

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

256S0517

HOUSE JUDICIARY ENGROSSED NO. **SB 173** - 2/28/2011

Introduced by: Senators Cutler, Adelstein, Garnos, Holien, Hunhoff (Jean), Kraus, Olson (Russell), Peters, and Schlekeway and Representatives Willadsen, Abdallah, Lust, Magstadt, Rausch, Russell, and Turbiville

1 FOR AN ACT ENTITLED, An Act to allow specific details of alleged sex crimes against
2 minors be suppressed under certain conditions.

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

4 Section 1. That § 23A-6-22.1 be amended to read as follows:

5 23A-6-22.1. Notwithstanding the provisions of § 23A-6-22, upon the request of any minor
6 victim ~~who is a minor~~ or the minor victim's parent or guardian in a prosecution for rape, incest,
7 or sexual contact, the court shall order that the name of the minor and the specific details of the
8 alleged acts be suppressed if the trial court finds a compelling interest after consideration of the
9 following factors: the minor victim's age, psychological maturity and understanding, the nature
10 of the crime, the desires of the victim, and the interests of the parents and relatives.

11 Section 2. That § 23A-35-4.1 be amended to read as follows:

12 23A-35-4.1. If not filed earlier, any affidavit in support of a search warrant shall be filed
13 with the court when the warrant and inventory are returned. Upon filing the warrant and
14 supporting documents, the law enforcement officer may apply by separate affidavit to the court



1 to seal the supporting affidavit from public inspection or disclosure. The court, for reasonable
2 cause shown, may order the contents of the affidavit sealed from public inspection or disclosure
3 but may not prohibit disclosure that a supporting affidavit was filed, the contents of the warrant,
4 the return of the warrant, nor the inventory. The court may order that the supporting affidavit
5 be sealed until the investigation is terminated or an indictment or information is filed. In cases
6 of alleged rape, incest, or sexual contact, if the victim is a minor, the court may limit access to
7 an affidavit pursuant to § 23A-6-22.1. However, a court order sealing a supporting affidavit may
8 not affect the right of any defendant to discover the contents of the affidavit under chapter 23A-
9 13.

10 Section 3. That § 23A-2-2 be amended to read as follows:

11 23A-2-2. If it appears from a complaint, or from an affidavit or affidavits filed with a
12 complaint, that there is probable cause to believe that an offense has been committed and that
13 a particular person has committed it, a warrant for the arrest of that person, if requested by the
14 prosecuting attorney, shall be issued to any officer authorized by law to execute it. If
15 circumstances make it reasonable to do so in the absence of a written affidavit, an arrest warrant
16 may be issued upon sworn oral testimony of a person who is not in the physical presence of a
17 committing magistrate if the committing magistrate is satisfied that probable cause exists for
18 the issuance of the warrant. The sworn oral testimony may be communicated to the magistrate
19 by telephone or other appropriate means and shall be recorded and transcribed. After
20 transcription the statement shall be certified by the magistrate and filed with the court. This
21 statement shall be deemed to be an affidavit and complaint for purposes of this section. In cases
22 of alleged rape, incest, or sexual contact, if the victim is a minor, the court may limit access to
23 the affidavit pursuant to § 23A-6-22.1. Upon the request of the prosecuting attorney, a summons
24 instead of a warrant shall be used. More than one warrant or summons may be issued on the

- 1 same complaint. If a defendant fails to appear in response to a summons, a warrant shall be
- 2 issued.