

AN ACT

ENTITLED, An Act to provide for the sharing of certain child protection records.

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

Section 1. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of § 26-8A-13, or any other statute to the contrary, in any case that a child is under the jurisdiction of the court pursuant to chapter 26-8B or 26-8C, upon a request for information, the Department of Social Services shall, with due regard to any federal laws or regulations, including the Health Information Portability and Accountability Act of 1996, as amended to January 1, 2007, the Family Educational Rights and Privacy Act, as amended to January 1, 2007, and the federal rules governing the confidentiality of alcohol and drug abuse patient records pursuant to 42 C.F.R. Part 2, as amended to January 1, 2007, in the following instances:

- (1) Conduct a child abuse and neglect central registry check and provide the results to the court, court services, or the state's attorney to determine the appropriateness of returning a child to the parents or placing the child with another caretaker at any time during the pendency of the proceedings;
- (2) For a child committed to the Department of Corrections, conduct a child abuse and neglect central registry check and provide the results to the Department of Corrections for purposes of determining the appropriateness of returning a child to the parents or placing the child with another caretaker; and
- (3) For a child committed to the Department of Corrections, release copies of, or the equivalent to, the child's: request for services history summary, initial family assessments, court reports, and family service agreements to the Department of Corrections for treatment planning purposes.

Upon receipt of an order of the court, the Department of Social Services shall make its child protection services file related to the child or the child's parents and siblings available to the court, court services, or the state's attorney with the exception of information protected by the Health Information Portability and Accountability Act of 1996, as amended to January 1, 2007, the Family Educational Rights and Privacy Act, as amended to January 1, 2007, and the federal rules governing the confidentiality of alcohol and drug abuse patient records pursuant to 42 C.F.R. Part 2, as amended to January 1, 2007. Under no circumstances may the court order the release of information pertaining to pending abuse or neglect investigations.

The information released under this section is discoverable to the parties under the provisions of chapter 26-7A, but is otherwise confidential. However, the court, court services, or the Department of Corrections may release the information in their possession or any portion necessary to institutions and agencies that have legal responsibility or authorization to care for, treat, or supervise a child. The attorneys for the child and respondents may review the records with the child and the respondents but may not copy or release copies of the records. A pro se litigant is entitled to review the records but may not copy or release copies of the records.

The Department of Social Services shall impose reasonable fees for reproduction of its records released under this section. The Department of Social Services shall promulgate rules pursuant to chapter 1-26 for any fee imposed for records reproduction.

Section 2. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

For central registry screenings allowed under the provisions of section 1 of this Act, the Department of Social Services may not complete the requested screening until the court, court services, the Department of Corrections, or the state's attorney provides to the department a consent signed by the person being considered as a possible caretaker for the child.

Section 3. That chapter 26-11A be amended by adding thereto a NEW SECTION to read as follows:

File material concerning a child under the jurisdiction of the Department of Corrections shall be provided, upon request, to the Department of Social Services for the purposes of developing family service agreements and dispositional recommendations and to the court for use at the disposition.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1059

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1059

File No. _____

Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
SS.

Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State