

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0380

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1059** - 01/17/2007

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



1 returning a child to the parents or placing the child with another caretaker at any time  
2 during the pendency of the proceedings;

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

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

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

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

1 litigant is entitled to review the records but may not copy or release copies of the records.

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

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

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

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

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