

**HB**

**52**

9-LS0242K  
Chenoweth  
2/1/95

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Toohey

A BILL  
FOR AN ACT ENTITLED

"An Act relating to the admissibility of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings; and amending Rule 703 of the Alaska Rules of Evidence."

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

Sec. 09.25.100. ADMISSIBILITY OF DNA PROFILES. (a) In a civil action or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant fact, if the court finds that the technique underlying the evidence is scientifically valid. The admission of the DNA profile does not require a finding of general acceptance in the scientific community of DNA profile evidence.

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(b) In this section,

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

(2) "DNA profile" means an analysis of blood, semen, tissue, or other ~~DNA-bearing cells~~ <sup>including statistical population frequency</sup> resulting in the identification of the individual's patterned chemical structure of genetic information. <sup>it includes statistical population frequency comparisons.</sup>

*cells bearing deoxyribonucleic acid,*

Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action or proceeding, the evidence of a DNA profile is admissible to prove or disprove any relevant fact. if the court finds that <sup>the</sup> technique underlying the evidence is scientifically valid. The admission of the DNA profile does not require a finding of general acceptance in the scientific community of DNA profile evidence.

(b) In this section,

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

(2) "DNA profile" means an analysis of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of the individual's patterned chemical structure of genetic information.

\*Sec. 3. AS 09.25.100, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent, ~~if any,~~ that Rule 703 would ~~disallow~~ DNA profile evidence as a result of the application of the standard previously adopted by the Alaska Supreme Court in Pulakis v. State, 476 P.2d 474 (Alaska 1970), which requires a finding of general acceptance of <sup>relevant</sup> scientific evidence in the scientific community as a precondition of admission of ~~scientific evidence~~ <sup>scientific evidence</sup> ~~DNA profile evidence~~

*limit the admissibility of*

*scientific evidence*

# FISCAL NOTE

STATE OF ALASKA

BILL NO: SSHB 52

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: DNA evidence in civil & criminal cases BRU: Department of Public Safety - Statewide  
 Component: Commissioner's Office  
 Sponsor: Representative Green  
 Requestor: (H) 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						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

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 fiscal impact to the department is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 02/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 3/13/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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HOUSE COMMITTEE REPORT

(7)  
 Date Referred: January 27, 1995 FURTHER REFERRALS: Finance

Date of Committee Action: 1-22-95

The JUDICIARY Committee considered: SSHB 52

HOUSE BILL NO. 52 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; amending Rules 702(a) and 703 of the Alaska Rules of Evidence to modify the rule relating to the basis or foundation for the admissibility of expert opinion testimony that is based on scientific evidence as it relates to DNA profile evidence; and amending Rules 401, 403, and 705 of the Alaska Rules of Evidence."

recommends it be replaced with the following committee substitute CS SSHB 52 (Jud)  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) AK Court System  zero fiscal note(s) \_\_\_\_\_  
Pub. Saf., Dept. of Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>	X		<del>X</del>	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

ERRR BD

CHAIR'S SIGNATURE Brian S. Porter

BACK UP FOR SSHB 52

Number 806

CHAIRMAN PORTER asked if there were any other questions for Mr. Miller. Hearing none, he requested testimony from an individual in D.C. As no one was available from D.C., he asked Mr. Guaneli from the Department of Law to testify, and welcomed him back.

MR. DEAN GUANELI, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW gave a preface to his testimony, saying the Administration has not taken a position on this or any of the DNA bills, or really any of the crime bills. Those positions are in the process of being formulated, and it is probably going to be after the budget is submitted before we reach some of those decisions. We have been authorized to indicate in this bill, or any number of bills, what the impact would be on the criminal justice system and on criminal prosecution, specifically.

MR. GUANELI agreed, in general, with the comments made by everyone else that DNA testing is powerful evidence in criminal prosecutions, particularly in murder and rape cases where there is no eye witness; where the issue at trial is identity. In other words, "Who committed this crime?" Did this specific individual commit this crime? DNA evidence is often the best evidence you can have. In light of the unfortunate recidivism we have in this state

and others, it is fair to say a number of people in jail now are going to be committing crimes in the future, and so there is a rational basis for this kind of testing of people who have committed violent crimes in the past.

MR. GUANELI made it known that this is really only half of the issue from his standpoint. Using this as an investigative tool to solve criminal cases does not get people convicted of the crime unless it is admissible in court. So there is a whole other part of the DNA question. That is the admissibility in court and what level of scientific evidence is going to be admissible, and what the jury will hear. Although this is something that is valuable, it is less valuable unless we also make sure at least one of the admissibility bills passes this legislature.

MR. GUANELI referred to Representative Vezey's question as to why we need legislation in this area. That is a fair question, but we have certainly taken the approach in other areas such as testing for the HIV virus in convicted sex offenders. More legislation was enacted. As the gentleman from the FBI said, with things like genetic testing and computer databases on people, and the whole idea of the government keeping files and lists on people, it is always safest to have legislation, and testimony as you have gotten today from the experts, in the field to...

TAPE 95-1, SIDE B  
Number 000

MR. GUANELI (continued) one, show that this is a reliable testing method, and two, that appropriate safeguards are going to be applied for both the testing and the confidentiality of it, and that there is some relationship between the taking of blood from convicted violent offenders and future investigative needs. Once the legislature has made all of those determinations in enacting a piece of legislation, it certainly helps when the Department of Law is faced with the inevitable challenge amounted by some convicted person who does not want his or her blood drawn. Armed with that, we have a much greater chance of success, as other attorney general's offices have had in other states when their DNA testing laws have been challenged. For that reason alone, it is an appropriate subject for legislative action. He asked if there were other questions.

Number 021

REPRESENTATIVE GREEN noted he has one question, assuming we are all watching the Simpson trial. He asked Mr. Guaneli's opinion, starting from a clear-cut, good, no-question sample to some of these gradations that we have talked about where they may be mixed or if he had a feel for the acceptability of this as at least supplemental to two of the things in the trial.

