

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0380

HOUSE BILL NO. 1059

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to provide for the sharing of certain child protection
2 records.

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

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

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

14 (1) Conduct a child abuse and neglect central registry check and provide the results to
15 the court, court services, or the state's attorney to determine the appropriateness of
16 returning a child to the parents or placing the child with another caretaker at any time



1 during the pendency of the proceedings;

2 (2) For a child committed to the Department of Corrections, conduct a child abuse and
3 neglect central registry check and provide the results to the Department of
4 Corrections for purposes of determining the appropriateness of returning a child to
5 the parents or placing the child with another caretaker; and

6 (3) For a child committed to the Department of Corrections, release copies of, or the
7 equivalent to, the child's: request for services history summary, initial family
8 assessments, court reports, and family service agreements to the Department of
9 Corrections for treatment planning purposes.

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

12 Upon receipt of an order of the court, the Department of Social Services shall make its
13 child protection services file related to the child or the child's parents and siblings available to
14 the court, court services, or the state's attorney with the exception of information protected by
15 the Health Information Portability and Accountability Act of 1996, as amended to January 1,
16 2007, the Family Educational Rights and Privacy Act, as amended to January 1, 2007, and the
17 federal rules governing the confidentiality of alcohol and drug abuse patient records pursuant
18 to 42 C.F.R. Part 2, as amended to January 1, 2007. Under no circumstances may the court order
19 the release of information pertaining to pending abuse or neglect investigations.

20 Section 3. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The information released under this Act is discoverable to the parties under the provisions
23 of chapter 26-7A, but is otherwise confidential. However, the court, court services, or the
24 Department of Corrections may release the information in their possession or any portion

1 necessary to institutions and agencies that have legal responsibility or authorization to care for,
2 treat, or supervise a child. The attorneys for the child and respondents may review the records
3 with the child and the respondents but may not copy or release copies of the records. A pro se
4 litigant is entitled to review the records but may not copy or release copies of the records.

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

8 Section 4. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
9 follows:

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

14 Section 5. That chapter 26-11A be amended by adding thereto a NEW SECTION to read
15 as follows:

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