

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

975I0303

SENATE BILL NO. 184

Introduced by: Senators Abdallah, Albers, Apa, Bogue, Brown, de Hueck, Dennert, Diedrich (Larry), Duenwald, Duniphant, Duxbury, Earley, Greenfield, Ham, Jaspers, Kelly, Kleven, Knudson, Koetzle, Kooistra, Koskan, LaPointe, McCracken, Moore, Olson (Ed), Reedy, Schoenbeck, Sutton (Dan), Sutton (Duane), Symens, and Vitter and Representatives McCaulley, Begalka, Christensen, Cradduck, Cutler, Davis, Deadrick (Thomas), Dykstra, Elliott, Garnos, Gillespie, Glenski, Hackl, Hanson, Haverly, Heineman, Hunhoff, Klaudt, Konold, Kraus, Lange, LaRue, Lintz, McCoy, Murschel, Nesselhuf, Novstrup, O'Brien, Olson (Ryan), Rave, Rounds, Schafer, Smidt, Thompson, Valandra, Van Gerpen, Weems, and Williamson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the collection,
2 retention, and use of DNA samples.

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

4 Section 1. Terms used in this Act mean:

5 (1) "CODIS," the Federal Bureau of Investigation's Combined DNA Index System that
6 allows the storage and exchange of DNA records submitted by federal, state, and
7 local forensic DNA laboratories. The term includes the national DNA identification
8 index administered and operated by the Federal Bureau of Investigation;

9 (2) "Conviction," includes a finding of guilt by a jury or a court, guilty plea, plea of nolo
10 contendere, or finding of not guilty by reason of insanity or mental disease or defect.
11 A finding of not guilty by reason of insanity or mental disease or defect is considered

1 a conviction solely for purposes of this Act insofar as such finding requires a person
2 to provide a DNA sample;

3 (3) "Criminal justice agency," an agency or institution of a federal, state, or local
4 government, other than the office of the public defender, which performs as part of
5 its principal function, activities relating to the apprehension, investigation,
6 prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal
7 offenders;

8 (4) "DNA," deoxyribonucleic acid;

9 (5) "DNA record," the DNA identification information stored in the State DNA Database
10 or CODIS for the purpose of generating investigative leads or supporting statistical
11 interpretation of DNA test results. The DNA record is the result obtained from the
12 DNA analysis. The DNA record is comprised of the characteristics of a DNA sample
13 which are of value in establishing the identity of individuals. The results of all DNA
14 identification analyses on an individual's DNA sample are also collectively referred to
15 as the DNA profile of an individual;

16 (6) "DNA sample," a biological sample provided by any person with respect to offenses
17 covered by this Act or submitted to the South Dakota State Forensic Laboratory
18 pursuant to this Act for analysis or storage or both;

19 (7) "FBI," the Federal Bureau of Investigation;

20 (8) "Qualifying offense," any felony offense under the laws of this state, a crime of
21 violence as defined in 22-1-2, or a violation of chapter 22-22.

22 Section 2. There is hereby established under the administration of the South Dakota State
23 Forensic Laboratory the State DNA Database and State DNA Databank. The South Dakota
24 State Forensic Laboratory shall provide DNA records to the Federal Bureau of Investigation for

1 the searching of DNA records nationwide and storage and maintenance by CODIS. The State
2 DNA Databank shall serve as the repository for DNA samples obtained pursuant to this Act. The
3 State DNA Database shall be compatible with the procedures specified by the Federal Bureau
4 of Investigation, including use of comparable test procedures, laboratory and computer
5 equipment, supplies, and computer platform and software. The State DNA Database shall have
6 the capability provided by computer software and procedures administered by the South Dakota
7 State Forensic Laboratory to store and maintain DNA records related to:

- 8 (1) Crime scene evidence and forensic casework;
9 (2) Convicted offenders and juveniles adjudicated delinquent who are required to provide
10 a DNA sample under this Act;
11 (3) Unidentified persons or body parts;
12 (4) Relatives of missing persons; and
13 (5) Anonymous DNA profiles used for forensic validation, forensic protocol
14 development, or quality control purposes or establishment of a population statistics
15 database.

16 Section 3. The South Dakota State Forensic Laboratory shall:

- 17 (1) Administer the State DNA Identification Record System to support law enforcement
18 agencies and other criminal justice agencies;
19 (2) Promulgate rules, pursuant to chapter 1-26, regarding DNA evidence collection,
20 storage, and transfer, and the dissemination of information relating to the DNA
21 evidence;
22 (3) Provide for liaison with the FBI and other criminal justice agencies relating to the
23 state's participation in CODIS and the National DNA Identification Index or in any
24 DNA database designated by the South Dakota State Forensic Laboratory.