Number 035

MR. GUANELI answered that those are legitimate questions, and he would be interested to hear the explanation from the FBI about the ability to separate samples. With DNA testing, like fingerprint testing, once you have used it as an investigative tool and you have narrowed your focus down to one person; whether the samples have been mixed at that point, you can always draw another sample of blood from that person who you focussed in on. It is a little like taking a fingerprint from that person. If it is smudged a little, you can take another fingerprint from the person and make whatever comparisons you can make. It is different from driving while intoxicated testing where you are taking a snapshot of the person's breath or blood at that moment, and you have got to do the testing fairly soon, as it disappears. With DNA testing, your genetic fingerprint does not change, and so it is appropriate to use it as an investigative tool, focus in on an individual, and if that individual has some question, draw another sample of blood and let them test it if they want to. There are always going to be questions when you have mixed samples, and it is a matter of relying on the scientists and the experts to tell us what conclusions they can draw. That is another reason why the admissability bills are so important, because to change the legal standard for admissability is the key to using this kind of evidence.

Number 080

REPRESENTATIVE GREEN understood we will be working on that.

Number 087

REPRESENTATIVE TOOHEY asked about Section 2, under (b), where it states that a person convicted in the state, of a crime against a person shall have a blood sample drawn. That does not include allowing a DNA sample to be used to convict that person, does it?

Number 091

MR. GUANELI replied that was correct. This bill only establishes a database of samples from people who have already been convicted once, and its usefulness is if that person commits a crime in the future. Then it is a matter of deciding if this evidence can be used in the prosecution for a future crime.

Number 102

REPRESENTATIVE TOOHEY asked if we were assuming DNA is being used to convict him, originally of a crime.

Number 106

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SSHB 52

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: DNA evidence in civil and criminal trials BRU: Trial Courts  
 Components: \_\_\_\_\_  
 Sponsor: Reps. Green, Toohy  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**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						
<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	0.0	0.0	0.0	0.0	0.0	0.0
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>

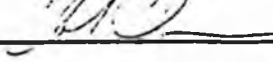
**POSITIONS**


FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

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

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Agency: Alaska Court System Date: 02/06/95

Approved by: Arthur H. Snowden, II, Administrative Director   
 Agency: Alaska Court System Date: 02/06/95

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# FISCAL NOTE

STATE OF ALASKA

BILL NO: SSHB 52

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: DNA evidence in civil & criminal cases BRU: Department of Public Safety - Statewide  
 Component: Commissioner's Office  
 Sponsor: Representative Green  
 Requestor: (H) 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						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

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 fiscal impact to the department is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 02/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 3/13/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 52

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...admissibility into evidence of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings..." BRU: Prosecution  
 Sponsor: Representative Green Component: All  
 Requester: Representative Green 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, in respect to DNA profiles. 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. Pegues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 2/9/95  
 Date: 2/9/95

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# Legislative Research Agency

130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Alaska State Legislature



Phone: (907) 465-3991  
Fax: (907) 463-3351

February 20, 1995

## MEMORANDUM

TO: Representative Joe Green

FROM: Dale Brandt *DB*  
Legislative Analyst

RE: **DNA Admissibility Statutes**  
Research Request 95.129

You asked for a sample of state statutes that allow DNA evidence to be admissible in civil and criminal proceedings. We found such laws in seven states: Alabama, Delaware, Indiana, Maryland, Minnesota, Tennessee and Virginia. In each of these states except Virginia, a brief explanation regarding the admissibility of DNA analysis as evidence is provided in statutes. Virginia statutes, however, simply state: "DNA profile admissible in criminal proceeding" with reference in the annotations to a law review article. (This article is being sent to us from an out-of-state law library but you have a copy in your office). Attached are copies of statutes from each of the states mentioned.

If you have questions or need additional information, please call.

Attachments

**ATTACHMENTS**

# CODE OF ALABAMA

1975

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1994 Cumulative Supplement

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ANNOTATED

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*Prepared by*

The Editorial Staff of the Publishers

*Under the Direction of*

D. S. Tussey, S. C. Willard, W. L. Jackson, M. A. Sancilio,  
J. H. Runkle, and L. A. Burckell

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VOLUME 19A

1991 REPLACEMENT VOLUME

---

*Including Acts through the 1994 Regular Session and First Special  
Session and annotations taken through Southern Reporter,  
Second Series, Volume 634, page 132*

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**Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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Charlottesville, Virginia  
1994

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**§ 36-18-27. Disclosure of DNA records.**

DNA records collected and maintained for the purpose of the identification of criminal suspects or offenders shall be disclosed only:

(a) To criminal justice agencies for law enforcement identification purposes.

(b) In judicial proceedings, if otherwise admissible.

(c) For criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged. (Acts 1994, 1st Ex. Sess., No. 94-804, § 8.)

**§ 36-18-28. Penalties.**

(a) A person who by virtue of employment or official position has possession of, or access to, individually identifiable DNA information indexed or otherwise contained in the DNA database system of the Alabama Department of Forensic Sciences and who knowingly and willfully discloses such information in any manner to any person or agency not entitled to receive it shall be guilty of a Class C felony.

(b) A person who without authorization knowingly and willfully obtains DNA samples or any individual identifiable DNA information indexed or contained in the DNA database system of the Alabama Department of Forensic Sciences shall be guilty of a Class C felony.

(c) A person who shall conspire to commit a violation of subsections (a) or (b) shall be guilty of a Class C felony. (Acts 1994, 1st Ex. Sess., No. 94-804, § 9.)

**§ 36-18-29. Penalty for false entry or alteration of records.**

A person who shall knowingly make any false entry or falsely alter any record of the Alabama Department of Forensic Sciences; or who shall intentionally destroy, mutilate, conceal, remove or otherwise impair the verity or availability of records of the Alabama Department of Forensic Sciences with the knowledge of a lack of authority to do so; or who shall possess a record of the Alabama Department of Forensic Sciences and refuse to deliver up such record upon proper request of a person lawfully entitled to receive the same shall be guilty of a Class B felony. (Acts 1994, 1st Ex. Sess., No. 94-804, § 10.)

