

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1288
(Representatives Klemin, Koppelman, Mueller)
(Senators Kilzer, Traynor, Warner)

AN ACT to create and enact a new section to chapter 29-32.1 of the North Dakota Century Code, relating to the performance of DNA testing under the Uniform Post-Conviction Procedure Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Motion for DNA testing not available at trial.

1. Without limitation on a court's authority to order discovery under section 29-32.1-08, a person convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the person's actual innocence if:
 - a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and
 - b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.
2. A person who makes a motion under subsection 1 must present a prima facie case that:
 - a. Identity was an issue in the trial; and
 - b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.
3. The court shall order that the testing be performed if:
 - a. A prima facie case has been established under subsection 2;
 - b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and
 - c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1288.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State