1 Section 4. Any person convicted or adjudicated delinquent for a qualifying offense on or
2 after the effective date shall provide a DNA sample upon intake or as determined by the
3 supervising agency. A person who has been convicted or adjudicated delinquent for a qualifying
4 offense before the effective date of this Act and who is still incarcerated or under supervision as
5 of the effective date shall provide a DNA sample as determined by the supervising agency or
6 institution.

7 Section 5. Any person who is convicted or adjudicated delinquent for a qualifying offense
8 on or after the effective date of this Act shall provide a DNA sample as follows:

- 9 (1) Any person who is sentenced or receives a delinquency disposition to a period of
10 incarceration shall provide a DNA sample upon intake to a prison, jail, juvenile
11 detention facility, mental health facility, or any other detention facility or institution.
12 If the person is already confined at the time of sentencing or adjudication, the person
13 shall provide a DNA sample immediately after the sentencing or adjudication;
- 14 (2) Any person who is convicted or adjudicated delinquent for a qualifying offense shall
15 provide a DNA sample as a condition for any sentence or adjudication which
16 disposition will not involve a period of incarceration. The agency supervising the
17 person shall determine the time for collection of the DNA sample; and
- 18 (3) Under no circumstances may any person who is convicted or adjudicated delinquent
19 for a qualifying offense be released in any manner after such disposition unless and
20 until that person has provided a DNA sample.

21 Section 6. Any person who has been convicted or adjudicated delinquent for a qualifying
22 offense before the effective date of this Act and who is still serving a period of incarceration or
23 is still under supervised release on the effective date of this Act shall provide a DNA sample as
24 determined by the custodial institution or supervising agency and may not be released in any

1 manner prior to the expiration of the person's maximum term of incarceration or supervised
2 release unless and until that person has provided a DNA sample.

3 Section 7. If the state accepts a person from another state under any interstate compact, or
4 under any other reciprocal agreement with any county, state, or federal agency, or any other
5 provision of law, whether or not the person is confined or released, the acceptance is conditional
6 on the person providing a DNA sample if the person was convicted of an offense in any other
7 jurisdiction which would be considered a qualifying offense as defined in section 1 of this Act
8 if committed in this state, or if the person was convicted of an equivalent offense in any other
9 jurisdiction. The person shall provide the DNA sample in accordance with the rules of the
10 custodial institution or supervising agency.

11 Section 8. The requirements of this Act apply regardless of whether a court advises a person
12 that a DNA sample must be provided to the State DNA Databank and Database as a condition
13 of probation or parole. No person who has been sentenced to death or life without the possibility
14 of parole, or to any life or indeterminate term of incarceration is exempt from the requirements
15 of this Act. Any person subject to this Act, who has not provided a DNA sample for any reason,
16 including the person's release prior to the effective date of this Act, an oversight or error, or
17 because of the person's transfer from another jurisdiction, shall give a DNA sample for inclusion
18 in the State DNA Database after being notified by the South Dakota Division of Criminal
19 Investigation. If a person's DNA sample is not adequate for any reason, the person shall provide
20 another DNA sample for analysis.

21 Section 9. The agency or institution having custody or control or the agency providing
22 supervision of persons convicted or adjudicated delinquent for qualifying offenses, as
23 appropriate, may contract with third parties to provide for the collection of the DNA samples
24 described in sections (5), (6), and (7).

1 Section 10. A fingerprint or fingerprints shall be provided from a person convicted of, or
2 adjudicated delinquent for, a qualifying offense for the purpose of verifying the identity of that
3 person.

4 Section 11. DNA samples collected pursuant to this Act shall be forwarded to the South
5 Dakota State Forensic Laboratory in accordance with procedures established by the South
6 Dakota State Forensic Laboratory.

7 Section 12. No person authorized to collect DNA samples may be held civilly or criminally
8 liable for the collection of a DNA sample pursuant to this Act if such person performs these
9 duties in good faith and in a reasonable manner according to generally accepted medical or other
10 professional practices.

11 Section 13. Duly authorized law enforcement and corrections personnel may employ
12 reasonable force in cases if an individual refuses to provide a DNA sample required under this
13 Act. No such employee may be held civilly or criminally liable for the use of such reasonable
14 force.

15 Section 14. Any person who is subject to the requirements of this Act, and who, after
16 receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide
17 such DNA sample, is guilty of a Class 5 felony.