**§ 36-18-30. Admissibility of evidence relating to use of genetic markers.**

Expert testimony or evidence relating to the use of genetic markers contained in or derived from DNA for identification purposes shall be admissible and accepted as evidence in all cases arising in all courts of this state, provided, however, the trial court shall be satisfied that the expert testimony or evidence meets the criteria for admissibility as set forth by the United States Supreme Court in *Daubert, et. ux., et. al., v. Merrell Dow*

Pharmaceuticals, Inc., decided on June 28, 1993. (Acts 1994, 1st Ex. Sess., No. 94-804, § 11.)

**§ 36-18-31. Statistical database.**

(a) The director is hereby authorized and empowered to create and establish a DNA population statistical database which shall not include therein individually identifiable information.

(b) The DNA population statistical database may be utilized for the following purposes:

1. To provide data relative to the causation, detection and prevention of disease or disability.

2. To support identification research and protocol development of DNA forensic methods, or to create and maintain DNA quality control standards.

3. To assist in other humanitarian endeavors including, but not limited to, educational research or medical research or development. (Acts 1994, 1st Ex. Sess., No. 94-804, § 12.)

**§ 36-18-32. DNA Database Fund.**

(a) There is hereby established a special fund to be known as the Alabama DNA Database Fund.

(b) The fund shall be placed under the management or administration of the Director of the Alabama Department of Forensic Sciences for the exclusive purposes of implementing the provisions of this article.

(c) The fund shall consist of all moneys received by the director pursuant to the provisions of this section.

(d) The director shall have control of those funds as shall not be inconsistent with the provisions of this article and with the laws of the State of Alabama.

(e) Monies deposited in the Alabama DNA Database Fund may be expended by the Director of the Alabama Department of Forensic Sciences in accordance with the provisions of this article. The investment of monies in the fund by the State Treasurer shall remain in the Alabama DNA Database Fund. At the end of each fiscal year any unexpended or unencumbered monies shall remain in the fund. However, no funds shall be withdrawn or expended except as budgeted and allotted according to law and only in the amounts authorized by the Legislature in the general appropriation bill or other appropriation bills.

(f) Neither the director nor any member of the director's staff nor any employee of the Alabama Department of Forensic Sciences shall have any financial interest in any such investments or receive any reward, thing of value, or commission in respect thereto.

(g) It shall be the duty of the director to keep detailed permanent records of all expenditures and disbursements from such fund or account.

(h) In all municipal, district and circuit court cases, both criminal and civil, in bond forfeiture proceedings, upon initiation of attachment, garnishment or

# THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND

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## 1994 Cumulative Supplement

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Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

DEBORAH S. TUSSEY, PETER R. ROANE, WANDA F. BROWN ROSZAK,  
BARRY L. BRIDGES AND KATHLEEN E. SKINNER

*Consultant*

F. CARVEL PAYNE

Director, State Department of Legislative Reference

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## Courts and Judicial Proceedings

1989 REPLACEMENT

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**Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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*Effective Date of Statutes*

See Md. Const., Article XVI, § 2

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Annotated through 639 A.2d 73. For complete  
scope of annotations and legislation, see  
preface in Volume 1.

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1994

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**Trial court's discretion.**

Trial court did not abuse its discretion in admitting evidence of defendant's conviction for theft in 1982. The trial judge's ruling was correct; in fact, it would have been an abuse of discretion to exclude the proffered evidence. *Mitchell v. Montgomery County*, 88 Md. App. 542, 596 A.2d 93 (1991).

**Finality of conviction.** — The person invoking the privilege against self incrimination has the burden to show that his convictions were not final and, therefore, might be incrimi-

nating. *Horne v. State*, 321 Md. 547, 583 A.2d 726 (1991).

**Applied in** *Henry v. State*, 324 Md. 204, 596 A.2d 1024 (1991), cert. denied, — U.S. —, 112 S. Ct. 1590, 118 L. Ed. 2d 307 (1992); *Burgess v. State*, 89 Md. App. 522, 598 A.2d 830 (1991), cert. denied, 325 Md. 619, 602 A.2d 710 (1992).

**Cited in** *Jordan v. State*, 82 Md. App. 225, 571 A.2d 238 (1990), modified, 323 Md. 151, 591 A.2d 875 (1991); *Coleman v. State*, 321 Md. 586, 583 A.2d 1044 (1991); *Suggs v. State*, 87 Md. App. 250, 589 A.2d 551 (1991).

**§ 10-909. Proof of patented lands.**

**Notice of adverse possession counter-claim not required.** — Court erred in determining that this section required counter-claimants in action to quiet title to give notice

to adjoining landowners of their adverse possession counter-claim. *Ski Roundtop, Inc. v. Wagerman*, 79 Md. App. 357, 556 A.2d 1144 (1989).

**§ 10-910. Negligence of parent or custodian not imputed to infant.**

**Quoted in** *United States v. Streidel*, 329 Md. 533, 620 A.2d 905 (1993).

**§ 10-913. Punitive damages for personal injuries.**

**Applied in** *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 601 A.2d 633 (1992).

**§ 10-915. Admissibility of DNA profiles.**

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(3) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

(b) *Purposes.* — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

- (i) Duplicates of the actual autoradiographs generated;
- (ii) The laboratory protocols and procedures;
- (iii) The identification of each probe utilized;

(iv) A statement describing the methodology of measuring fragment size and match criteria; and

(v) A statement setting forth the allele frequency and genotype data for the appropriate data base utilized.

(c) *Prerequisites.* — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceedings, the court may grant a continuance to permit such timely disclosures. (1989, ch. 430; 1991, ch. 631.)

*Effect of amendments.* — The 1991 amendment, effective July 1, 1991, inserted "that utilizes the restriction fragment length polymorphism analysis" in (a) (3); and rewrote (b) and (c).

*Editor's note.* — Section 2, ch. 430, Acts 1989, provided that the act shall take effect Jan. 1, 1990.

*Admissibility.* — Rape defendant was not

prejudiced during trial delay by the enactment of this section declaring DNA analysis as admissible evidence. *Wheeler v. State*, 88 Md. App. 512, 596 A.2d 78 (1991).

Cited in *Wilson v. State*, 87 Md. App. 659, 591 A.2d 524, cert. denied, 324 Md. 325, 597 A.2d 422 (1991); *Jackson v. State*, 92 Md. App. 304, 608 A.2d 782 (1992).

