

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0399

HOUSE BILL NO. 1064

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to establish a process for persons rendering emergency aid
2 to require testing for blood-borne pathogens.

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) "Emergency medical services person," a person who renders emergency care or
13 assistance including:
- 14 (a) A person employed or receiving compensation to provide out-of-hospital
15 emergency medical services such as a firefighter, paramedic, emergency



1 medical technician, licensed nurse, rescue squad person, or other person who
2 serves as an employee or volunteer of an ambulance service or other first
3 responder, who provides out-of-hospital emergency medical services during
4 the performance of the person's duties;

5 (b) A person employed as a law enforcement officer;

6 (c) A person employed as a forensic crime laboratory worker while working
7 outside the laboratory and involved in a criminal investigation; or

8 (d) A person who renders emergency care or assistance at the scene of an
9 emergency or while an injured person is being transported to receive medical
10 care and who is acting as an unpaid volunteer also known as a good samaritan;

11 (6) "HIV," the human immunodeficiency virus or any other identified causative agent of
12 acquired immune deficiency syndrome (AIDS);

13 ~~(6)~~(7) "Juvenile," a minor charged in juvenile court with being a delinquent child as the
14 result of actions that would constitute a sexual assault, an assault or a crime of
15 violence in criminal court;

16 ~~(7)~~(8) "Law enforcement officer," any person described in subdivision 23A-45-9(9) or (14);

17 ~~(8)~~(9) "Sexual assault," an offense described in chapter 22-22 in which the facts show a
18 possibility of exchange of bodily fluids;

19 (10) "Source individual," any person, living or dead, whose blood, tissue, or potentially
20 infectious body fluids may be a source of blood-borne pathogen exposure to an
21 emergency medical services person;

22 ~~(9)~~(11) "Test," "testing," any medically recognized test for determining the presence
23 of blood-borne pathogens; and

24 ~~(10)~~(12) "Victim," any person who is the direct subject of an alleged act which would

1 constitute a crime of violence as defined by subdivision 22-1-2(9), a violation
2 of chapter 22-22, an assault as defined by § 22-18-1, a violation of § 22-18-26,
3 or a motor vehicle accident which involved a violation of chapter 32-23 or the
4 parent or guardian of such a person if the person is under age eighteen. Except
5 for § 23A-35B-3, a victim also includes any emergency medical services
6 person who has potentially been exposed to a blood-borne pathogen while
7 rendering aid to a source individual. If a victim is unable to make a request,
8 a member of the victim's immediate family may make such request upon the
9 victim's behalf.

10 Section 2. That chapter 23A-35B be amended by adding thereto a NEW SECTION to read
11 as follows:

12 An emergency medical services person who is a victim may request in writing to the source
13 individual or if the source individual is deceased to the source individual's estate for medical
14 records or information concerning blood-borne pathogens. If the source individual or the estate
15 deny the request or do not provide a response within three business days, the emergency medical
16 services person may file a motion with the circuit court to require the source individual to
17 provide the information or to be tested for blood-borne pathogens by the Department of Health
18 and that an order be obtained for the purpose of taking a blood sample from the source
19 individual for testing. The motion shall state that the emergency medical services person
20 believes there was an exchange of blood, semen, or other bodily fluids from the source
21 individual to the emergency medical services person and shall state the factual basis for
22 believing there was such an exchange. The court shall hold a hearing at which both the
23 emergency medical services person and the source individual may be present. If the court finds
24 probable cause to believe that there was an exchange of blood, semen, or other bodily fluids

1 from the source individual to the emergency medical services person, the court may issue an
2 order for the purpose of taking a blood sample from the source individual for testing for blood-
3 borne pathogens. If the source individual is not available for testing, the court may order a
4 release of medical information from the source individual's medical providers to the emergency
5 medical services person.