

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

607P0576

## HOUSE BILL NO. 1196

Introduced by: Representatives Cutler, Faehn, Gillespie, Halverson, Novstrup (David), Rave, Turbiville, and Vanneman and Senators Abdallah, Dempster, Garnos, Heidepriem, Knudson, McCracken, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to allow the fingerprinting of children for certain criminal  
2 offenses.

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

4 Section 1. That § 23-5-4 be amended to read as follows:

5 23-5-4. The sheriffs, chiefs of police, marshals of the municipalities, and any other law  
6 enforcement officers and peace officers of the state, immediately upon the arrest of any person  
7 for a felony or misdemeanor, or the taking into custody, or first court appearance, of any child  
8 for a criminal offense that would be a felony if committed by an adult, exclusive of those  
9 exceptions set forth in § 23-5-1, shall take such person's fingerprints according to the fingerprint  
10 system of identification established by the Division of Criminal Investigation, on forms  
11 furnished by the division and shall forward the fingerprints together with other descriptions as  
12 may be required with a history of the offense alleged to have been committed, to the division  
13 for classification and filing. However, in the case of a Class 2 misdemeanor, exclusive of those  
14 exceptions set forth in § 23-5-1, if the arresting officer reasonably believes that the person



1 arrested does not present a danger to self or others and will appear in response to a summons,  
2 the arresting officer may, without complying with the provisions of this section, release the  
3 person arrested with a summons to appear; and the person arrested shall present himself or  
4 herself to the law enforcement agency issuing the summons for fingerprinting prior to the initial  
5 court appearance. Any person who fails to appear for fingerprinting in compliance with this  
6 section shall be proceeded against by warrant. A copy of the fingerprints of the person arrested  
7 or detained, shall be transmitted forthwith by the arresting officer agency to the Division of  
8 Criminal Investigation. The Division of Criminal Investigation shall transmit a copy of the  
9 fingerprints to the Federal Bureau of Investigation in Washington, D.C.

10 Any officer required by this section to take and report fingerprint records, who fails to take  
11 and report the records required by this section, is guilty of a Class 2 misdemeanor.

12 Section 2. That § 26-7A-27 be amended to read as follows:

13 26-7A-27. The records of law enforcement officers and agencies concerning all children  
14 taken into temporary custody or issued a summons or citation under this chapter or chapter 26-  
15 8A, 26-8B, or 26-8C, except for fingerprint records obtained pursuant to § 23-5-4, shall be  
16 maintained separately from the records of arrest and any other records regarding detention of  
17 adult persons. The records concerning children, including their names, may not be inspected by  
18 or disclosed to the public except:

- 19 (1) By order of the court;
- 20 (2) If the court orders the child to be held for criminal proceedings, as provided in  
21 chapter 26-11;
- 22 (3) If there has been a criminal conviction and a presentence investigation is being made  
23 on an application for probation; ~~or~~
- 24 (4) Any child or the child's parent or guardian may authorize the release of records to

1           representatives of the United States Military for the purpose of enlistment into the  
2           military service; or

3       (5)   If the hearing is an open hearing under § 26-7A-36.

4       Section 3. That § 26-7A-28 be amended to read as follows:

5       26-7A-28. No ~~fingerprint~~, photograph, name, address, or other information concerning the  
6       identity of any child taken into temporary custody or issued a summons under this chapter or  
7       chapter 26-8A, 26-8B, or 26-8C may be released or transmitted to the Federal Bureau of  
8       Investigation or any other person or agency except in the following instances:

- 9       (1)   To the person or party specifically authorized by order of the court; and  
10      (2)   To courts, law enforcement agencies, prosecuting attorneys, court services officers,  
11           and the Department of Social Services if the child is an adjudicated delinquent  
12           offender.

13      Information regarding an alleged, apparent, or adjudicated abused or neglected child may  
14      be released only in accordance with § 26-8A-13.