## § 10-916. Battered Spouse Syndrome.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Battered Spouse Syndrome" means the psychological condition of a victim of repeated physical and psychological abuse by a spouse, former spouse, cohabitant, or former cohabitant which is also recognized in the medical and scientific community as the "Battered Woman's Syndrome".

(3) "Defendant" means an individual charged with:

(i) First degree murder, second degree murder, manslaughter, maiming, or attempt to commit any of these crimes; or

(ii) Assault with intent to murder or maim.

(b) *Admissibility of evidence.* — Notwithstanding evidence that the defendant was the first aggressor, used excessive force, or failed to retreat at the time of the alleged offense, when the defendant raises the issue that the defendant was, at the time of the alleged offense, suffering from the Battered Spouse Syndrome as a result of the past course of conduct of the individual who is the victim of the crime for which the defendant has been charged, the court may admit for the purpose of explaining the defendant's motive or state of mind, or both, at the time of the commission of the alleged offense:

(1) Evidence of repeated physical and psychological abuse of the defendant perpetrated by an individual who is the victim of a crime for which the defendant has been charged; and

(2) Expert testimony on the Battered Spouse Syndrome. (1991, ch. 337.)

*Editor's note.* — Section 2, ch. 337, Acts 1991, provides that the act shall take effect July 1, 1991.

*Maryland Law Review.* — For comment, "Expert Testimony on the Battered Woman Syndrome in Maryland," see 50 Md. L. Rev. 920 (1991).

*Purpose.* — This section does not create a

new defense to murder. Rather, evidence of the Battered Spouse Syndrome is offered in support of the state of mind element of perfect or imperfect self-defense, i.e., it is offered to prove the honesty and reasonableness of the defendant's belief that he or she was in imminent danger at the time of the offense. *Banks v. State*, 92 Md. App. 422, 608 A.2d 1249 (1992).

# CODE OF VIRGINIA

1950

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1994 Cumulative Supplement

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ANNOTATED

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*Prepared under the Supervision of*  
The Virginia Code Commission

BY

The Editorial Staff of the Publishers

*Under the Direction of*

D. S. TUSSEY, S. C. WILLARD, W. L. JACKSON, T. M. HAMILTON,  
J. H. RUNKLE, AND S. L. HAVENS, JR.



**VOLUME 4A**

1990 REPLACEMENT

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*Annotated through South Eastern Reporter, 2d Series, through  
Volume 439, page 895.*

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**Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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The 1989 amendment designated the first paragraph as subsection A; added subsection B; and in subsection C, designated the paragraph as subsection C and inserted "or an order returning exhibits to the owners."

**§ 19.2-270.5. DNA profile admissible in criminal proceeding.** — In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the accused as shall be admissible in evidence.

At least twenty-one days prior to commencement of the proceeding in which the results of a DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of the profiles and the report or statement to be introduced. In the event that such notice is not given, and the person proffers such evidence, then the court may in its discretion either allow the opposing party a continuance or, under appropriate circumstances, bar the person from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243. If the opposing party intends to object to the admissibility of such evidence he shall give written notice of that fact and the basis for his objections at least ten days prior to commencement of the proceedings.

No blood sample submitted to the Bureau of Forensic Science for analysis and use as provided in this section and no results of the analysis performed shall be included in the DNA data bank established by the Bureau pursuant to § 19.2-310.5 or otherwise used in any way with identifying information on the person whose sample was submitted. (1990, c. 669.)

**§ 19.2-271. Certain judicial officers incompetent to testify under certain circumstances.** — No judge shall be competent to testify in any criminal or civil proceeding as to any matter which came before him in the course of his official duties.

No clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding, except proceedings wherein the defendant is charged with perjury, as to any matter which came before him in the course of his official duties. Such person shall be competent to testify in any criminal proceeding wherein the defendant is charged pursuant to the provisions of § 18.2-460 or in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, shall not be incompetent solely because of his office to testify in any criminal or civil proceeding arising out of the crime. (Code 1950, §§ 19.1-267, 19.1-268; 1960, c. 366; 1975, c. 495; 1976, c. 269; 1989, c. 738; 1990, c. 602.)

The 1980 amendment substituted "came before him" for "shall have come before him" in the first paragraph and in the first sentence of the second paragraph, and added "or in any proceeding authorized pursuant to § 19.2-353.3" in the second sentence of the second paragraph.

The 1990 amendment added the last sentence of the second paragraph.

**Law Review.** — For note, "Lying on the Stand Won't Cost You a Dime: Should Courts Recognize a Civil Action in Tort for Perjury," see 44 Wash. & Lee L. Rev. 1257 (1988).

This section is intended to protect an accused against the testimony of certain judicial officers before whom he has appeared as to admissions or confessions made by him.

**DELAWARE CODE**  
**ANNOTATED**

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**REVISED 1974**

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**1994 Cumulative Supplement**

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Prepared under the Supervision of  
The Delaware Code Revisors

**DANIEL F. WOLCOTT, JR. AND BRUCE A. ROGERS**

by

The Editorial Staff of the Publishers

*Under the Direction of*

**DEBORAH S. TUSSEY, PETER R. ROANE, WANDA F. BROWN ROSZAK,  
CAROLYN B. MEIER AND LYNN P. SEUFFERT**

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**VOLUME 7**  
**1987 REPLACEMENT**

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*Including Legislation Enacted  
by the 137th General  
Assembly*

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Annotated through 643 A.2d 1212. For complete scope of annotations,  
see Preface in Supplement to Volume 1.

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1994

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time. (68 Del. Laws, c. 407, § 1.)

**Revisor's note.** — Section 2 of 68 Del. Laws, c. 407, provides: "This act shall not take effect unless and until sufficient funding has been appropriated to implement its provisions." The act was signed by the Governor on July 17, 1992.

### § 3515. Admissibility of DNA profiles.

(a) *Definitions.* — In this section the following words have the meanings indicated.

