

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

652Q0573

HOUSE JUDICIARY ENGROSSED NO. **HB 1155** 2/9/2009

Introduced by: Representatives Cutler, Boomgarden, Deadrick, Gibson, Lederman, Novstrup (David), Peters, Romkema, Sorenson, Street, Vanderlinde, and Vanneman and Senators Gillespie, Abdallah, Bartling, Gant, Jerstad, Maher, Miles, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to require that the testing of blood samples of suspects of
2 sexual assault be initiated within a specified time.

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

4 Section 1. That § 23A-35B-3 be amended to read as follows:

5 23A-35B-3. A victim or a law enforcement officer may request in writing to the state's
6 attorney that the defendant or the juvenile be tested for blood-borne pathogen infection by the
7 Department of Health and that a search warrant be obtained for the purpose of taking a blood
8 sample from the defendant or the juvenile for testing for such infection. The written request
9 shall state that the victim or law enforcement officer believes there was an exchange of blood,
10 semen, or other bodily fluids from the defendant or the juvenile to the victim or law
11 enforcement officer and shall state the factual basis for believing there was such an exchange.
12 The court shall hold a hearing at which both the victim or law enforcement officer and the
13 defendant or the juvenile may be present. If the court finds probable cause to believe that the



1 defendant or the juvenile committed the offense and that there was an exchange of blood,
2 semen, or other bodily fluids from the defendant or the juvenile to the victim or from the
3 defendant or the juvenile to the law enforcement officer, the court may order a search warrant
4 for the purpose of taking a blood sample from the defendant or the juvenile for testing for
5 blood-borne pathogen infection. If the court orders a search warrant, the Department of Health
6 shall initiate the test for blood-borne pathogen infection within forty-eight hours after the
7 department receives the blood sample.