

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE JUDICIARY ENGROSSED NO. **HB 1132** 02/17/2016

Introduced by: Representatives Gibson, Feickert, Hawks, Johns, Killer, McCleerey, Rasmussen, Ring, Russell, Schoenfish, and Soli and Senators Buhl O'Donnell, Bradford, Olson, Parsley, and Rusch

1 FOR AN ACT ENTITLED, An Act to require the submission of sexual assault kits for testing.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 Terms used in this Act mean:

5 (1) "Accredited laboratory," a DNA laboratory that has received formal recognition that
6 it meets or exceeds a list of standards, including the FBI director's quality assurance
7 standards, to perform specific tests;

8 (2) "DNA," deoxyribonucleic acid;

9 (3) "DNA record," the DNA identification information stored in the state DNA database
10 or CODIS for the purpose of generating investigative leads or supporting statistical
11 interpretation of DNA test results. The DNA record is the result obtained from the
12 DNA analysis. The DNA record is comprised of the characteristics of a DNA sample
13 which are of value in establishing the identity of individuals. The results of all DNA
14 identification analyses on an individual's DNA sample are also collectively referred



1 to as the DNA profile of an individual;

2 (4) "Health care facility," any institution, sanitarium, birth center, ambulatory surgery
3 center, chemical dependency treatment facility, hospital, nursing facility, assisted
4 living center, rural primary care hospital, adult foster care home, inpatient hospice,
5 residential hospice, place, building, or agency in which any accommodation is
6 maintained, furnished, or offered for the hospitalization, nursing care, or supervised
7 care of the sick or injured; and

8 (5) "Sexual assault kit," a set of swabs, slides, envelopes, instructions, and forms
9 specifically designed to collect and preserve physical evidence that can be used in a
10 criminal sexual assault investigation.

11 Section 2. That the code be amended by adding a NEW SECTION to read:

12 Any health care facility administering a sexual assault kit that has obtained written consent
13 to release the kit evidence shall notify the investigating law enforcement agency, if known, or
14 the law enforcement agency with local jurisdiction, within twenty-four hours after obtaining the
15 consent.

16 Section 3. That the code be amended by adding a NEW SECTION to read:

17 Any health care facility that has not obtained consent to release any sexual assault kit
18 evidence shall inform the person from which the evidence was collected of its sexual assault kit
19 evidence storage policy. Any information provided under this section shall included the period
20 of time for which that evidence shall be stored before it is destroyed, and how the person may
21 have the evidence released to the investigating law enforcement agency at a later point. Any
22 evidence not released to a law enforcement agency shall be stored for a minimum of one year
23 before it is destroyed.

24 Section 4. That the code be amended by adding a NEW SECTION to read:

1 A law enforcement agency that receives notice that sexual assault kit evidence has been
2 released shall take possession of the evidence from the health care facility within fourteen days
3 of receiving the notice. The agency that takes possession of the evidence shall follow standard
4 protocol to submit the evidence to the Division of Criminal Investigation or another accredited
5 laboratory for analysis within fourteen days of receiving the evidence.

6 Section 5. That the code be amended by adding a NEW SECTION to read:

7 Any sexual assault kit evidence that is submitted to the Division of Criminal Investigation
8 or another accredited laboratory shall be analyzed within ninety days after all necessary evidence
9 is received by the division or the laboratory.

10 Section 6. That the code be amended by adding a NEW SECTION to read:

11 The DNA records for any sexual assault kit evidence analyzed under this Act shall be
12 uploaded only into those databases at the state and national levels specified by the Division of
13 Criminal Investigation.

14 Section 7. That the code be amended by adding a NEW SECTION to read:

15 Any failure to comply with the requirements of this Act does not constitute grounds in any
16 criminal proceeding for challenging the validity of a DNA database match or of any database
17 information. No evidence of that DNA record may be excluded by a court on those grounds.