

AN ACT

ENTITLED, An Act to revise certain provisions relating to the collection, retention, and use of DNA samples.

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

Section 1. Terms used in this Act mean:

- (1) "CODIS," the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term includes the national DNA identification index administered and operated by the Federal Bureau of Investigation;
- (2) "Conviction," includes a finding of guilt by a jury or a court, guilty plea, plea of nolo contendere, or finding of not guilty by reason of insanity or mental disease or defect. A finding of not guilty by reason of insanity or mental disease or defect is considered a conviction solely for purposes of this Act insofar as such finding requires a person to provide a DNA sample;
- (3) "Criminal justice agency," an agency or institution of a federal, state, or local government, other than the office of the public defender, which performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders;
- (4) "DNA," deoxyribonucleic acid;
- (5) "DNA record," the DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification

analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual;

- (6) "DNA sample," a biological sample provided by any person with respect to offenses covered by this Act or submitted to the South Dakota State Forensic Laboratory pursuant to this Act for analysis or storage or both;
- (7) "FBI," the Federal Bureau of Investigation;
- (8) "Qualifying offense," any felony offense under the laws of this state, a crime of violence as defined in 22-1-2, or a violation of chapter 22-22.

Section 2. There is hereby established under the administration of the South Dakota State Forensic Laboratory the State DNA Database and State DNA Databank. The South Dakota State Forensic Laboratory shall provide DNA records to the Federal Bureau of Investigation for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA Databank shall serve as the repository for DNA samples obtained pursuant to this Act. The State DNA Database shall be compatible with the procedures specified by the Federal Bureau of Investigation, including use of comparable test procedures, laboratory and computer equipment, supplies, and computer platform and software. The State DNA Database shall have the capability provided by computer software and procedures administered by the South Dakota State Forensic Laboratory to store and maintain DNA records related to:

- (1) Crime scene evidence and forensic casework;
- (2) Convicted offenders and juveniles adjudicated delinquent who are required to provide a DNA sample under this Act;
- (3) Unidentified persons or body parts;
- (4) Relatives of missing persons; and
- (5) Anonymous DNA profiles used for forensic validation, forensic protocol development, or

quality control purposes or establishment of a population statistics database.

Section 3. The South Dakota State Forensic Laboratory shall:

- (1) Administer the State DNA Identification Record System to support law enforcement agencies and other criminal justice agencies;
- (2) Promulgate rules, pursuant to chapter 1-26, regarding DNA evidence collection, storage, and transfer, and the dissemination of information relating to the DNA evidence;
- (3) Provide for liaison with the FBI and other criminal justice agencies relating to the state's participation in CODIS and the National DNA Identification Index or in any DNA database designated by the South Dakota State Forensic Laboratory.

Section 4. Any person convicted or adjudicated delinquent for a qualifying offense on or after the effective date shall provide a DNA sample upon intake or as determined by the supervising agency. A person who has been convicted or adjudicated delinquent for a qualifying offense before the effective date of this Act and who is still incarcerated or under supervision as of the effective date shall provide a DNA sample as determined by the supervising agency or institution.

Section 5. Any person who is convicted or adjudicated delinquent for a qualifying offense on or after the effective date of this Act shall provide a DNA sample as follows:

- (1) Any person who is sentenced or receives a delinquency disposition to a period of incarceration shall provide a DNA sample upon intake to a prison, jail, juvenile detention facility, mental health facility, or any other detention facility or institution. If the person is already confined at the time of sentencing or adjudication, the person shall provide a DNA sample immediately after the sentencing or adjudication;
- (2) Any person who is convicted or adjudicated delinquent for a qualifying offense shall provide a DNA sample as a condition for any sentence or adjudication which disposition will not involve a period of incarceration. The agency supervising the person shall

determine the time for collection of the DNA sample; and

- (3) Under no circumstances may any person who is convicted or adjudicated delinquent for a qualifying offense be released in any manner after such disposition unless and until that person has provided a DNA sample.

Section 6. Any person who has been convicted or adjudicated delinquent for a qualifying offense before the effective date of this Act and who is still serving a period of incarceration or is still under supervised release on the effective date of this Act shall provide a DNA sample as determined by the custodial institution or supervising agency and may not be released in any manner prior to the expiration of the person's maximum term of incarceration or supervised release unless and until that person has provided a DNA sample.

Section 7. If the state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person providing a DNA sample if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense as defined in section 1 of this Act if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. The person shall provide the DNA sample in accordance with the rules of the custodial institution or supervising agency.

Section 8. The requirements of this Act apply regardless of whether a court advises a person that a DNA sample must be provided to the State DNA Databank and Database as a condition of probation or parole. No person who has been sentenced to death or life without the possibility of parole, or to any life or indeterminate term of incarceration is exempt from the requirements of this Act. Any person subject to this Act, who has not provided a DNA sample for any reason, including the person's release prior to the effective date of this Act, an oversight or error, or because of the

person's transfer from another jurisdiction, shall give a DNA sample for inclusion in the State DNA Database after being notified by the South Dakota Division of Criminal Investigation. If a person's DNA sample is not adequate for any reason, the person shall provide another DNA sample for analysis.

Section 9. The agency or institution having custody or control or the agency providing supervision of persons convicted or adjudicated delinquent for qualifying offenses, as appropriate, may contract with third parties to provide for the collection of the DNA samples described in sections (5), (6), and (7).

