

HOUSE BILL NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GREEN

Introduced: 1/16/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA)
2 profiles in civil and criminal proceedings; directing the Department of Public
3 Safety to establish and maintain a DNA data bank and requiring DNA
4 registration by persons convicted of felony offenses; amending Rules 702(a) and
5 703 of the Alaska Rules of Evidence to modify the rule relating to the basis or
6 foundation for the admissibility of expert opinion testimony that is based on
7 scientific evidence as it relates to DNA profile evidence; and amending Rules 401,
8 403, and 705 of the Alaska Rules of Evidence; and providing for an effective
9 date."

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 * **Section 1.** LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE. (a) The
12 legislature finds that

1 (1) recent developments in molecular biology and genetics have important
2 applications for forensic science; it has been scientifically established that there is a unique
3 pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell
4 of the human body; the process for identifying this pattern is called "DNA identification";

5 (2) the accuracy of identification provided by this method is superior to that
6 of any presently existing technique and recognizes the importance of this scientific
7 breakthrough in providing a reliable and accurate tool for the investigation and prosecution
8 of crimes;

9 (3) scientific evidence provides an increasingly critical source of information
10 in civil and criminal litigation;

11 (4) court decisions guiding the admissibility of scientific evidence in the state
12 courts impose a requirement on the introduction of expert scientific testimony that conditions
13 the introduction of that testimony on a degree of its validation within the community, that is,
14 to its general acceptance by experts in the relevant scientific field; under those court decisions,
15 trial courts are empowered to evaluate the quality of expert witnesses' opinions and to exclude
16 opinions that have not achieved general acceptance in the scientific community;

17 (5) the ability of a trial court to exclude opinion evidence that has not achieved
18 general acceptance in the scientific community may prohibit introduction and consideration
19 of evidence and testimony based on experimental scientific information that could be useful
20 to the trier of fact; and

21 (6) to better assure that relevant evidence based on emerging scientific
22 techniques and processes of debatable reliability may be considered, the "general acceptance"
23 principle for admissibility of scientific testimony should be replaced and a more flexible
24 approach to the use of opinion testimony should be adopted.

25 (b) In amending Alaska Rules of Evidence 702(a) and 703 in secs. 7 and 8 of this Act,
26 it is the purpose of the legislature to change the appropriate standard for the admissibility of
27 DNA evidence in civil and criminal proceedings. The legislature's amendment of this rule
28 would eliminate, as to DNA evidence, the principle of "general acceptance" underlying
29 scientific evidence as a precondition to the admissibility of scientific evidence in a criminal
30 or civil action, a principle first enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir.
31 1923) and adopted for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478 (Alaska

1 1970). In its place, the legislature opts to substitute the comparable rule applicable to the
2 introduction of scientific evidence in cases in the federal courts. That standard was announced
3 in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. --, 125 L.Ed.2d 469, 113 S.Ct.
4 2786 (1993). Under the Daubert standard, the reliability of scientific evidence is to be
5 determined based on the evidence's scientific validity without reference to the quality of
6 expert opinion, and without the qualifying condition that an expert opinion that has not
7 achieved general acceptance in the scientific community must be excluded.

8 * **Sec. 2.** AS 09.25 is amended by adding a new section to read:

9 Sec. 09.25.051. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action
10 or proceeding, the evidence of a DNA profile is admissible to prove or disprove the
11 identity of a person.

12 (b) In this section,

13 (1) "deoxyribonucleic acid" means the molecules in all cellular forms
14 that contain genetic information in a patterned chemical structure for each individual;

15 (2) "DNA profile" means an analysis that uses the restriction fragment
16 length polymorphism analysis of deoxyribonucleic acid material in a human sample
17 of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of
18 the individual's patterned chemical structure of genetic information.

19 * **Sec. 3.** AS 09.65 is amended by adding a new section to read:

20 Sec. 09.65.096. **LIABILITY FOR ADMINISTRATION OF BLOOD TEST**
21 **FOR DNA SAMPLE.** A person who, under AS 44.41.060(b), is authorized to draw
22 blood samples for purposes of DNA identification analysis, is not liable for civil
23 damage resulting from an act or omission arising out of the drawing of the blood
24 sample unless the act or omission constitutes gross negligence or reckless or intentional
25 misconduct.

