

AN ACT

ENTITLED, An Act to provide for mandatory HIV testing for any person convicted of prostitution or solicitation of prostitution and to provide for appropriate utilization of the test results.

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

Section 1. Any person convicted of prostitution or solicitation of prostitution shall be required, with or without that person's consent, to undergo a standard diagnostic test for human immunodeficiency virus (HIV) under the testing protocol of the Department of Health.

Section 2. After conviction, but prior to sentencing, the court shall order the convicted person to submit to an HIV test and shall issue a warrant to collect a blood sample from that person. A health professional licensed or certified to do so shall take the blood samples required for testing and forward them to the Department of Health. The Department of Health shall initiate the test for HIV within forty-eight hours after the department receives the blood sample. If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

Section 3. The court shall order the convicted person to pay the cost of the testing. The cost shall be treated as any other court cost or fine under chapter 23A-27. If the person tested is an inmate under the jurisdiction of the Department of Corrections, the cost of testing shall be taken from the person's inmate account pursuant to § 24-2-29.

Section 4. The final test results shall be reported to the person tested along with precautionary, medical care, and counseling information. Except as provided in section 5 of this Act, the results of the test shall remain confidential.

Section 5. Any person who may have had sexual relations with or otherwise exchanged bodily fluids with the tested person may petition the court to receive the results of the HIV test. The petition shall state that the petitioner believes there was an exchange of blood, semen, or other bodily fluids

with the tested person and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the petitioner and the tested person may be present. If the court finds probable cause that there was an exchange of blood, semen, or other bodily fluids, the court may issue an order releasing the test results to the petitioner.

Section 6. The results of the test may not be used as evidence in any criminal prosecution. All persons involved in carrying out the provisions of this Act shall act in a manner that will protect the confidentiality of the petitioner and the person tested, including sealing relevant court records as provided in § 23A-35B-5.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1263

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1263
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State