

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

418D0430

SENATE JUDICIARY COMMITTEE

ENGROSSED NO. **SB108** - 2/8/00

Introduced by: Senators Stagers and Albers and Representatives Koehn, Klaudt, Koetzle, and
Patterson

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

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

4 Section 1. Any person confined in the state penitentiary for a conviction of murder or any
5 felony under chapter 22-22 may petition a court of competent jurisdiction to order
6 deoxyribonucleic acid (DNA) testing on evidence relevant to that person's case and on a sample
7 drawn from that person. The court shall schedule a hearing on the petition within one hundred
8 twenty days. The court on hearing the petition shall consider:

9 (1) The likelihood of sufficient DNA being recovered from the evidence to generate a
10 sufficient sample for testing; and

11 (2) The likelihood that the results of DNA testing, if results do not match the DNA of the
12 petitioner, would, if introduced at trial, produce sufficient reasonable doubt to prevent
13 conviction.

14 If the court finds sufficient evidence, it shall order DNA testing to be done at the state's
15 expense. The sample from the petitioner shall be collected by a health professional licensed or
16 certified to do so. The sample from the evidence shall be collected by a competent professional.

1 If the court determines that the results of testing, if introduced at trial, might reasonably produce
2 sufficient doubt regarding the petitioner's guilt or result in a reversal of the petitioner's
3 conviction, the court shall immediately order a trial de novo. If the test results do not result in
4 a new trial or if the petitioner is reconvicted and that conviction, if appealed, is upheld, the
5 petitioner shall reimburse the state for the costs of the services and testing.

6 Section 2. Any court or law enforcement agency of the state shall preserve any DNA
7 evidence in its possession that it knows or should know exists, if that evidence is relevant to any
8 conviction of murder or of any felony under chapter 22-22. No court or law enforcement agency
9 needs to preserve DNA evidence if the conviction has been overturned and the state has
10 exhausted its appeals or declined to appeal, the convicted person has completed the sentence and
11 has not indicated any intention to appeal, or the convicted person has died without filing an
12 appeal.

13 Section 3. This Act is effective January 1, 2002.

1 **BILL HISTORY**

2 1/19/00 First read in Senate and referred to Judiciary. S.J. 112

3 1/21/00 Scheduled for Committee hearing on this date.

4 1/21/00 Judiciary Deferred to another day.

5 2/4/00 Scheduled for Committee hearing on this date.

6 2/4/00 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 327