

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

445E0168

HOUSE ENGROSSED NO. **SB 228** - 02/23/2001

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

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 convicted of a felony and currently serving a term of imprisonment
5 may file a petition in the circuit court that entered the judgment of conviction in the person's case
6 requesting performance of forensic deoxyribonucleic acid (DNA) testing. The petition shall be
7 served on the state's attorney in the county of conviction. Any response shall be filed within sixty
8 days of the date on which the state's attorney was served with the petition.

9 Section 2. Before the court may grant the petition, the petitioner shall demonstrate that post-
10 conviction DNA analysis will:

- 11 (1) Meet the current test for scientific reliability;
- 12 (2) Show that the petitioner would be entitled to the testing and that the results would be
13 admissible if the case were being presently tried;

1 (3) Show that a favorable test result would most likely produce an acquittal in a new trial;
2 and

3 (4) Show that the testing will not impose an unreasonable burden on the state.

4 Section 3. The court, in its discretion, may order a hearing on the petition. The court may
5 appoint legal counsel for the petitioner, pursuant to chapter 23A-40, if the court determines that
6 person is indigent and that appointment is in the best interests of justice.

7 Section 4. The court may grant the petition for DNA testing if it determines that petitioner
8 has met the four factors to test set out in section 2 of this Act and that DNA testing is suitable
9 under the circumstances. If the court grants the petition for DNA testing, the court order shall
10 identify the specific evidence to be tested and the DNA technology to be used. The testing shall
11 be conducted by a laboratory mutually agreed upon by the state and the person filing the petition.
12 If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing.

13 Section 5. The result of any testing ordered under this Act shall be fully disclosed to the
14 person filing the petition and the state's attorney.

15 Section 6. Any law enforcement agency of the state shall retain any biological material
16 secured in connection with a criminal case for the period of time that any person remains
17 incarcerated in connection with that case. The agency may determine how the evidence is
18 retained. However, the evidence shall be retained in a condition suitable for further DNA testing.