(1) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(2) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

(b) *Purposes.* — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

- a. Duplicates of the actual autoradiographs generated;
- b. The laboratory protocols and procedures;
- c. The identification of each probe utilized;
- d. A statement describing the methodology of measuring fragment size and match criteria; and
- e. A statement setting forth the allele frequency and genotype data for the appropriate database utilized.

(c) *Prerequisites.* — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceeding, the court may grant a continuance to permit such timely disclosures as justice may require. (69 Del. Laws, c. 249, § 2.)

**Revisor's note.** — This section became effective upon the signature of the Governor on June 16, 1994.

### *Subchapter III. Intimidation of Witnesses and Victims*

### § 3532. Act of intimidation; class E felony.

**Statement about prior criminal activity admissible.** — Evidence that defendant made a statement about prior criminal activity in order to threaten and intimidate his victim is admissible in a prosecution under this section,

although the admission of such evidence must be accompanied by a limiting instruction by the trial judge. *Weber v. State*, Del. Supr., 547 A.2d 948 (1988).

**BURNS**  
**INDIANA STATUTES**  
**ANNOTATED**

**CODE EDITION**

**TITLE 35**

Articles 1-40

**1994 REPLACEMENT VOLUME**

*Annotations from North Eastern Reporter through  
Volume 616, second series*

Original Edition by

**HARRISON BURNS**

Prepared by the Editorial Staff of the Publishers

*Under the Direction of*

**DEBORAH S. TUSSEY, KAREN S. MAWYER, JOHN A. STONER,  
RUTH B. LAYNE, AND FRANCINE J. PAYNE**

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**35-37-4-12. Disclosure of personal information.** — (a) If the physical safety of a victim or the victim's immediate family is in danger, a victim may not be required to give personal information during the course of sworn testimony regarding the following:

- (1) Telephone numbers.
- (2) Place of employment.
- (3) Residential address.

(b) In any hearing to determine the introduction into evidence of the personal information specified in subsection (a), the court, if the court finds an actual danger to the victim or the victim's immediate family exists, may require the party possessing the personal information to disclose the personal information to the court for in camera review. [P.L.1-1991, § 193.]

**35-37-4-13. Forensic DNA analysis — Admissibility as evidence.** —

(a) As used in this section, "forensic DNA analysis" means an identification process in which the unique genetic code of an individual that is carried by the individual's deoxyribonucleic acid (DNA) is compared to genetic codes carried in DNA found in bodily substance samples obtained by a law enforcement agency in the exercise of the law enforcement agency's investigative function.

(b) In a criminal trial or hearing, the results of forensic DNA analysis are admissible in evidence without antecedent expert testimony that forensic DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material. [P.L.1-1991, § 194.]

Indiana Law Review. Statutory Control of DNA Fingerprinting in Indiana, 25 Ind. L. Rev. 205 (1991).

Developments in the Law of Evidence, 25 Ind. L. Rev. 1213 (1992).

Valparaiso University Law Review.

DNA Profiling Evidence: The Need for a Uniform and Workable Evidentiary Standard of Admissibility, 26 Val. U.L. Rev. 595 (1992).

Cited: Hopkins v. State, 579 N.E.2d 1297 (Ind. 1991).

#### NOTES TO DECISIONS

**Defendant's Evidence.**

Since the exculpatory potential of the evidence was first discovered after trial because the deoxyribonucleic acid (DNA) comparisons were unavailable to the defendant at the

time of his trial, the defendant did not waive his rights due to his lack of pretrial pursuit of the reports. Sewell v. State, 592 N.E.2d 705 (Ind. App. 1992).

**Collateral References.** Admissibility of DNA identification evidence. 84 A.L.R.4th 313.

**35-37-4-14. Admissibility of evidence of previous battery.** — (a) This section applies even if no criminal charges were filed concerning the act that is the basis of the evidence of a previous battery.

(b) As used in this section, "evidence of a previous battery" means evidence that a person charged with a crime described in subsection (c)(1)

# MINNESOTA STATUTES

Embracing laws of a general and permanent nature and certain other laws in force or to be in force after the 1994 regular session and 1994 First Special Session.

Compiled, edited, and published by  
the Revisor of Statutes,  
State of Minnesota



OFFICIAL PUBLICATION  
OF THE  
STATE OF MINNESOTA

performed by a person who has been fully trained in the use of an infrared breath-testing instrument, as defined in section 169.01, subdivision 68, pursuant to training given or approved by the commissioner of public safety or the commissioner's acting agent, are admissible in evidence without antecedent expert testimony that an infrared breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

*History: 1984 c 430 s 9; 1986 c 444*

#### **634.20 EVIDENCE OF PRIOR CONDUCT.**

Evidence of similar prior conduct by the accused against the victim of domestic abuse, as defined under section 518B.01, subdivision 2, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

*History: 1985 c 159 s 3*

### **DNA EVIDENCE**

#### **634.25 ADMISSIBILITY OF RESULTS OF DNA ANALYSIS.**

In a civil or criminal trial or hearing, the results of DNA analysis, as defined in section 299C.155, are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards for admissibility set forth in the Rules of Evidence.

*History: 1989 c 290 art 4 s 18; 1989 c 356 s 55*

#### **634.26 STATISTICAL PROBABILITY EVIDENCE.**

In a civil or criminal trial or hearing, statistical population frequency evidence, based on genetic or blood test results, is admissible to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific human biological specimen. "Genetic marker" means the various blood types or DNA types that an individual may possess.

*History: 1989 c 290 art 4 s 19*

### **OUT-OF-STATE EVIDENCE**

#### **634.30 EVIDENCE OBTAINED IN FOREIGN JURISDICTIONS.**

Relevant evidence shall not be excluded in any criminal trial or hearing or in any proceeding arising under section 169.123 on the ground that it existed or was obtained outside of this state.