26 * **Sec. 4.** AS 11.56.860(a) is amended to read:

27 (a) A person [WHO IS OR HAS BEEN A PUBLIC SERVANT] commits the
28 crime of misuse of confidential information

29 **(1)** if the person

30 **(A) is or has been a public servant;**

31 **(B) [(1)]** learns confidential information through employment

1 as a public servant; and

2 (C) [(2)] while in office or after leaving office, uses the
3 confidential information for personal gain or in a manner not connected with
4 the performance of official duties other than by giving sworn testimony or
5 evidence in a legal proceeding in conformity with a court order; or

6 (2) if the person, without authority, uses information that is made
7 confidential by AS 44.41.060 other than for a purpose authorized by AS 09.25.051,
8 AS 12.45.035, or AS 44.41.060.

9 * **Sec. 5.** AS 12.45 is amended by adding a new section to read:

10 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal
11 action or proceeding, the evidence of a DNA profile is admissible to prove or disprove
12 the identity of a person.

13 (b) In this section,

14 (1) "deoxyribonucleic acid" means the molecules in all cellular forms
15 that contain genetic information in a patterned chemical structure for each individual;

16 (2) "DNA profile" means an analysis that uses the restriction fragment
17 length polymorphism analysis of deoxyribonucleic acid material in a human sample
18 of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of
19 the individual's patterned chemical structure of genetic information.

20 * **Sec. 6.** AS 44.41 is amended by adding a new section to read:

21 Sec. 44.41.060. DNA DATA BANK. (a) To support criminal justice services
22 in this state, the Department of Public Safety shall establish and maintain a
23 deoxyribonucleic acid (DNA) data bank. The DNA data bank shall be consistent with
24 the provisions of this section.

25 (b) A person convicted in this state of an offense that is a felony shall have
26 a blood sample drawn for purposes of DNA identification analysis. The blood sample
27 shall be drawn substantially in the following manner:

28 (1) a blood sample from a person

29 (A) who is to be incarcerated in a correctional facility shall be
30 drawn at the correctional facility at which the person is committed to the
31 custody of the commissioner of corrections, unless the Department of

1 Corrections designates another place;

2 (B) who, as a part of the person's sentence, is not to be
3 incarcerated in a correctional facility shall be drawn at a time and place
4 specified by the sentencing court;

5 (2) the blood sample may be taken only by a correctional health nurse
6 technician or a physician, registered professional nurse, licensed practical nurse,
7 graduate laboratory technician, or phlebotomist;

8 (3) chemically clean sterile disposable needles and vacuum draw tubes
9 shall be used for all samples; the tube shall be sealed and labeled with the subject's
10 name, social security number, date of birth, race, and sex, the name of the person
11 collecting the sample, and the date and place of collection; the vacuum draw tubes
12 shall be secured to prevent tampering with the contents;

13 (4) the vacuum draw tubes containing the samples shall be transported
14 to the location specified by the Department of Public Safety not later than 15 days
15 following withdrawal, and shall be analyzed and stored in the DNA data bank.

16 (c) The Department of Public Safety shall conduct the DNA identification
17 analysis in accordance with procedures that it has adopted to determine identification
18 characteristics specific to the individual whose sample is being analyzed. For each
19 vacuum draw tube received, the commissioner of public safety or the commissioner's
20 designated representative shall complete and maintain on file a form indicating the
21 name of the person whose sample is to be analyzed, the date and by whom the blood
22 sample was received and examined, and, if the seal on the vacuum draw tube had not
23 been broken or otherwise tampered with, a statement to that effect. The blood sample
24 may be divided, but, if divided, each part of the sample must be labeled as provided
25 for the original sample and securely stored by the department in accordance with
26 specific procedures to ensure the integrity and confidentiality of the samples adopted
27 by the department by regulation.

28 (d) A blood sample received by the Department of Public Safety under this
29 section may be used only

30 (1) to create a statistical data base, provided no identifying information
31 on the individual whose sample is being analyzed is included; or

1 (2) for retesting by the department to validate or update an original
2 DNA analysis prepared under this section.

3 (e) The Department of Public Safety shall prepare and maintain a report of the
4 results of a DNA identification analysis conducted by the department, including the
5 profile and identifying information.

6 (f) To assist in the investigation of a criminal offense, the Department of
7 Public Safety may make available the results of DNA identification characteristics
8 profiles of blood samples and the results of an analysis and comparison of the
9 identification characteristics from two or more blood samples to federal, state, and
10 local law enforcement officers upon request. A request may be made by personal
11 contact, mail, or electronic means. The department shall maintain on file the name of
12 the person making the request and the purpose for which the information is requested.

