

**HB**

**143**



*Adopted*

22-LS0234\F  
Luckhaupt  
3/14/01

**CS FOR HOUSE BILL NO. 143( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MURKOWSKI, Dyson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the deoxyribonucleic acid (DNA) identification registration system."**

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

3 **\* Section 1.** AS 44.41.035(b) is amended to read:

4 (b) The Department of Public Safety shall collect for inclusion into the DNA  
5 registration system a blood sample, oral sample, or both, from (1) a person convicted  
6 of burglary or a crime against a person, and (2) a minor 16 years of age or older,  
7 adjudicated as a delinquent for an act that would be burglary or a crime against a  
8 person if committed by an adult. The DNA identification registration system consists  
9 of the blood or oral samples drawn under this section, any DNA or other blood  
10 grouping tests done on those samples, and the identification data related to the samples  
11 or tests. Blood samples and oral samples from persons not subject to testing under this  
12 section, and test or identification data related to those samples, may not be entered  
13 into, or made a part of, the DNA identification registration system.

14 **\* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

1           APPLICABILITY. Section 1 of this Act applies to all convictions and adjudications  
2 as a delinquent occurring on or after the effective date of this Act.

# ALASKA STATE LEGISLATURE

*Chair:*  
LABOR AND COMMERCE

*Member:*  
MILITARY AND VETERANS AFFAIRS  
COMMUNITY AND REGIONAL AFFAIRS  
LEGISLATIVE COUNCIL  
JOINT ARMED SERVICES



**REPRESENTATIVE LISA MURKOWSKI**  
Government Hill • Elmendorf • East Anchorage


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## Memorandum

Date: March 19, 2001

To: Representative Norman Rokeberg  
Chairman, House Judiciary Committee

From: Representative Lisa Murkowski 

Subject: Scheduling HB 143

MAR 19 2001

House Bill 143, DNA Database, expands Alaska's DNA registration system to include convictions for burglary. National statistics indicate that 52 percent of those who have committed violent crimes have had burglary convictions in their past. There is an alarming correlation between burglary and violent crimes. To date, 24 states include DNA testing for convicted burglars. Expanding Alaska's DNA registry will dramatically impact law enforcement's ability to identify and solve violent crimes.

Enclosed you will find a committee substitute for your consideration, a sponsor statement, and supporting documentation. Please schedule HB 143 at your earliest convenience.

# ALASKA STATE LEGISLATURE

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LABOR AND COMMERCE

**Member:**  
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## Sponsor Statement

### HB 143

**“An Act relating to deoxyribonucleic acid (DNA) identification registration system.”**

In 1995, the Alaska legislature passed legislation creating the DNA registration system to assist law enforcement in identifying perpetrators of violent crimes. DNA evidence has proven very effective in identifying and convicting violent criminals. All 50 states require testing and storage of DNA profiles for convicted sex offenders.

Alaska's current statute requires DNA testing of sex offenders, and also includes those convicted of crimes against persons to include assault, rape, kidnapping, murder, child sexual abuse, robbery, stalking, indecent exposure, extortion, coercion, and first degree arson. National statistics indicate that 52 percent of those who have committed violent crimes have had burglary convictions in their past. There is an alarming correlation between burglary and violent crimes.

House Bill 143 expands Alaska's DNA registration system to include convictions for burglary. To date, 24 states include DNA testing for convicted burglars. Expanding Alaska's DNA registry will dramatically impact law enforcement's ability to identify and solve violent crimes. I appreciate your considered and favorable support.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_

Bill Version: HB 143

( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_

Dept. Affected: Administration

Title: "An Act relating to the DNA identification registration system...."

BRU: Legal & Advocacy Svc.

Component: Public Defender Agency

Sponsor: Representative Murkowski

Requester: (H) Judiciary

Component Number: 1631

**Expenditures/Revenues**

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OFFPATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill adds burglary to the list of crimes for which, after conviction, a defendant can be required to give a DNA sample. The bill also allows inclusion of DNA data from missing persons or their relatives and unidentified human remains in the DNA identification system. This bill will most likely have fiscal impact on the Public Defender Agency. Failing to comply with a valid request to provide a DNA sample is already a Class A misdemeanor. See AS. 11.56.760. The Agency is likely to be appointed to represent people accused of this crime.