*History: 1990 c 449 s 4*

# Tennessee Code Annotated *1994 Supplement*

Updated through the 1994 Session of the General Assembly

## Volume 4A

*1980 Replacement*

### THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the  
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ing a child's condition at the time the tape was made, but should not be introduced to prove the truth of the complaint asserted unless taken by way of deposition under Tenn. R. Crim. P. 15 or on court order pursuant to subsection (d) or (e), supported by specific findings of necessity, un-

less defendant agrees or waives the issue. *State v. Pilkey*, 776 S.W.2d 943 (Tenn. 1989), cert. denied, 494 U.S. 1032, 110 S. Ct. 1483, 108 L. Ed. 2d 619 (1990), cert. denied, 494 U.S. 1406, 110 S. Ct. 1510, 108 L. Ed. 2d 646 (1990).

**24-7-117. DNA analysis — Admissibility in evidence.** — (a) As used in this section, unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(b)(1) In any civil or criminal trial, hearing or proceeding, the results of DNA analysis, as defined in subsection (a), are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards of admissibility set forth in the Tennessee Rules of Evidence.

(2) Nothing in this section shall be construed as prohibiting any party in a civil or criminal trial from offering proof that DNA analysis does not provide a trustworthy and reliable method of identifying characteristics in an individual's genetic material, nor shall it prohibit a party from cross-examining the other party's expert as to the lack of trustworthiness and reliability of such analysis.

(c) In any civil or criminal trial, hearing or proceeding, statistical population frequency evidence, based on genetic or blood test results, is admissible in evidence to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific biological specimen. For purposes of this subsection, "genetic marker" means the various blood types or DNA types that an individual may possess. [Acts 1991, ch. 480, § 3.]

**Compiler's Notes.** Acts 1991, ch. 480, § 5, provided that this section shall apply to all persons committing or attempting to commit one of the offenses set out in § 40-35-321 on or after July 1, 1991.

**Cross-References.** DNA analysis, collection

and preservation of human biological specimens, § 38-6-113.

DNA analysis, collection of biological specimens from persons convicted of certain offenses, § 40-35-321.

#### NOTES TO DECISIONS

##### 1. Expert Testimony.

Trial court correctly denied defendant's motion seeking to prohibit the introduction of deoxyribonucleic acid (DNA) evidence in an aggravated rape prosecution, since through this act the legislature has clearly mandated

that DNA analysis is to be admissible in evidence without the need for expert testimony as to its reliability as long as it meets the standards set forth in the Tenn. R. Evid. *State v. Harris*, 866 S.W.2d 583 (Tenn. Crim. App. 1992).

**24-7-118. Voluntary acknowledgment of paternity.** — (a) A voluntary acknowledgment of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b) or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowl-

**DIVISION OF LEGAL SERVICES  
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STATE OF ALASKA**

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Juneau, Alaska 99801-2105


**MEMORANDUM**

February 9, 1995

**SUBJECT:** Sponsor Substitute for House Bill 52, relating to admissibility of DNA profile evidence in criminal and civil proceedings, and modifying various related court rules: sectional analysis (Work Order No. 9-LS0242\F)

**TO:** Representative Joe Green  
Attn: Lisa Mock

**FROM:** Jack Chenoweth  
Legislative Counsel



The bill proposes a series of changes to the body of the Alaska Statutes and to several court rules generally to assure that relevant DNA profile evidence based on changing scientific techniques may be more readily admitted in criminal and civil proceedings. The changes look to replace the approach derived from the so-called "Frye" principle with one that reflects more contemporary United States Supreme Court thinking as set out in the recent "Daubert" decision.

**Bill section 1** provides legislative findings and a brief statement of legislative purpose for the bill.

**Bill section 2** adds a new section to the evidence provisions of the Civil Procedure code, AS 09.25, declaring that deoxyribonucleic acid (DNA) profile evidence may be admitted in civil proceedings to prove or disprove the identity of a person.

**Bill section 3** adds a new section to the evidence provisions of the Criminal code, AS 12.45, for the admissibility of DNA profile evidence in criminal proceedings under the same circumstances.

\*

The remaining sections of the bill treat with court rules and require a two-thirds vote to take effect:

**Bill section 4** amends Evidence Rule 702(a) applicable to use of expert testimony during trial to explain scientific and technical evidence. The general rule is to allow expert testimony in

those instances for that purpose. The bill's modification of the court rule adds a further sentence limiting the use of expert testimony going to a scientific theory or technique. Under the "Frye" rule, testimony by expert witnesses given at trial lays the basis for indicating that the data is generally accepted within the appropriate scientific community. However, this additional sentence to the Evidence Rule substitutes, with reference to expert testimony based on scientific theory or technique, a directive that the court admit the expert testimony not with reference to the generally acceptability of the data but, instead, with reference to the standard--and, procedurally, based on the court's finding--that "the theory or technique in question is scientifically valid for the purpose for which it is applied."

**Bill section 5** amends Evidence Rule 703, a section that addresses the basis of opinion testimony by experts. The nature of the change made by the underlined language is to abandon the key element of the "Frye rule," that is, to set aside the requirement that facts or data supportive of expert opinion evidence related to scientific knowledge may not be admitted without prior "general acceptance in the particular field to which the facts or data belong."

**Bill section 6** notes the effects of the changes made by the addition of the two earlier statute sections on three related Evidence Rules.

\*

Since bill sections 4 and 5 directly make court rule changes and since, in effect, the statutory changes of sections 2 and 3 of the bill affect other court rules, the bill really needs at least a two-thirds vote for all of its operative provisions to become law in the manner contemplated.

JBC:klb  
95-054.klb

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES GREEN, 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; and amending Rule 703 of the Alaska Rules  
3 of Evidence."

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

5 \* Section 1. AS 09.25 is amended by adding a new section to read:

6           Sec. 09.25.051. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action or  
7 proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
8 fact if the court finds that the technique underlying the evidence is scientifically valid.  
9 The admission of the DNA profile does not require a finding of general acceptance in the  
10 relevant scientific community of DNA profile evidence.

11           (b) In this section,

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

14                   (2) "DNA profile"

1 (A) means an analysis of blood, semen, tissue, or other cells  
2 bearing deoxyribonucleic acid resulting in the identification of the individual's  
3 patterned chemical structure of genetic information;

4 (B) includes statistical population frequency comparisons of the  
5 patterned chemical structures described in (A) of this paragraph.

