

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0252

HOUSE BILL NO. 1053

Introduced by: The Committee on State Affairs at the request of the Department of
Corrections

1 FOR AN ACT ENTITLED, An Act to permit a victim of sliming to request that the defendant
2 be tested for blood-borne pathogens and that the test results be disclosed to the victim.

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

4 Section 1. That § 23A-35B-1 be amended to read as follows:

5 23A-35B-1. Terms used in this chapter mean:

- 6 (1) "Assault," an offense described in § 22-18-1, in which the facts show a possibility of
7 exchange of bodily fluids;
- 8 (2) "Blood-borne pathogens," any of a family of pathogenic micro-organisms that are
9 present in and may be transmitted by human blood, including hepatitis B and HIV;
- 10 (3) "Crime of violence," any of the offenses described in subdivision 22-1-2(9);
- 11 (4) "Defendant," a person as described in subdivision 23A-45-9(4);
- 12 (5) "HIV," the human immunodeficiency virus or any other identified causative agent of
13 acquired immune deficiency syndrome (AIDS);
- 14 (6) "Juvenile," a minor charged in juvenile court with being a delinquent child as the result
15 of actions that would constitute a sexual assault, an assault or a crime of violence in



1 criminal court;

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

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

5 (9) "Test," "testing," any medically recognized test for determining the presence of
6 blood-borne pathogens; and

7 (10) "Victim," any person who is the direct subject of an alleged act which would
8 constitute a crime of violence as defined by subdivision 22-1-2(9), a violation of
9 chapter 22-22, an assault as defined by § 22-18-1, a violation of § 22-18-26, or a
10 motor vehicle accident which involved a violation of chapter 32-23 or the parent or
11 guardian of such a person if the person is under age eighteen. If a victim is unable to
12 make a request, a member of the victim's immediate family may make such request
13 upon the victim's behalf.

14 Section 2. That § 23A-35B-4 be amended to read as follows:

15 23A-35B-4. A health professional licensed or certified to do so shall take the blood samples
16 required for testing for blood-borne pathogen infection and forward them to the Department of
17 Health for testing. The testing shall take place under a test protocol determined by the
18 Department of Health. A licensed physician designated by the victim or the law enforcement
19 officer to receive the results of the test shall notify the victim or the law enforcement officer of
20 the results of the victim's or law enforcement officer's test and shall notify the victim or the law
21 enforcement officer and the defendant or the juvenile of the results of the defendant's or the
22 juvenile's test within forty-eight hours after receipt. The county in which the alleged crime of
23 violence, assault, sexual assault, or equivalent juvenile offense occurred shall pay for the services
24 of the licensed or certified health professionals involved in the counseling and the testing, and

1 a defendant, if convicted, shall reimburse the county for the costs of the testing. If the defendant
2 is an inmate under the jurisdiction of the Department of Corrections, the costs of the testing shall
3 be taken from the inmate's account pursuant to § 24-2-29.

4 Section 3. That § 24-2-29 be amended to read as follows:

5 24-2-29. An inmate is liable for court ordered fines, costs, fees, sanctions, and restitution and
6 any obligation incurred while under the jurisdiction of the Department of Corrections including
7 those provided for in §§ 24-2-28, 24-7-3, 24-8-9, 24-11A-19, 24-15-11, ~~and~~ 24-15A-24, and
8 23A-35B-4 and any other charge owed to the state. Disbursement shall be made from an inmate's
9 institutional account to defray the inmate's obligation, regardless of the source of the inmate's
10 funds, including moneys in the inmate's institutional account pursuant to § 24-2-5 and wages
11 earned by the inmate pursuant to §§ 24-4-9, 24-7-3(3), 24-7-6, 24-8-8, and 24-11A-20.