13 (g) At the request of a person who has been charged with an offense based in
14 whole or in part on the result of a search of information in the DNA data bank, the
15 Department of Public Safety shall furnish to the person a copy of the request for
16 search. If a sample or DNA profile supplied by the person making a request under
17 this subsection satisfactorily matches a profile in the DNA data bank, the department
18 shall confirm the existence of data in the DNA data bank or disseminate identifying
19 information from the DNA data bank.

20 (h) The Department of Public Safety

21 (1) shall create a separate statistical data base comprised of DNA
22 profiles of blood samples of persons whose identity is unknown;

23 (2) may share the information in the statistical data base with law
24 enforcement or criminal justice agencies in or outside the state.

25 (i) Except as specifically provided in (e) - (h) of this section, the results of a
26 DNA analysis are confidential.

27 (j) A person whose DNA profile has been included in the data bank may
28 request expungement of the DNA profile from the data bank if the felony conviction
29 on which the authority for including the DNA profile was based was reversed and
30 dismissed with prejudice to the right to renew the prosecution. The Department of
31 Public Safety shall purge all records and identifiable information in the data bank

1 pertaining to the person and destroy all samples from the person when the department
2 receives

3 (1) a written request for expungement under this section; and

4 (2) a certified copy of the court order reversing the conviction having
5 the effect of dismissing the case with prejudice.

6 (k) The Department of Public Safety

7 (1) may charge a reasonable fee to any authorized law enforcement
8 agency to search and provide a comparative analysis of DNA profiles in the data bank;

9 (2) shall adopt regulations establishing

10 (A) methods of obtaining information from the DNA data
11 bank; and

12 (B) procedures for verification of the identity and authority of
13 persons making requests for information from the data base; and

14 (3) shall specify the positions in the department that, as a necessary
15 function of the position, require regular access to the DNA data bank and samples
16 submitted.

17 * **Sec. 7.** Rule 702(a), Alaska Rules of Evidence, is amended to read:

18 (a) If scientific, technical, or other specialized knowledge will assist the trier
19 of fact to understand the evidence or to determine a fact in issue, a witness qualified
20 as an expert by knowledge, skill, experience, training, or education, may testify thereto
21 in the form of an opinion or otherwise. **However, when expert testimony that is**
22 **based upon a scientific theory or technique is used to support the admission of**
23 **evidence of or based upon a deoxyribonucleic acid (DNA) profile, the court may**
24 **not admit the evidence if the court finds that the theory or technique in question**
25 **is scientifically valid for the purpose for which it is applied.**

26 * **Sec. 8.** Rule 703, Alaska Rules of Evidence, is amended to read:

27 Rule 703. BASIS OF OPINION TESTIMONY BY EXPERTS. The facts or
28 data in the particular case upon which an expert bases an opinion or inference

29 (1) may be those perceived by or made known to the expert at or
30 before the hearing;

31 (2) [. FACTS OR DATA] need not be admissible in evidence; **and**

1 (3) [BUT] must be of a type reasonably relied upon by experts in the
2 particular field in forming opinions or inferences upon the subject; **however, when**
3 **used to support the admission of evidence that is based on a deoxyribonucleic acid**
4 **(DNA) profile, the facts or data that relate to and support the expert opinion or**
5 **inference as to scientific knowledge need not be sufficiently established to have**
6 **become generally accepted in the particular field to which the facts or the data**
7 **belong.**

8 * **Sec. 9.** DNA DATA BANK: APPLICABILITY OF SAMPLE REQUIREMENT TO
9 PERSONS PRESENTLY INCARCERATED. To the extent permitted by the United States
10 and state constitutions, a person who was convicted of a felony and, on the effective date of
11 this Act, is serving a term of imprisonment in a correctional facility in the state shall have a
12 blood sample drawn for the purposes of DNA identification analysis and storage in the DNA
13 data bank established by AS 44.41.060(a), added by sec. 6 of this Act. The sample shall be
14 drawn in the manner provided in AS 44.41.060(b), added by sec. 6 of this Act.

15 * **Sec. 10.** AS 09.25.051, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 5
16 of this Act, have the effect of amending

17 (1) Rules 401 and 403, Alaska Rules of Evidence, by determining that, when
18 offered in civil and criminal actions and proceedings, DNA profile evidence has probative
19 value and that its probative value outweighs the danger of unfair prejudice;

20 (2) Rule 705, Alaska Rules of Evidence, by eliminating a requirement that the
21 court require or allow antecedent expert testimony concerning the reliability of DNA profiles
22 as a method of identification prior to its receipt into evidence in the action or proceeding.

23 * **Sec. 11.** This Act takes effect September 1, 1995.