

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

571B0256

## HOUSE JUDICIARY ENGROSSED NO. **HB 1061** 2/6/2019

Introduced by: Representatives Reed, Barthel, Borglum, Diedrich, Hansen, Johns, Milstead, Olson, Peterson (Kent), Reimer, Smith (Jamie), and Sullivan and Senators Schoenbeck, Bolin, Kolbeck, Monroe, Soholt, Solano, Stalzer, and Youngberg

1 FOR AN ACT ENTITLED, An Act to provide for a court order to test for HIV at the request  
2 of victims of certain crimes.

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

4 Section 1. That chapter 23A-35B be amended by adding a NEW SECTION to read:

5 A victim, or victim or witness assistant, may request in writing to the state's attorney that  
6 a defendant or juvenile against whom an information, indictment, or petition is presented for  
7 a crime in which, by force or threat of force, the defendant or juvenile compelled the victim to  
8 engage in sexual activity be tested for HIV by the Department of Health, and that a search  
9 warrant be obtained for the purpose of taking a blood sample from the defendant or juvenile to  
10 test for HIV. A request under this section shall state that the victim believes there was an  
11 exchange of blood, semen, or other bodily fluids from the defendant or juvenile to the victim,  
12 and shall state the factual basis for believing the exchange occurred.

13 Upon motion, a court of competent jurisdiction shall hold a hearing at which both the victim



1 and defendant or juvenile may be present. If the court finds probable cause that the defendant  
2 or juvenile committed the offense and that there was an exchange of blood, semen, or other  
3 bodily fluids from the defendant or juvenile to the victim, the court shall order a search warrant  
4 for the purpose of taking a blood sample from the defendant or juvenile to test for HIV in  
5 accordance with § 23A-35B-4. A blood sample shall be taken within forty-eight hours of the  
6 date of the request under this section or, if later, the date on which the information, indictment,  
7 or petition was:

- 8 (1) Presented or filed, and the defendant or juvenile was taken into custody; or
- 9 (2) Served on the defendant or juvenile.

10 The court shall include in the order a requirement for any follow-up test for HIV that is  
11 medically appropriate based on the results of the initial test. Payment for any test for HIV under  
12 this section shall be in accordance with § 23A-35B-4. The victim, victim or witness assistant,  
13 and the defendant shall be notified in accordance with § 23A-35B-4 of the results of any test for  
14 HIV under this section.