and
- 4 c. The testing requested employs a scientific method generally accepted within
- 5 the relevant scientific community. The court shall impose reasonable
- 6 conditions on the testing designed to protect the state's interests in the
- 7 integrity of the evidence and the testing process.