18 Section 15. The detention, arrest, or conviction of a person based upon a database match or
19 database information is not invalidated if it is determined that the sample was obtained or placed
20 in the database by mistake.

21 Section 16. The attorney general's office may promulgate rules pursuant to chapter 1-26, for
22 the collection, submission, identification, analysis, storage, and disposition of the DNA samples
23 and DNA records collected under this Act. The DNA records shall be securely stored in the State
24 DNA Database consistent with the procedures established by the FBI. These procedures shall

1 also require compliance with national quality assurance standards to ensure that the DNA records
2 satisfy standards for acceptance of such records into the national DNA identification index.

3 Section 17. The analyses to be performed on each DNA sample collected pursuant to this Act
4 shall be used only for law enforcement identification purposes or to assist in the recovery or
5 identification of human remains or missing persons. Analyses of DNA samples obtained pursuant
6 to this Act is not authorized for identification of any medical or genetic disorder.

7 Section 18. All or part of the remainder of the DNA sample stored in the State DNA
8 Databank may be used only for forensic validation studies and forensic protocol development
9 purposes and to create a statistical database provided that no personally identifying information
10 is included or for retesting to validate or update the original analysis or for quality control
11 purposes.

12 Section 19. The results of any analyses conducted pursuant to this Act from a person
13 adjudicated delinquent may be used for any law enforcement identification purpose, including
14 adult prosecutions.

15 Section 20. The South Dakota State Forensic Laboratory may revoke the right of any public
16 forensic DNA laboratory within the state to access and contribute DNA records to the State
17 DNA Database if the required disclosure and quality assurance standards required by this Act
18 are not met.

19 Section 21. The South Dakota State Forensic Laboratory may contract with third parties for
20 the purposes of implementing this Act. Any other party contracting to carry out the functions of
21 this Act is subject to the same restrictions and requirements of this Act, insofar as applicable, as
22 the South Dakota State Forensic Laboratory, as well as any additional restrictions imposed by
23 the South Dakota State Laboratory.

24 Section 22. Any DNA record or DNA sample submitted to the South Dakota State Forensic

1 Laboratory pursuant to this Act is confidential and may not be disclosed to or shared with any
2 person or agency unless disclosure is authorized by this Act.

3 Section 23. Any DNA record or DNA sample submitted to the South Dakota State Forensic
4 Laboratory pursuant to this Act is confidential and is not a public record under chapter 1-27.

5 Section 24. In the case of a criminal proceeding, requests to access a person's DNA record
6 shall be in accordance with the rules for criminal discovery under Title 23A.

7 Section 25. Any DNA record or DNA sample submitted to the South Dakota State Forensic
8 Laboratory may only be released for the following authorized purposes:

9 (1) For law enforcement identification purposes, including the identification of human
10 remains, to federal, state, or local criminal justice agencies;

11 (2) For criminal defense and appeal purposes, to a defendant, who shall have access to
12 samples and analyses performed in connection with the case in which such defendant
13 is charged or was convicted; and

14 (3) If personally identifiable information is removed, for forensic validation studies,
15 forensic protocol development or quality control purposes and for establishment or
16 maintenance of a population statistics database, to federal, state, or local forensic
17 laboratories or law enforcement agencies.

18 Section 26. Any person who knowingly or intentionally discloses any DNA record or the
19 results of a forensic DNA analysis, to a person or agency other than one authorized to have
20 access to such records under this Act; or knowingly or intentionally uses or receives DNA
21 records, or the results of a forensic DNA analysis, for purposes other than those authorized
22 under this Act; or knowingly or intentionally tampers or attempts to tamper with any DNA
23 sample or the collection container without lawful authority, is guilty of a Class 5 felony.

24 Section 27. The computer software and database structures used by the South Dakota State

1 Forensic Laboratory to implement this Act are confidential.

2 Section 28. Any person whose DNA record or DNA profile has been included in the State
3 DNA Database in accordance with this Act may request expungement on the grounds that the
4 conviction or delinquency adjudication on which the authority for including that person's DNA
5 record or DNA profile was based has been reversed and the case dismissed.

6 Section 29. Upon receipt of written request for expungement; certified copy of the final court
7 order reversing and dismissing the conviction or delinquency adjudication; and any other
8 information necessary to ascertain the validity of the request, the South Dakota State Forensic
9 Laboratory shall expunge all DNA records and identifiable information in the database pertaining
10 to the person and destroy the DNA sample from the person, unless the South Dakota State
11 Forensic Laboratory determines that the person has otherwise become obligated to submit a
12 DNA sample.

