

**SB**

**13**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: February 27, 1995

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The FINANCE Committee considered:

CSSB 13(JUD)am(ct rule fld)

CS FOR SENATE BILL NO. 13(JUD) am(ct rule fld)

DNA EVIDENCE IN CIVIL AND CRIMINAL TRIALS

"An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings."

recommended it be replaced with the following committee substitute \_\_\_\_\_  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DOA  zero fiscal note(s) 1 - Corrections 2/9/95  
1 - Law 2/9/95  
1 - DPS 2/9/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Vic Kohring</i> Kohring	X			
<i>Mark Hanley</i> Hanley	X			
<i>John Mulder</i> Mulder	X			
<i>Kate Kelly</i> Kelly	X			
<i>Terry Martin</i> Martin	X			
<i>Gene Therriault</i> Therriault	X			

CHAIR'S SIGNATURE *Mark Hanley*

317195  
(H) FIN

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSSB 13 (HD)

Revision Date: \_\_\_\_\_  
Title: "An Act relating to admissibility into evidence of DNA profiles in civil and criminal proceedings..."  
Sponsor: Sen. Leman  
Requestor: H. FIN

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)  
No measurable impact on the Public Defender Agency is anticipated.

Prepared by: John Salemi, Director  
Division: Public Defender Agency

Phone: 264-4400  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 3/7/95

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# FISCAL NOTE

No. 2  
 Bill Version: SB 131  
 (S) Publish Date: 2-9-95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to the admissibility of evidence and BRU: \_\_\_\_\_  
testimony related to DNA profiles Component: \_\_\_\_\_  
 Sponsor: Sen. Lemman  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill relates to expert testimony related to DNA testing. According to the most recent discussions involving the Department of Law and the Department of Public Safety, the Department of Corrections role in this issue would be to collect the blood samples and transport to a designated location. It is not anticipated that any costs would be incurred with respect to the effects of this bill.

Prepared by: Jerry Shriner  
 Division: Comm. Office  
 Approved by Commissioner: /s/  
 Agency: Department of Corrections

Phone: 465-4640  
 Date: 1/25/95  
 Date: 1/25/95

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Version: SB 13

(S) Publish Date: 2-9-95

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ...admissibility of evidence and testimony in BRU: Prosecution  
criminal and civil proceedings...deoxyribonucleic acid (DNA) profiles... Component: All  
 Sponsor: Senator Leman  
 Requester: Senator Leman COMPONENT SERIAL NO. 0085 - 0090

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill changes the Alaska Rules of Evidence to provide for the admissibility of DNA profiles in civil and criminal actions or proceedings to prove or disprove the identity of a person. In so doing, the bill adopts the standard for admissibility of scientific evidence adopted by the U.S. Supreme Court in 1993 for use by federal courts. Currently, Alaska's courts apply a standard for admissibility of scientific evidence that dates from the 1920s. The current standard does not take into account new or rapidly developing science for the identification of persons, and courts have sometimes not admitted into evidence the most recent testing methods. For instance, DNA evidence has been proven to be scientifically valid and of extreme value for both the defense and the prosecution for identification purposes. However, in the 2 or 3 cases where the issue of the standard for the admissibility of DNA evidence has been litigated, the department has had to spend \$20,000, in each case, for out-of-state experts, with only partial success. Consequently, the bill will reduce the department's cost to have DNA evidence admitted at trial and free its limited resources to handle other prosecutions that it has been forced to decline.

Prepared by: Richard I. Peques, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 1/23/95  
 Date: 1/23/95

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# FISCAL NOTE

STATE OF ALASKA

BILL NO. No. 3

1995 LEGISLATIVE SESSION

Bill Version: SB 13

(S) Publish Date: 2-9-95

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: "An Act relating to the admissibility of DNA BRU: DPS Statewide

evidence and testimony in criminal/civil proceedings." Component: Commissioner's Office

Sponsor: Senator Leman

Requestor: (S) Judiciary COMPONENT SERIAL NO. 0523

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ -0-

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS: (Attach a separate page if necessary.)**

No significant fiscal impact is anticipated.

