

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0357

HOUSE BILL NO. 1074

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

1 FOR AN ACT ENTITLED, An Act to authorize court ordered release of certain child abuse or
2 neglect 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 In proceedings under chapters other than 26-7A, 26-8A, 26-8B, or 26-8C, a court may order
7 the Department of Social Services to release information relating to reports of abuse or neglect
8 which have been substantiated by investigation of the Department of Social Services pursuant
9 to rules promulgated by the department pursuant to chapter 1-26, or determined by a court
10 finding to have been abuse or neglect. The order for release of information shall contain a court
11 finding that release of the information is necessary for a determination before the court and is
12 not contrary to the best interests of any child who was the subject of the abuse or neglect.

13 No court may order the release of abuse or neglect information pertaining to any report
14 which has not been substantiated by a Department of Social Services investigation or prior to
15 a court finding of abuse or neglect. No court may order release of information revealing the



1 identity of a party reporting abuse or neglect. The department may not release information
2 subject to the Health Information Portability and Accountability Act of 1996, as amended to
3 January 1, 2008, the Family Educational Rights and Privacy Act, as amended to January 1,
4 2008, or the federal rules governing confidentiality of alcohol and drug abuse patient records
5 pursuant to 42 C.F.R. Part 2, as amended to January 1, 2008, without a properly authorized
6 release.

7 Section 2. That § 26-8A-13 be amended to read as follows:

8 26-8A-13. All investigative case records and files relating to reports of child abuse or
9 neglect are confidential, and no disclosure of any such records, files, or other information may
10 be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly
11 violates the confidential nature of the records, files, or information is guilty of a Class 1
12 misdemeanor. The Department of Social Services may release records, files, or other
13 information to the following parties upon the receipt by the department of a request showing that
14 it is necessary for the parties to have such information in the performance of official functions
15 relating to child abuse or neglect:

- 16 (1) The attorney general, the state's attorneys, law enforcement agencies, protective
17 services workers, and judges of the courts investigating reports of known or
18 suspected child abuse or neglect;
- 19 (2) The attorney or guardian ad litem of the child who is the subject of the information;
- 20 (3) Public officials or their authorized representatives who require the information in
21 connection with the discharge of official duties;
- 22 (4) Institutions and agencies that have legal responsibility or authorization to care for,
23 treat, or supervise a child who is the subject of the information or report;
- 24 (5) An adoptive or foster parent of the child who is the subject of the information or

1 report;

2 (6) A state, regional, or national registry of child abuse and neglect cases and courts of
3 record of other states;

4 (7) A validly appointed and registered child protection team under § 26-8A-17;

5 (8) A physician who is caring for a child whom the physician reasonably suspects may
6 be abused or neglected;

7 (9) State hearing examiners and any person who is the subject of the report for purposes
8 directly related to review under § 26-8A-11; and

9 (10) A person eligible to submit an adoptive home study report under § 25-6-9.1 or 26-4-
10 15. However, the information may only be released for the purpose of screening
11 applicants.

12 Information received by an authorized receiving party shall be held confidential by the
13 receiving party. However, the court may order the authorized receiving party to release of the
14 information or any portion of it necessary for determination of an issue before the court.

15 However, the Department of Social Services may release information and findings to the
16 media regarding the abuse or neglect of a child that resulted in a fatality or near fatality of the
17 child if the release of the information has been approved by the prosecutor who has commenced
18 or who has authority to commence legal action, and, if such disclosure has been authorized by
19 the court and is not contrary to the best interests of the child, the child's siblings, or other
20 children in the household. The information to be released shall relate to the acts of child abuse
21 or neglect that caused the fatality or near fatality of the child. However, the identity of the child
22 may never be released. For the purpose of this chapter, near fatality means an act that, as
23 certified by a physician, places the child in serious or critical condition.