13 Section 30. The South Dakota State Forensic Laboratory is not required to destroy an item
14 of physical evidence obtained from a sample if evidence relating to another person would thereby
15 be destroyed.

16 Section 31. Any identification, warrant, probable cause to arrest, or arrest based upon a
17 database match is not invalidated due to a failure to expunge or a delay in expunging records.

18 Section 32. The provisions of this Act shall be liberally construed and shall be held to by in
19 addition to, and not in substitution for or a limitation of, the provisions of any other law.

20 Section 33. That § 23-5-14 be repealed.

21 ~~— 23-5-14. The attorney general shall procure and file for record genetic marker grouping~~
22 ~~analysis information from any person convicted of a sex crime pursuant to chapter 22-22 or a~~
23 ~~crime of violence as defined in § 22-1-2. The attorney general also shall cooperate with and assist~~
24 ~~corrections officers, sheriffs, chiefs of police, and other law enforcement officers to the end that~~

1 a complete state system of genetic marker grouping analysis information may be established. The
2 Department of Corrections, immediately upon attaining custody of any person for a conviction
3 of a crime of violence as defined in § 22-1-2 or a conviction of a sex crime pursuant to chapter
4 22-22, shall arrange for collection of biological specimens for genetic marker grouping analysis
5 according to the system established by the Division of Criminal Investigation and shall forward
6 any such specimen to the division for classification and filing. If the court does not sentence a
7 person convicted of a sex crime pursuant to chapter 22-22 or a person convicted of a crime of
8 violence as defined in § 22-1-2 to the Department of Corrections, the court shall order the
9 convicted person to immediately report to a law enforcement agency for the collection of a
10 biological specimen for genetic grouping analysis.

11 Section 34. That § 23-5-15 be repealed.

12 — 23-5-15. Any person convicted under the provisions of chapter 22-22 prior to July 1, 1990,
13 and confined as a result of such conviction on July 1, 1990, in a facility outlined in § 23-5-14,
14 released on parole from such confinement or subject to probation for such conviction shall be
15 required to submit specimens of his blood and saliva to the Division of Criminal Investigation.
16 Any such specimen shall be collected prior to any final release of the person from supervision by
17 the state at a collection site designated by the Division of Criminal Investigation.

18 Section 35. That § 23-5-16 be repealed.

19 — 23-5-16. The Division of Criminal Investigation shall provide equipment and instructions as
20 necessary for collection of biological specimens pursuant to this chapter. Such collection of
21 specimens shall be performed in a medically approved manner. Only a physician, laboratory
22 technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical
23 nurse, certified nurse practitioner, medical technician, or medical technologist may withdraw
24 blood for the purpose of genetic marker grouping analysis. Other persons, such as corrections

1 officers or law enforcement officers, after being trained, may withdraw an alternative biological
2 specimen in accordance with a procedure provided by the Division of Criminal Investigation. The
3 Office of the Attorney General shall promulgate rules, pursuant to chapter 1-26, to identify the
4 types of biological specimens which, based on evidentiary value, may be procured and the
5 procedures by which the biological specimens may be procured. Any such authorized person,
6 acting on the presumption of consent, or any hospital employing such person, is not liable and
7 may not be held to pay damages to the party from whom the biological sample is withdrawn, if
8 the withdrawal is administered with usual and ordinary care. Any such specimen shall be
9 forwarded to the Division of Criminal Investigation for analysis and categorization into genetic
10 marker groupings. Such genetic marker groupings shall be maintained by the Division of Criminal
11 Investigation. The division may contract with private entities for such specimen analysis and
12 categorization.

13 Section 36. That § 23-5-17 be repealed.

14 — 23-5-17. Genetic marker grouping analysis information obtained pursuant to this chapter is
15 confidential, is not public information and is subject to the provisions of chapter 23-5. The Office
16 of the Attorney General shall promulgate rules, pursuant to chapter 1-26, for the form and
17 manner of the collection of blood and saliva specimens and other procedures for the operation
18 of this chapter. However, the Department of Corrections, in cooperation with the Office of the
19 Attorney General, shall promulgate rules, pursuant to chapter 1-26, for collection of blood and
20 saliva specimens pursuant to § 23-5-15.

21 Section 37. That § 23-5-18 be repealed.

22 — 23-5-18. The cost of collection of blood and saliva specimens pursuant to the provisions of
23 this chapter shall initially be borne by the county where such collection takes place, but such
24 county shall be reimbursed therefor by the Office of the Attorney General. Any court suspending

- 1 ~~imposition of sentence or sentencing a person for a conviction under the provisions of chapter~~
- 2 ~~22-22 shall require such person to bear the cost of such collection.~~