Currently the Public Defender Agency has few of these cases. If the sampling program becomes more widespread with the inclusion of additional crimes and more samples being requested, more refusals will undoubtedly be prosecuted. In that case there could be a significant fiscal impact on the Public Defender Agency. Over 680 people were arrested for burglary in Alaska in 1999 (Crime Reported in Alaska, 1999, Department of Public Safety).

Prepared by: Barbara Brink, Director

Phone (907) 334-4414

Division: Public Defender Agency

Date/Time April 4, 2001

Approved by: Jim Duncan, Commissioner

Date 4/4/01

Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 143  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Dept. of Public Safety  
Title: An Act relating to the DNA identification BRU: AST-Detachments  
registration system Component: AST-Detachments  
Sponsor: Representative Murkowski  
Requester: House Judiciary Committee Component Number: 2325

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</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>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnagan Phone (907)269-4532  
Division: Alaska State Troopers Date/Time 4/4/01 12:00 AM  
Approved by: Commissioner Glenn G. Godfrey Date 4/4/01  
Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

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# Study: Many rapists were thieves first

## Results may lead to taking DNA for lesser crimes

By Richard Willing  
USA TODAY

WASHINGTON — At least 40% of men who ultimately are arrested for rape begin their criminal careers with property crimes such as burglary and petty theft, says a study of Virginia's convict DNA database scheduled to be released today.

The Virginia study of 40 rape suspects is the first U.S. analysis of the link between property crime and subsequent sex offenses. It likely will prompt more calls to expand the list of crimes for which DNA is drawn from convicts.

Most of those state databases focus on collecting DNA from violent criminals as a way to quickly identify repeat offenders. But law enforcement agencies and other supporters of expanded databases also want to include non-violent offenders such as burglars. That way, proponents say, more potential rapists would be entered in state DNA databases and matched more quickly to serious crimes.

"To catch those who commit the most serious crimes, you're



By Mark Foley, AP

Statistics show: David Coffman, Florida's DNA database director, says many rapes are "crimes of opportunity."

going to want to collect DNA from those whose crimes at first don't seem so bad," says Paul Ferrara, director of Virginia's DNA database and a study co-author. "In many cases, ultimately they're going to prove to be the same people."

Critics of database expansion say the Virginia study's conclusions are based on too small a group of convicts.

"If you're going to expand databases, you're going to have to be smart about it," says Harlan Levy, a lawyer in New York and author of *And the Blood Cried Out*, a book about using DNA in the courtroom.

"You can't make really broad

judgments based on narrow data," he says.

Virginia's findings echo the results of a British government study from 1998 that found that more than three-quarters of rapists in the United Kingdom were burglars first. In Florida, an ongoing study of that state's sex offenders has found that more than half were previously burglars or petty thieves.

The Virginia study is scheduled to be discussed here today at a meeting of the National Commission on the Future of DNA Evidence.

All states require DNA, the body chemical that carries an individual's unique genetic

code, to be drawn from some convicted offenders. That information is stored on a computer database. Authorities then can check whether DNA taken from crime scenes matches any DNA profile in the database.

All states take DNA, typically in the form of blood or saliva, from convicted sex offenders, and most collect it from murderers. But only seven states do DNA profiles of all felons, including burglars and other non-violent offenders. And lately, state legislatures have resisted efforts to expand DNA databases. This year, 17 state legislatures considered proposals to expand the list of crimes for which DNA is drawn. Eight passed such measures.

Virginia, which began the first state DNA database in 1989, is among the seven states that take samples from all convicted felons.

The study tracked 40 men in Virginia who were matched by DNA evidence to unsolved rape, sodomy or indecent exposure cases from 1993 through 1999.

About 60% were matched because their DNA had been filed after they were convicted of a previous sex offense. But the other 40% were caught because their DNA was on the database for lesser felonies, mainly burglary and larceny.

