

SENATE BILL NO. 2138

Introduced by

Senators Potter, Hacker, Nelson

Representatives Delmore, Ekstrom, N. Johnson

1 A BILL for an Act to amend and reenact subsection 1 of section 23-07-07.5 and section
2 23-07.7-01 of the North Dakota Century Code, relating to sexual offense medical testing; and to
3 repeal section 12.1-20-10 of the North Dakota Century Code, relating to an individual's living
4 arrangements.

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

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-07.5 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. The following individuals must be examined or tested for the presence of
9 antibodies to or antigens of the human immunodeficiency virus:
- 10 a. Every individual convicted of a crime who is imprisoned for fifteen days or
11 more in a grade one or grade two jail, a regional correctional facility, or the
12 state penitentiary;
 - 13 b. Every individual, whether imprisoned or not, who is convicted of a sexual
14 offense under chapter 12.1-20, except for those convicted of violating sections
15 ~~12.1-20-10~~, 12.1-20-12.1; and 12.1-20-13; and
 - 16 c. Every individual, whether imprisoned or not, who is convicted of an offense
17 involving the use of a controlled substance, as defined in chapter 19-03.1, and
18 the offense involved the use of paraphernalia, including any type of syringe or
19 hypodermic needle, that creates an epidemiologically demonstrated risk of
20 transmission of the human immunodeficiency virus.

21 **SECTION 2. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23-07.7-01. Court-ordered sexual offense medical testing.** The court may order any
24 defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender

1 with respect to whom a petition has been filed in a juvenile court alleging violation of chapter
2 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile
3 offender has any sexually transmitted diseases, including a test for infection with the human
4 immunodeficiency virus or any other identified positive agent of acquired immunodeficiency
5 syndrome. The court may not order a defendant charged with violating section ~~12.1-20-10~~,
6 12.1-20-12.1; or 12.1-20-13 or an alleged juvenile offender with respect to when a petition has
7 been filed in a juvenile court alleging violation of section ~~12.1-20-10~~, 12.1-20-12.1; or
8 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing
9 only if the court receives a petition from the alleged victim of the offense or from the prosecuting
10 attorney if the alleged victim has made a written request to the prosecuting attorney to petition
11 the court for an order authorized under this section. On receipt of a petition, the court shall
12 determine, without a hearing, if probable cause exists to believe that a possible transfer of a
13 sexually transmitted disease or human immunodeficiency virus took place between the
14 defendant or alleged juvenile offender and the alleged victim. If the court determines probable
15 cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing
16 and that a copy of the test results be released to the defendant's or alleged juvenile offender's
17 physician and each requesting victim's physician. The physicians for the defendant or alleged
18 juvenile offender and requesting victim must be specifically named in the court order, and the
19 court order must be served on the physicians before any test.

20 **SECTION 3. REPEAL.** Section 12.1-20-10 of the North Dakota Century Code is
21 repealed.