Prepared By: Ken Bischoff Phone: 465-4336

Division: Administrative Services Date: 01/27/95

Approved by Commissioner: *Dee Smith* Date: 01/27/95

Agency: Ronald L. Otte, Dept. of Public Safety

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# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Ste 540, Anchorage AK 99501 258-8189

Session: State Capitol, Juneau AK 99801 465-2095

## SPONSOR STATEMENT

### SENATE BILL 13

"An Act relating to the admissibility of evidence and testimony in criminal and civil proceedings; directing the admissibility into evidence of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings,..."

\*\*\*\*\*

The State of Alaska has spent a considerable amount of money making our State's Crime Lab one of the best in the country. A substantial amount of this money has gone into state-of-the-art deoxyribonucleic acid (DNA) analysis equipment and experts. Passage of Senate Bill 13 ensures that the criminal justice system will be able to fully capitalize on the benefits of this scientific evidence.

Genetic print analysis - genetic fingerprinting - is a term used to describe a kind of evidence by which strands of coding found in a particular genetic molecule may be compared to the coding of like molecules in tissue from a different source for the purpose of identifying the perpetrator of a crime. The genetic molecule examined is deoxyribonucleic acid (DNA). Genetic print analysis subjects human tissue to a procedure that "reads" sequences in the DNA molecule and produces a bar-code like pattern that is unique to the individual.

Currently, methods for admitting new scientific evidence such as DNA in criminal cases fall under the Frye test. Under this test the court must decide if there is a general consensus in the relevant scientific community that the scientific testimony is reliable. Sometimes this is called the "general acceptance" test, using a social standard rather than a scientific standard.

The problem with the outdated Frye test can be seen as intense debate concerning the O.J. Simpson trial unfolds. It is almost impossible as well as extremely expensive for a judge to determine in each individual case what a general, national scientific consensus is or is not. If the law is not changed Alaska could fly the same four expert witnesses up again and again, in case after case before the standards of the Frye test are met.

The United States Supreme Court has abandoned the Frye test and is now using a 1993 case called Daubert v. Merrell Dow Pharmaceuticals, Inc. 113 S.Ct.2786, 125 L.Ed.2d 469 (1993). The so-called Daubert test is now being used in all Federal courts. The Daubert approach is based on Federal Rule of Evidence 702. Under the Daubert test, the court makes a preliminary assessment that the underlying reasoning or methodology of the DNA testing is scientifically valid and can be applied to the facts at issue. The inquiry is flexible and focuses on the scientific validity of the principles and the methodology. The advantage of adopting the Daubert test in Alaska is that it is far more flexible than the Frye test and can therefore be satisfied without counting all the noses of scientists in the country.

DNA is important because it can be used in cases involving the most heinous of crimes: rape, child sexual abuse and murder. Alaska has made the scientific investment, it is now time to ensure that this DNA evidence can routinely be heard by juries.

The Legislature should pass Senate Bill 13. It would save bundles of money and make good use of its investment in the Alaska State Forensic Science Crime Lab.

# ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0515

FEB 13 1995

February 8, 1995



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Senator Loran Leman  
Capitol Building  
Juneau, Alaska 99801-1182

Dear Senator Leman,

I am the State-wide president of the Alaska Peace Officers Association. Our organization represents over 1200 law enforcement officers from over 80 local, state and federal agencies. On January 31, 1995, the State Board met and discussed pending legislation dealing with peace officers.

