

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2358

Introduced by

Senators Nelson, Fiebiger, Lyson

Representatives Gruchalla, Koppelman

1 A BILL for an Act to amend and reenact section 23-07.7-01 of the North Dakota Century Code,
2 relating to court-ordered testing of a sexual offender for human immunodeficiency virus; and to
3 declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23-07.7-01. Court-ordered sexual offense medical testing.**

8 1. The court may order any defendant charged with a sex offense under chapter
9 12.1-20 and any alleged juvenile offender with respect to whom a petition has
10 been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo
11 medical testing to determine whether the defendant or alleged juvenile offender
12 has any sexually transmitted diseases, including a test for infection with the human
13 immunodeficiency virus or any other identified positive agent of acquired
14 immunodeficiency syndrome. The court may not order a defendant charged with
15 violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile
16 offender with respect to when a petition has been filed in a juvenile court alleging
17 violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 to undergo the testing
18 authorized by this section. The court may order the testing only if the court
19 receives a petition from the alleged victim of the offense or from the prosecuting
20 attorney if the alleged victim has made a written request to the prosecuting
21 attorney to petition the court for an order authorized under this section. On receipt
22 of a petition, the court shall determine, without a hearing, if probable cause exists
23 to believe that a possible transfer of a sexually transmitted disease or human
24 immunodeficiency virus took place between the defendant or alleged juvenile

offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician.

2. If a defendant is charged with a sexual offense under chapter 12.1-20 in which the alleged victim is compelled by force or threat to engage in sexual activity or sexual contact, the prosecuting attorney shall inform the alleged victim that the alleged victim may request that a test for infection with the human immunodeficiency virus or any other identified agent of acquired immunodeficiency syndrome be administered to the defendant. If the alleged victim requests that the test be administered, the prosecuting attorney shall notify the court. The court shall order that the test be administered within forty-eight hours after the date the complaint or information is filed or after the defendant's initial appearance.
3. ~~The~~ If a test is ordered under subsection 1 or 2, the physicians for the defendant or alleged juvenile offender and requesting alleged victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.