6 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

7 Sec. 12.45.035. **ADMISSIBILITY OF DNA PROFILES.** (a) In a criminal action  
8 or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
9 fact, if the court finds that the technique underlying the evidence is scientifically valid.  
10 The admission of the DNA profile does not require a finding of general acceptance in the  
11 relevant scientific community of DNA profile evidence.

12 (b) In this section,

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

15 (2) "DNA profile"

16 (A) means an analysis of blood, semen, tissue, or other cells  
17 bearing deoxyribonucleic acid resulting in the identification of the individual's  
18 patterned chemical structure of genetic information;

19 (B) includes statistical population frequency comparisons of the  
20 patterned chemical structures described in (A) of this paragraph.

21 \* Sec. 3. AS 09.25.051, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this  
22 Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent that Rule 703  
23 would limit the admissibility of DNA profile evidence as a result of the application of the  
24 standard previously adopted by the Alaska Supreme Court in *Pulakis v. State*, 476 P.2d 474  
25 (Alaska 1970), that requires a finding of general acceptance of scientific evidence in the relevant  
26 scientific community as a precondition of admission of scientific evidence.

# ALASKA CIVIL LIBERTIES UNION

*An Affiliate of the American Civil Liberties Union*  
P. O. Box 201844 Anchorage, AK 99520-1844  
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 14, 1995

**R E C E I V E D**  
FEB 21 1995

The Honorable Brian Porter  
Chair, Judiciary Committee  
Alaska House of Representatives  
State Capitol Building - Room 118  
Juneau, AK 99801-1182

**Rep. Brian Porter**

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express concerns about sponsor substitute for House Bill 52 which is currently pending before the House Judiciary Committee. The AkCLU has concerns both with the introduction of DNA evidence and with the erosion of the standard governing admission of DNA evidence in Alaska courts.

Our basic mandate as an organization is to protect the Constitution and the Bill of Rights which are the cornerstones of our democracy. The most basic of all of our cherished democratic rights is the right to due process; namely, a fair and open trial whenever the government is attempting to deprive a person of liberty or property. We are very concerned at what appears to be an erosion of due process rights in the guise of fighting the "war on crime." Without the protections of due process, the risks of repression and unfair conviction are very high.

The introduction of DNA identification testimony may present significant due process problems if:

(1) it is presented to juries with the infallible aura of science;

(2) laboratories that conduct forensic testing, including DNA testing, are not regulated and test results are not reliable or valid;

(3) given the difficulty of litigating the complexities of this issue and the fact that the defendant is likely to have fewer resources than the government, it is difficult for lay finders of fact (i.e., juries) to understand the scientific processes leading to the conclusory testimony presented to them; or

(4) its claims are so ambitious that the testimony often threatens to subvert the standard of proof beyond a reasonable doubt required by due process in a criminal trial.

Accordingly, the AkCLU believes that before DNA identification should be admitted, the prosecution must prove that (1) the general principles underlying the forensic use of the DNA test are accepted as accurate by a consensus of the scientific community; (2) the actual procedures used in an individual case comport with those general principles and, in particular, that the laboratories involved in the testing were sufficiently regulated to ensure the reliability and validity of these results; and (3) the probability derived from the DNA evidence used to identify the defendant was calculated through use of appropriate statistical principles of population genetics and adequately developed data bases. Until this showing can be made, DNA testimony should not be admitted in criminal cases.

The Alaska Civil Liberties Union is not per se opposed to the introduction of DNA evidence in criminal or civil proceedings. Rather, we caution that the aura of infallibility which is associated with DNA testing poses a potentially grave problem. Instead of loosening the requirements for admissibility of DNA evidence, we believe that even tighter protocols should apply when the prosecution seeks to use DNA evidence to convict a defendant.<sup>1</sup> Unless the trier of fact understands the underlying processes of DNA testing to such a degree that it can adequately judge the reliability of the testing, the trier of fact will assume that the test results "conclusively" establish a fact which may not be true.

It is unclear from the language of the bill if, and to what extent, the defendant would be allowed to challenge the validity of the DNA evidence. It is also unclear if this challenge would be in front of the judge or in front of the jury. The bill appears to presume that DNA evidence would automatically be admitted regardless of whether it is scientifically established. This is deeply troubling to the AKCLU.

Part of the confusion stems from the language of Section 1 of the bill, which claims that the legislature wishes to change the standard for admissibility from the standard of Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), to the more recent standard of Daubert v. Merrill Dow Pharmaceutical, Inc., 113 S.Ct. 2786 (1993); unfortunately, however, the language of HB 52 does not follow the holding of the Daubert case.

In Daubert, the U. S. Supreme Court announced a new test for determining the admissibility of evidence in federal court. The Frye test had previously required that before evidence could be admitted in court it first had to reach a general level of

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<sup>1</sup> A different question is presented when the defendant is the proponent of such evidence. See Chambers v. Mississippi, 410 U.S. 284 (1983).

acceptance within the scientific community. In the Daubert case, the trial court had dismissed plaintiff's suit against Dow pharmaceutical for birth defects caused by a drug manufactured by Dow. To establish its case, the plaintiff had called experts who testified that the drug Bendectin had caused the birth defects; the defendants called different experts who refuted those studies and their methodology. The court ruled that the lack of consensus on the testing established that a general level of acceptance had not yet been reached within the scientific community and accordingly dismissed the plaintiff's case.

The United States Supreme Court reversed the lower court's decision, holding that the Federal Rules of Evidence replaced the Frye test and that the Rules were intended to be "flexible" and "liberal" and should allow new and progressive scientific techniques to be considered if certain scientific criteria had been established. The Daubert court did not say that a certain body of evidence (such as DNA) could be admitted in court without any type of scrutiny. Rather, the court laid out numerous criterion to be examined in determining the admissibility of evidence, including: (1) whether the testing hypotheses could be falsified; (2) whether the testing had been subjected to peer review and publication; (3) what the known or potential rate of error in the testing protocol was; and (4) whether the test had been generally accepted within the scientific community.

Instead of the absolute standard established in Frye, the Daubert court set out a standard which weighed many different factors, including the general acceptance of the methodology within the scientific community. The Daubert court still required the judge to determine the admissibility of evidence weighing the above criteria; it did not presume the wholesale admission of one particular type of evidence under any circumstance.