"If you just (take DNA for) a rape conviction, you're giving someone, in effect, a free rape before they can be put on the database and matched," Virginia's Ferrara says. "But if you include the so-called 'gateway' or 'predictor' crimes, you're much more effective."

David Coffman, Florida's DNA database director, says the data suggest that rapes are often "crimes of opportunity" committed by burglars who find women home alone.

"Anecdotally, police have known this for a long time," says Coffman, who is studying the criminal history of convicts in Florida. "Now we can quantify it and, better yet, do something about it."

Prodded by Coffman's statistics, the Florida Legislature recently added burglary to the crimes for which DNA can be collected.

Jerry Lyell, a defense lawyer in Arlington, Va., criticized the expanded databases as part of a "general trend" among prosecutors to try to convince the public that DNA evidence is "always the be-all and end-all."

"Do we really want every minor offender's genetic code in the government's hands, just because some prosecutor argues that it might help him make a case somewhere down the road?" Lyell asks. "That's asking a lot."

The Nation

# States' DNA database laws and 'qualifying offenses'

All 50 states have laws authorizing them to collect DNA from convicts and match it via a computer database to unsolved crimes. All states draw DNA from sex offenders, and most take it from killers. But some states collect DNA from a variety of lesser criminals — robbers, burglars, even white-collar criminals. Types of criminals who may be tested in each state: (Cover story, 1A)

	Sex Offenses	Offenses against children	Murder	Assault/battery	Robbery	Kidnaping	Burglary	Felony attempts	Juvenile	All felonies
Ala.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Alaska	✓	✓	✓	✓	✓	✓		✓	✓	
Ariz.	✓	✓					✓		✓	
Ark.	✓	✓	✓	✓	✓	✓			✓	
Calif.	✓	✓	✓	✓				✓	✓	
Colo.	✓	✓							✓	
Conn.	✓	✓				✓				
Del.	✓	✓						✓		
Fla.	✓	✓	✓	✓	✓		✓	✓	✓	
Ga.	✓	✓								✓
Hawaii	✓	✓	✓	✓						
Idaho	✓	✓	✓	✓	✓			✓	✓	
Ill.	✓	✓						✓	✓	
Ind.	✓	✓	✓	✓	✓	✓	✓			
Iowa	✓	✓	✓	✓		✓	✓			
Kan.	✓	✓	✓					✓	✓	
Ky.	✓	✓								
La. <sup>1</sup>	✓	✓	✓	✓		✓		✓	✓	
Maine	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Md.	✓	✓	✓	✓	✓					
Mass.	✓	✓	✓	✓	✓	✓	✓	✓		
Mich.	✓	✓								
Minn.	✓	✓	✓					✓	✓	
Miss.	✓	✓								
Mo.	✓	✓	✓	✓		✓				
Mont.	✓	✓	✓	✓	✓	✓		✓	✓	
Neb.	✓	✓	✓							
Nev.	✓	✓	✓	✓			✓	✓		
N.H.	✓	✓								
N.J.	✓	✓						✓	✓	
N.M.	✓	✓	✓	✓	✓	✓	✓		✓	✓
N.Y.	✓	✓	✓	✓						
N.C.	✓	✓	✓	✓	✓	✓				
N.D.	✓	✓						✓		
Ohio	✓	✓	✓			✓		✓	✓	
Okla.	✓	✓	✓	✓						
Ore.	✓	✓	✓				✓	✓	✓	
Pa.	✓	✓	✓					✓	✓	
R.I.	✓	✓	✓							
S.C.	✓	✓	✓	✓			✓		✓	
S.D.	✓	✓								
Tenn.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Texas	✓	✓	✓	✓			✓		✓	
Utah	✓	✓	✓			✓				
Vt.	✓	✓	✓	✓	✓	✓	✓	✓		
Va.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Wash.	✓	✓	✓	✓	✓	✓	✓	✓	✓	
W.Va.	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Wis.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Wyo.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Total states	50	40	37	28	19	22	18	25	24	7

1 — Beginning Sept. 1, Louisiana is authorized to collect DNA samples from people charged with qualifying offenses.