We have chosen Senate Bills 12 & 13 as one of our priority pieces of legislation. In 1901 at the World's Fair in St. Louis fingerprinting was introduced to America. By 1906 it was widely accepted by American Courts. DNA has been used by police agencies in this country since 1986 (it was first used by the Alaska State Crime Lab in 1992). It is meeting constant challenges by the defense bar because of its devastating consequences at a jury trial. We feel this scientific procedure has passed muster in courts all over the world and we should not bow to the pressure of disgruntled defense attorneys who are trying to prohibit this useful piece of evidence from the court room.

If there is anything this organization can do to assist your effort in passing this legislation please contact me (451-5316) or our Executive Director, Joseph Young (277-0515), or Alyce Hanley (243-7574). On behalf of the Alaska Peace Officers Association, I want to thank you for proposing this legislation and wish you the best in this legislative session.

Respectfully yours,

*Michael Corkill*  
by *[Signature]*

Michael Corkill  
State-wide President

9-LS01-110  
Chenoweth  
3/1/95

HOUSE CS FOR CS FOR SENATE BILL NO. 13( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS LEMAN, Kelly, Halford, Sharp, Green

REPRESENTATIVE Toohey

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; amending Rules 702(a) and 703 of the  
3 Alaska Rules of Evidence to modify the rule relating to the basis or foundation  
4 for the admissibility of expert opinion testimony that is based on scientific  
5 evidence as it relates to DNA profile evidence; and amending Rule 403 of the  
6 Alaska Rules of Evidence."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE. (a) The  
9 legislature finds that

10 (1) recent developments in molecular biology and genetics have important  
11 applications for forensic science; except for identical twins, the deoxyribonucleic acid (DNA)  
12 of every person is unique; DNA typing methods can be used to characterize the DNA of an  
13 individual;

1 (2) the discriminating power of DNA typing is far superior to non-DNA  
2 genetic marker testing methods and DNA typing methods have proven to be a reliable and  
3 scientifically accepted tool for the investigation and prosecution of sex offenses and other  
4 crimes;

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

7 (4) court decisions guiding the admissibility of scientific evidence in the state  
8 courts impose a requirement on the introduction of expert scientific testimony that condition  
9 the introduction of that testimony on the degree of its validation within the community, that  
10 is, to its general acceptance by experts in the relevant scientific field;

11 (5) under the court decisions, trial courts are empowered to evaluate the quality  
12 of expert witnesses' opinions and to exclude opinions that have not achieved general  
13 acceptance in the scientific community;

14 (6) the ability of a trial court to exclude opinion evidence that has not achieved  
15 general acceptance in the scientific community may prohibit introduction and consideration  
16 of DNA profile evidence and testimony based on experimental scientific information that  
17 could be useful to the trier of fact; and

18 (7) to better assure that relevant DNA profile evidence may be considered, the  
19 "general acceptance" principle for admissibility of scientific testimony should be replaced and  
20 a more flexible approach to the use of opinion testimony should be adopted.

21 (b) In amending Alaska Rules of Evidence 702(a) and 703, in secs. 4 and 5 of this  
22 Act, it is the purpose of the legislature to change the appropriate standard for the admissibility  
23 of DNA evidence in civil and criminal proceedings. The legislature's amendment of this rule  
24 would eliminate, as to DNA evidence, a case-by-case determination of "general acceptance"  
25 underlying scientific evidence as a precondition to the admissibility of scientific evidence in  
26 a criminal or civil action, a principle first enunciated in *Frye v. United States*, 293 F. 1013  
27 (D.C. Cir. 1923) and adopted for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478  
28 (Alaska 1970). In its place, for DNA evidence, the legislature opts to substitute the  
29 comparable rule applicable to the introduction of scientific evidence in cases in the federal  
30 courts. That standard was announced in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509  
31 U.S. --, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993). Under the *Daubert* standard, the reliability

1 of scientific evidence is to be determined based on the evidence's scientific validity without  
2 reference to the quality of expert opinion, and without the qualifying condition that an expert  
3 opinion that has not achieved general acceptance in the scientific community must be  
4 excluded.

