

AN ACT

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

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

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

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

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

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

The court shall include in the order a requirement for any follow-up test for HIV that is medically appropriate based on the results of the initial test. Payment for any test for HIV under this section

shall be in accordance with § 23A-35B-4. The victim, the victim or witness assistant, and the defendant shall be notified in accordance with § 23A-35B-4 of the results of any test for HIV under this section.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1061

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1061
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

=====
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