## **Alaska Civil Liberties Union**

*An Affiliate of the American Civil Liberties Union*

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: House Judiciary Committee  
From: Jennifer Rudinger, Executive Director  
Date: Friday, April 6, 2001

Re: **HB 143: DNA collection from persons convicted of burglary and missing persons/unidentified human remains/relatives of missing persons**

The Alaska Civil Liberties Union opposes HB 143 and respectfully urges the House Judiciary Committee to put an end to the progressive expansion of DNA collection by the government. DNA collected from one person not only reveals personal information about that person (much of which has nothing to do with serving the needs of law enforcement), but it also reveals very personal information about that person's blood relatives. Unlike fingerprinting, which only reveals information that can be used for identification purposes, DNA gives the government control over a great deal of personal, private information about anyone related to the sample source. Therefore, expansion of the government's power to collect DNA from its citizens – even people convicted of crimes – should not be taken lightly. HB 143 proposes to invade the privacy of innocent people, and the government's only justifications are that in Alaska, there is roughly a 6% chance that burglars *might* later commit violent crimes in which they leave DNA evidence at the crime scene or that the DNA "may benefit law enforcement" in its efforts to solve missing persons crimes.

To give the Committee some background, DNA testing and profiling are becoming increasingly more common. States across the country and the federal government are expanding the scope of their DNA data banks as scientific knowledge about the content of this genetic material is growing by leaps and bounds.

In October 1998, the FBI opened a national database that brings together the DNA records from all 50 states and the federal government into one centralized system, known as CODIS (Combined DNA Index System). If this trend is allowed to continue, the most intimate and personal information about each individual could routinely become a matter of public record, to be used and abused at the state's discretion.

Initially, these DNA storehouses were created to house information about convicted sex offenders exclusively. The argument was that sex offenders were especially prone to recidivism, typically left DNA evidence at the crime scene, and hence, were important to identify. Whether or not that argument was sufficient, we were assured at the time that only convicted sex offenders would be tested, and the information gleaned from these tests would be used by law enforcement officials strictly for identification purposes.

But it is often the case that information initially collected for one, limited purpose is before long used for many other purposes. Slowly and inexorably, the pool of people

being tested, and the range of uses for the data, has been expanding, raising grave concerns for personal privacy. In less than a decade, law enforcement officials across the country have gone from advocating collection of DNA from only convicted sex offenders, to all violent offenders, to all burglars, to all persons convicted of any crime, to all juvenile offenders. In many states, the DNA samples are maintained even if a conviction is overturned.

Louisiana has gone a step further. A new state law will collect DNA data from everyone *arrested* for a felony crime -- before they have been convicted. In Louisiana, the record can be kept even if the person is found innocent. Former U.S. Attorney General Janet Reno asked the National Commission on the Future of DNA Evidence to look into the possibility of applying this concept across the country. In December 1998, New York City Police Commissioner Howard Safir jumped on the bandwagon, proposing the same idea. And New York's Mayor Rudy Giuliani not only voiced his support for the proposal, but went so far as to say that he would support the collection of DNA samples from all babies *at birth*, giving the city a genetic database of all its citizens!

The collection of DNA samples and the creation of DNA data banks have legitimate and vital medical, scientific and forensic purposes. Research can lead to treatments and even cures for many genetic diseases. DNA can prove that an individual was at the scene of a crime. It can also prove the innocence of a suspect, preventing terrible miscarriages of justice. DNA can even be used to correct wrongful convictions based upon an erroneous identification (although law enforcement and prosecutors are decidedly less enthusiastic about this use).