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

6 Sec. 09.25.300. ADMISSIBILITY OF DNA PROFILES. (a) In a civil action  
7 or proceeding, the evidence of a DNA profile is admissible to prove or disprove any  
8 relevant fact.

9 (b) A party seeking to introduce the evidence of a DNA profile shall

10 (1) notify all other parties in writing, on or before a date determined by  
11 order or rule of the court, of the party's intention to introduce the evidence; and

12 (2) provide all other parties, on or before a date determined by order  
13 or rule of the court, copies of the DNA profiles and the report or statement of the  
14 profile to be introduced.

15 (c) If the notice required by (b) of this section is not timely provided and a  
16 party attempts to introduce the evidence, the court may, in its discretion, either allow  
17 the opposing party a continuance or, under appropriate circumstances, bar the party  
18 from presenting the evidence.

19 (d) If a party to whom notice is given under (b) of this section intends to  
20 object to the admissibility of the DNA profile, the party shall give written notice of  
21 the objection on or before the date determined by order or rule of the court.

22 (e) In this section,

23 (1) "deoxyribonucleic acid" or "DNA" means the molecules in all  
24 cellular forms that contain genetic information in a patterned chemical structure for  
25 each individual;

26 (2) "DNA profile" means an analysis of deoxyribonucleic acid material  
27 in a human sample of blood, semen, tissue, or other DNA-bearing cells resulting in the  
28 identification of the individual's patterned chemical structure of genetic information.

29 \* Sec. 3. AS 12.45 is amended by adding a new section to read:

30 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal  
31 action or proceeding, the evidence of a DNA profile is admissible to prove or disprove

1 any relevant fact.

2 (b) A party seeking to introduce the evidence of a DNA profile shall

3 (1) notify all other parties in writing, on or before a date determined  
4 by order or rule of the court, of the party's intention to introduce the evidence; and

5 (2) provide all other parties, on or before a date determined by order or  
6 rule of the court, copies of the DNA profiles and the report or statement of the profile  
7 to be introduced.

8 (c) If the notice required by (b) of this section is not timely provided and a  
9 party attempts to introduce the evidence, the court may, in its discretion, either allow  
10 the opposing party a continuance or, under appropriate circumstances, bar the party  
11 from presenting the evidence.

12 (d) If a party to whom notice is given under (b) of this section intends to  
13 object to the admissibility of the DNA profile, the party shall give written notice of  
14 the objection on or before the date determined by order or rule of the court.

15 (e) In this section,

16 (1) "deoxyribonucleic acid" or "DNA" means the molecules in all  
17 cellular forms that contain genetic information in a patterned chemical structure for  
18 each individual;

19 (2) "DNA profile" means an analysis of deoxyribonucleic acid material  
20 in a human sample of blood, semen, tissue, or other DNA-bearing cells resulting in the  
21 identification of the individual's patterned chemical structure of genetic information.

22 \* Sec. 4. Rule 702(a), Alaska Rules of Evidence, is amended to read:

23 (a) If scientific, technical, or other specialized knowledge will assist the trier  
24 of fact to understand the evidence or to determine a fact in issue, a witness qualified  
25 as an expert by knowledge, skill, experience, training, or education, may testify thereto  
26 in the form of an opinion or otherwise. In the case of expert testimony that is based  
27 upon a scientific theory or technique to support the admission of evidence of or  
28 based upon a deoxyribonucleic acid (DNA) profile, the court may not admit the  
29 evidence unless the court finds that the theory or technique in question is  
30 scientifically valid for the purpose for which it is applied.

31 \* Sec. 5. Rule 702, Alaska Rules of Evidence, is amended to read:

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

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

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

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

13 \* Sec. 6. AS 09.25.300, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 3  
14 of this Act, have the effect of amending Rule 403, Alaska Rules of Evidence, by determining  
15 that, when offered in civil and criminal actions and proceedings, DNA profile evidence has  
16 probative value and that its probative value outweighs the danger of unfair prejudice.