Section 10. A fingerprint or fingerprints shall be provided from a person convicted of, or adjudicated delinquent for, a qualifying offense for the purpose of verifying the identity of that person.

Section 11. DNA samples collected pursuant to this Act shall be forwarded to the South Dakota State Forensic Laboratory in accordance with procedures established by the South Dakota State Forensic Laboratory.

Section 12. No person authorized to collect DNA samples may be held civilly or criminally liable for the collection of a DNA sample pursuant to this Act if such person performs these duties in good faith and in a reasonable manner according to generally accepted medical or other professional practices.

Section 13. Duly authorized law enforcement and corrections personnel may employ reasonable force in cases if an individual refuses to provide a DNA sample required under this Act. No such employee may be held civilly or criminally liable for the use of such reasonable force.

Section 14. Any person who is subject to the requirements of this Act, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, is guilty of a Class 5 felony.

Section 15. The detention, arrest, or conviction of a person based upon a database match or

database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake.

Section 16. The attorney general's office may promulgate rules pursuant to chapter 1-26, for the collection, submission, identification, analysis, storage, and disposition of the DNA samples and DNA records collected under this Act. The DNA records shall be securely stored in the State DNA Database consistent with the procedures established by the FBI. These procedures shall also require compliance with national quality assurance standards to ensure that the DNA records satisfy standards for acceptance of such records into the national DNA identification index.

Section 17. The analyses to be performed on each DNA sample collected pursuant to this Act shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains or missing persons. Analyses of DNA samples obtained pursuant to this Act is not authorized for identification of any medical or genetic disorder.

Section 18. All or part of the remainder of the DNA sample stored in the State DNA Databank may be used only for forensic validation studies and forensic protocol development purposes and to create a statistical database provided that no personally identifying information is included or for retesting to validate or update the original analysis or for quality control purposes.

Section 19. The results of any analyses conducted pursuant to this Act from a person adjudicated delinquent may be used for any law enforcement identification purpose, including adult prosecutions.

Section 20. The South Dakota State Forensic Laboratory may revoke the right of any public forensic DNA laboratory within the state to access and contribute DNA records to the State DNA Database if the required disclosure and quality assurance standards required by this Act are not met.

Section 21. The South Dakota State Forensic Laboratory may contract with third parties for the purposes of implementing this Act. Any other party contracting to carry out the functions of this Act is subject to the same restrictions and requirements of this Act, insofar as applicable, as the South

Dakota State Forensic Laboratory, as well as any additional restrictions imposed by the South Dakota State Laboratory.

Section 22. Any DNA record or DNA sample submitted to the South Dakota State Forensic Laboratory pursuant to this Act is confidential and may not be disclosed to or shared with any person or agency unless disclosure is authorized by this Act.

Section 23. Any DNA record or DNA sample submitted to the South Dakota State Forensic Laboratory pursuant to this Act is confidential and is not a public record under chapter 1-27.

Section 24. In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery under Title 23A.

Section 25. Any DNA record or DNA sample submitted to the South Dakota State Forensic Laboratory may only be released for the following authorized purposes:

- (1) For law enforcement identification purposes, including the identification of human remains, to federal, state, or local criminal justice agencies;
- (2) For criminal defense and appeal purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted; and
- (3) If personally identifiable information is removed, for forensic validation studies, forensic protocol development or quality control purposes and for establishment or maintenance of a population statistics database, to federal, state, or local forensic laboratories or law enforcement agencies.

Section 26. Any person who knowingly or intentionally discloses any DNA record or the results of a forensic DNA analysis, to a person or agency other than one authorized to have access to such records under this Act; or knowingly or intentionally uses or receives DNA records, or the results of a forensic DNA analysis, for purposes other than those authorized under this Act; or knowingly or

intentionally tampers or attempts to tamper with any DNA sample or the collection container without lawful authority, is guilty of a Class 5 felony.

Section 27. The computer software and database structures used by the South Dakota State Forensic Laboratory to implement this Act are confidential.

Section 28. Any person whose DNA record or DNA profile has been included in the State DNA Database in accordance with this Act may request expungement on the grounds that the conviction or delinquency adjudication on which the authority for including that person's DNA record or DNA profile was based has been reversed and the case dismissed.

Section 29. Upon receipt of written request for expungement; certified copy of the final court order reversing and dismissing the conviction or delinquency adjudication; and any other information necessary to ascertain the validity of the request, the South Dakota State Forensic Laboratory shall expunge all DNA records and identifiable information in the database pertaining to the person and destroy the DNA sample from the person, unless the South Dakota State Forensic Laboratory determines that the person has otherwise become obligated to submit a DNA sample.

Section 30. The South Dakota State Forensic Laboratory is not required to destroy an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

Section 31. Any identification, warrant, probable cause to arrest, or arrest based upon a database match is not invalidated due to a failure to expunge or a delay in expunging records.

Section 32. The provisions of this Act shall be liberally construed and shall be held to by in addition to, and not in substitution for or a limitation of, the provisions of any other law.

Section 33. That § 23-5-14 be repealed.

Section 34. That § 23-5-15 be repealed.

Section 35. That § 23-5-16 be repealed.

Section 36. That § 23-5-17 be repealed.

Section 37. That § 23-5-18 be repealed.

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I certify that the attached Act
originated in the

SENATE as Bill No. 184

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 184

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State