But it is equally clear that there is tremendous potential for abuse. The vast amount of information to be gleaned, the incredible longevity of DNA samples, and the ease with which DNA databases can be shared and accessed raise grave privacy, equality and due process concerns. Though DNA has been touted as a high-tech equivalent to fingerprints, this comparison is dangerously misleading. Where fingerprints can be used for identification purposes only, DNA samples can provide insight into a breathtaking wealth of singularly private information -- information about a person's ethnicity, family relationships, family history and the likelihood of getting some 4,000 genetic conditions and diseases. This information belongs to each individual, not the government. Further, geneticists are constantly increasing the database of information that can be gleaned from DNA -- some even claim that there are genetic markers for "criminal tendencies," sexual orientation, substance abuse, etc. The possibilities -- and thus the dangers -- are endless.

Today, the growing law enforcement databases raise the immediate specter of widespread discrimination. Given the over-targeting of Alaska Natives, African Americans, Latinos and other minorities within the criminal justice system nationwide, the government will have the disproportionate power to track millions of people of color.

Now the sponsor of HB 143 wants the Alaska Legislature to expand DNA sampling to include convicted burglars, unidentified human remains, missing persons and relatives of missing persons! It will help identify more violent criminals in the future

or find missing persons, proponents say. Claiming that this is a minor and necessary expansion of the present system, proponents ask, "What's the harm?"

Because genetic information pertains not only to the individual whose DNA is sampled, but to everyone who shares in that person's blood line, potential threats to genetic privacy posed by their collection extend well beyond the millions of Americans whose samples are currently on file. Moreover, there is no requirement in HB 143 or in the Alaska Statutes that the DNA sample from which genetic information is taken be destroyed. It is precisely the availability of these samples lying around that sparks ingenious ideas about new ways to use the information contained in those samples, thus prompting new legislation authorizing ever-increasing numbers of permissible uses for Alaskan citizens' DNA. This allows for the future possibility that all of the information could be used in other ways that we cannot even anticipate today.

For a perfect example of this phenomenon that the ACLU calls "function creep," the Committee needs look no further than this bill. Shortly after SB 99 was introduced in the Senate (mandating collection from burglars only), Rep. Murkowski introduced HB 143 in the House and suggested that the State should not stop at burglars but should go so far as to allow law enforcement to demand DNA samples from anyone related to a missing person if law enforcement articulates even a remote possibility that this information "may benefit law enforcement." In order to allow such government seizure of Alaskans' DNA, the government must demonstrate a much tighter fit between ends and means than simply alleging that it "may benefit law enforcement."

We do not doubt that the sponsors of HB 143 and SB 99 have good intentions. However, once the genie is out of the bottle, so to speak, it can be impossible to close the lid on ever-expanding uses for this technology. Therefore, we urge you to exercise the utmost caution when considering the implications of expanding the State's ability to collect DNA from its citizens. There is a long and unfortunate history of despicable behavior by governments toward people whose genetic composition has been considered "abnormal" under the prevailing societal standards of the day. While the FBI has stated that this information will be used for limited forensic purposes, the history in our country is that information compiled for one purpose will be used for another. For example, Social Security numbers were initially intended only for use as an aid tracking social security payments but are now a universal identifier. Another example, Census records created for general statistical purposes were used to round up innocent Japanese Americans and place them in internment camps during World War II.

Your constituents throughout Alaska are concerned about the government's ever-increasing control over their personal information, and their concerns cross party and ideological lines. The Alaska Civil Liberties Union fields inquiries virtually every week regarding the government's demand for personal information – Social Security numbers, Census information, background checks, DNA and genetic information, etc. Almost every week, Alaskans voice concerns that the government cannot be trusted to keep this information confidential or to limit its use to the initial purpose for which it is given. And we agree. Your constituents are right.

AkCLU Position Paper on HB 143  
Page 4 of 4

In conclusion, HB 143 does not "only" affect the person from whom a DNA sample is taken – it affects their relatives, who are law-abiding citizens innocent of any crime. And the government's proposed justification for collecting DNA from burglars just doesn't fly in Alaska. Unlike the other states that law enforcement likes to cite, the Department of Public Safety has conceded that in Alaska, only 6% of burglars ever go on to commit a violent crime – meaning that 94% do not. We should not take DNA from people who have never committed a violent crime on the theory that someday 6% of them *might* commit a violent crime. If so, where will this end?

Please end it here and now. Please do not pass HB 143.