Herein lies our major concern for House Bill 52 -- it is very dangerous to allow the wholesale introduction of one particular type of evidence without the requirement of reliability, both in the underlying scientific theory and in the testing protocol used in each particular case. The civil liberties concern is obvious: if evidence is admitted without the requirement of establishing its validity, innocent persons may be convicted.

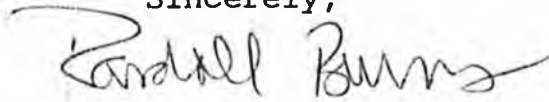
Not only is this bill of concern from a civil liberties perspective, it is unnecessary from a legal perspective. Alaska Courts have already ruled in a number of instances that DNA evidence may be admitted in court, even when using the Frye test (which is the current test relied upon by Alaska courts). There is no need to change the rules of evidence presently governing the admission of DNA evidence. If the DNA testing protocol is sound, the evidence will be admitted -- if the testing protocol is not sound, then allowing the evidence to be admitted could have

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disastrous consequences.

In short, there is no need to change the law governing the introduction of DNA evidence. Passing this bill could have extremely negative consequences. Please do not allow this bill to go any further.

Sincerely,

A handwritten signature in cursive script that reads "Randall Burns". The signature is written in dark ink and is positioned above the typed name.

Randall Burns,  
Executive Director  
Alaska Civil Liberties Union

9-LS0242M ✓

Chenoweth

2/22/95

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GREEN, 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; and amending Rule 703 of the Alaska Rules  
3 of Evidence."

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

5 \* Section 1. AS 09.25 is amended by adding a new section to read:

6 Sec. 09.25.051. ADMISSIBILITY OF DNA PROFILES. (a) In a civil action or  
7 proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
8 fact if the court finds that the technique underlying the evidence is scientifically valid.  
9 The admission of the DNA profile does not require a finding of general acceptance in the  
10 relevant scientific community of DNA profile evidence.

11 (b) In this section,

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

14 (2) "DNA profile"

1 (A) means an analysis of blood, semen, tissue, or other cells  
2 bearing deoxyribonucleic acid resulting in the identification of the individual's  
3 patterned chemical structure of genetic information;

4 (B) includes statistical population frequency comparisons of the  
5 patterned chemical structures described in (A) of this paragraph.

6 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

7 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action  
8 or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
9 fact, if the court finds that the technique underlying the evidence is scientifically valid.  
10 The admission of the DNA profile does not require a finding of general acceptance in the  
11 relevant scientific community of DNA profile evidence.

12 (b) In this section,

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

15 (2) "DNA profile"

16 (A) means an analysis of blood, semen, tissue, or other cells  
17 bearing deoxyribonucleic acid resulting in the identification of the individual's  
18 patterned chemical structure of genetic information;

19 (B) includes statistical population frequency comparisons of the  
20 patterned chemical structures described in (A) of this paragraph.

21 \* Sec. 3. AS 09.25.051, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this  
22 Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent that Rule 703  
23 would limit the admissibility of DNA profile evidence as a result of the application of the  
24 standard previously adopted by the Alaska Supreme Court in *Pulakis v. State*, 476 P.2d 474  
25 (Alaska 1970), that requires a finding of general acceptance of scientific evidence in the relevant  
26 scientific community as a precondition of admission of scientific evidence.

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

Handwritten annotations: A vertical line is drawn through the text. At the bottom, the numbers 401, 403, and 705 are circled, with arrows pointing down to the word "no" written twice.

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

10 \* Section 1. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE. (a) The  
 11 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 of  
4 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 of  
6 any presently existing technique and recognizes the importance of this scientific breakthrough  
7 in providing a reliable and accurate tool for the investigation and prosecution of crimes;

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

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

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

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

24 (b) In amending Alaska Rules of Evidence 702(a) and 703 in secs. 7 and 8 of this Act,  
25 it is the purpose of the legislature to change the appropriate standard for the admissibility of  
26 DNA evidence in civil and criminal proceedings. The legislature's amendment of this rule would  
27 eliminate, as to DNA evidence, the principle of "general acceptance" underlying scientific  
28 evidence as a precondition to the admissibility of scientific evidence in a criminal or civil action,  
29 a principle first enunciated in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923) and adopted  
30 for the courts of this state in Pulakis v. State, 476 P.2d 474, 478 (Alaska 1970). In its place, the  
31 legislature opts to substitute the comparable rule applicable to the introduction of scientific

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

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

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

11 (b) In this section,

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

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

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

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

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

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

27 (1) if the person

28 (A) is or has been a public servant;

29 (B) [(1)] learns confidential information through employment as  
30 a public servant; and

31 (C) [(2)] while in office or after leaving office, uses the

1 confidential information for personal gain or in a manner not connected with the  
2 performance of official duties other than by giving sworn testimony or evidence  
3 in a legal proceeding in conformity with a court order; or

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

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

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

11 (b) In this section,

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

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

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

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

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

26 (1) a blood sample from a person

27 (A) who is to be incarcerated in a correctional facility shall be  
28 drawn at the correctional facility at which the person is committed to the custody  
29 of the commissioner of corrections, unless the Department of Corrections  
30 designates another place;

31 (B) who, as a part of the person's sentence, is not to be

1           incarcerated in a correctional facility shall be drawn at a time and place specified  
2           by the sentencing court;

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

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

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

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

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

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

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

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

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

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

18 (h) The Department of Public Safety

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

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

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

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

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

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

3 (k) The Department of Public Safety

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

6 (2) shall adopt regulations establishing

7 (A) methods of obtaining information from the DNA data bank;

8 and

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

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

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

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

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

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

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

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

29 (3) [BUT] must be of a type reasonably relied upon by experts in the  
30 particular field in forming opinions or inferences upon the subject; however, when used  
31 to support the admission of evidence that is based on a deoxyribonucleic acid (DNA)

1 profile, the facts or data that relate to and support the expert opinion or inference  
2 as to scientific knowledge need not be sufficiently established to have become  
3 generally accepted in the particular field to which the facts or the data belong.

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

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

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

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

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