

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0399

HOUSE ENGROSSED NO. **HB 1064** - 1/27/2010

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 exposed to certain blood-  
2 borne infections to require testing for blood-borne pathogens and to provide for the  
3 confidentiality of the 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:
- 15 (a) A person employed or receiving compensation to provide out-of-hospital



1 emergency medical services such as a firefighter, paramedic, emergency  
2 medical technician, licensed nurse, rescue squad person, or other person who  
3 serves as an employee or volunteer of an ambulance service or other first  
4 responder, who provides out-of-hospital emergency medical services during  
5 the performance of the person's duties;

6 (b) A person employed as a law enforcement officer;

7 (c) A person employed as a coroner or a funeral director;

8 (d) A person employed as a forensic crime laboratory worker while working  
9 outside the laboratory and involved in a criminal investigation; or

10 (e) A person who renders emergency care or assistance at the scene of an  
11 emergency or while an injured person is being transported to receive medical  
12 care and who is acting as an unpaid volunteer also known as a good samaritan;

13 (6) "HIV," the human immunodeficiency virus or any other identified causative agent of  
14 acquired immune deficiency syndrome (AIDS);

15 ~~(6)~~(7) "Juvenile," a minor charged in juvenile court with being a delinquent child as the  
16 result of actions that would constitute a sexual assault, an assault or a crime of  
17 violence in criminal court;

18 ~~(7)~~(8) "Law enforcement officer," any person described in subdivision 23A-45-9(9) or (14);

19 ~~(8)~~(9) "Sexual assault," an offense described in chapter 22-22 in which the facts show a  
20 possibility of exchange of bodily fluids;

21 (10) "Source individual," any person, living or dead, whose blood, tissue, or potentially  
22 infectious body fluids may be a source of blood-borne pathogen exposure to an  
23 emergency medical services person;

24 ~~(9)~~(11) "Test," "testing," any medically recognized test for determining the presence

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

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

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

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

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

9 23A-35B-5. All persons involved in carrying out the provisions of this chapter shall act in  
10 a manner that will protect the confidentiality of the victim, the source individual, and the  
11 defendant or juvenile, including sealing relevant court records. The results of the test for  
12 infection by blood-borne pathogens may not be used to establish a defendant's guilt or innocence  
13 of the charge and may not be used to determine a juvenile's status as a delinquent child.