

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

185A0285

SENATE BILL NO. 171

Introduced by: Senators Olson, Aker, Daugaard, Dunn (Rebecca), and Everist and
Representatives Fischer-Clemens, Barker, Broderick, Brown (Richard),
Matthews, Pederson (Gordon), and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding how long certain
2 unsubstantiated reports of child abuse and neglect may be maintained.

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

4 Section 1. That § 26-8A-11 be amended to read as follows:

5 26-8A-11. Within thirty days after notice of a substantiated investigation by the Department
6 of Social Services, a subject of a report of abuse or neglect may request the department to
7 amend, expunge identifying information from, or remove the record of the report from the
8 register. The request shall be in writing and directed to the person designated by the department
9 in the notice. If the department refuses to do so or does not act within thirty days after receipt
10 of the written request, the subject may request an administrative hearing within thirty days to
11 determine whether the record of the report should be amended, expunged, or removed on the
12 grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.
13 However, if there has been a court finding of child abuse or neglect, the report's accuracy is
14 conclusively presumed and the subject has no right to an administrative hearing on the ground
15 of inaccuracy. The hearing shall be held within a reasonable time after the subject's request and

1 at a reasonable place and hour. The appropriate local office of the Department of Social Services
2 shall be given notice of the hearing. In the hearing, the burden of proving the accuracy and
3 consistency of the record is on the department. The hearing examiner may order the amendment,
4 expunction, or removal of the record to make it accurate and consistent with this chapter.
5 However, under no circumstances, may the hearing examiner order or may the department carry
6 out any amendment, expunction, or removal of any portion of the record that proves, affirms,
7 corroborates, or supports the innocence of the subject of the report without the express written
8 authority of the subject. The decision shall be made in writing within ninety days after the date
9 of receipt of the request for a hearing and shall state the reasons upon which it is based.
10 Decisions of the department under this section are administrative decisions subject to judicial
11 review under chapter 1-26. In any case where there has been no substantiated report of child
12 abuse and neglect, the department may not maintain a record or other information of
13 unsubstantiated child abuse and neglect for longer than ~~one year~~ three years if there has been no
14 further report within that ~~one-year~~ three-year period. ~~However, if the unsubstantiated report~~
15 ~~involves a child under the age of six, the department may not maintain a record or other~~
16 ~~information of unsubstantiated child abuse and neglect for longer than three years if there has~~
17 ~~been no further report within that three-year period.~~