

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0399

## HOUSE JUDICIARY ENGROSSED NO. **HB 1064** 1/25/2010

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney  
General

1 FOR AN ACT ENTITLED, An Act to establish a process for persons rendering emergency aid  
2 to require testing for blood-borne pathogens and to provide for the confidentiality of the  
3 source individual.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 23A-35B-1 be amended to read as follows:

6 23A-35B-1. Terms used in this chapter mean:

- 7 (1) "Assault," an offense described in § 22-18-1, in which the facts show a possibility of  
8 exchange of bodily fluids;
- 9 (2) "Blood-borne pathogens," any of a family of pathogenic micro-organisms that are  
10 present in and may be transmitted by human blood, including hepatitis B and HIV;
- 11 (3) "Crime of violence," any of the offenses described in subdivision 22-1-2(9);
- 12 (4) "Defendant," a person as described in subdivision 23A-45-9(4);
- 13 (5) "Emergency medical services person," a person who renders emergency care or  
14 assistance including:



- 1           (a) A person employed or receiving compensation to provide out-of-hospital  
2           emergency medical services such as a firefighter, paramedic, emergency  
3           medical technician, licensed nurse, rescue squad person, or other person who  
4           serves as an employee or volunteer of an ambulance service or other first  
5           responder, who provides out-of-hospital emergency medical services during  
6           the performance of the person's duties;
- 7           (b) A person employed as a law enforcement officer;
- 8           (c) A person employed as a coroner or a funeral director;
- 9           (d) A person employed as a forensic crime laboratory worker while working  
10           outside the laboratory and involved in a criminal investigation; or
- 11           (e) A person who renders emergency care or assistance at the scene of an  
12           emergency or while an injured person is being transported to receive medical  
13           care and who is acting as an unpaid volunteer also known as a good samaritan;
- 14           (6) "HIV," the human immunodeficiency virus or any other identified causative agent of  
15           acquired immune deficiency syndrome (AIDS);
- 16           ~~(6)~~(7) "Juvenile," a minor charged in juvenile court with being a delinquent child as the  
17           result of actions that would constitute a sexual assault, an assault or a crime of  
18           violence in criminal court;
- 19           ~~(7)~~(8) "Law enforcement officer," any person described in subdivision 23A-45-9(9) or (14);
- 20           ~~(8)~~(9) "Sexual assault," an offense described in chapter 22-22 in which the facts show a  
21           possibility of exchange of bodily fluids;
- 22           (10) "Source individual," any person, living or dead, whose blood, tissue, or potentially  
23           infectious body fluids may be a source of blood-borne pathogen exposure to an  
24           emergency medical services person;

1       ~~(9)~~(11)       "Test," "testing," any medically recognized test for determining the presence  
2                   of blood-borne pathogens; and

3       ~~(10)~~(12)       "Victim," any person who is the direct subject of an alleged act which would  
4                   constitute a crime of violence as defined by subdivision 22-1-2(9), a violation  
5                   of chapter 22-22, an assault as defined by § 22-18-1, a violation of § 22-18-26,  
6                   or a motor vehicle accident which involved a violation of chapter 32-23 or the  
7                   parent or guardian of such a person if the person is under age eighteen. Except  
8                   for § 23A-35B-3, a victim also includes any emergency medical services  
9                   person who has potentially been exposed to a blood-borne pathogen while  
10                  rendering aid to a source individual. If a victim is unable to make a request,  
11                  a member of the victim's immediate family may make such request upon the  
12                  victim's behalf.

13       Section 2. That chapter 23A-35B be amended by adding thereto a NEW SECTION to read  
14       as follows:

15       An emergency medical services person who is a victim may request in writing to the source  
16       individual or if the source individual is deceased to the source individual's estate for medical  
17       records or information concerning blood-borne pathogens. If the source individual or the estate  
18       deny the request or do not provide a response within three business days, the emergency medical  
19       services person may file a motion with the circuit court to require the source individual to  
20       provide the information or to be tested for blood-borne pathogens by the Department of Health  
21       and that an order be obtained for the purpose of taking a blood sample from the source  
22       individual for testing. The motion shall state that the emergency medical services person  
23       believes there was an exchange of blood, semen, or other bodily fluids from the source  
24       individual to the emergency medical services person and shall state the factual basis for

1 believing there was such an exchange. The court shall hold a hearing at which both the  
2 emergency medical services person and the source individual may be present. If the court finds  
3 probable cause to believe that there was an exchange of blood, semen, or other bodily fluids  
4 from the source individual to the emergency medical services person, the court may issue an  
5 order for the purpose of taking a blood sample from the source individual for testing for blood-  
6 borne pathogens. If the source individual is not available for testing, the court may order a  
7 release of medical information from the source individual's medical providers to the emergency  
8 medical services person.

9 Section 3. That § 23A-35B-5 be amended to read as follows:

10 23A-35B-5. All persons involved in carrying out the provisions of this chapter shall act in  
11 a manner that will protect the confidentiality of the victim, the source individual, and the  
12 defendant or juvenile, including sealing relevant court records. The results of the test for  
13 infection by blood-borne pathogens may not be used to establish a defendant's guilt or innocence  
14 of the charge and may not be used to determine a juvenile's status as a delinquent child.