

SOUTH DAKOTA CODIFIED LAWS

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August 2006

I. Statutes Regarding Confidentiality and Information Sharing

Provisions that PROHIBIT information sharing are underlined.

Provisions that PERMIT information sharing are in *italics*.

| Child Abuse and Neglect Information | | |
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| | 26-8A-10 Report to social services – Content | A report made pursuant to § 26-8A-8 to the Department of Social Services shall include the name, address, date and place of birth of the child, the name and address of the child's parents, guardian, custodian, or responsible persons, the date of the report, and the suspected or proven instances of child abuse or neglect as defined in § 26-8A-2. The Department of Social Services shall be the central registry for such information. |
| | 26-8A-10.1 Notice to child's parents of determination of abuse or neglect – Contents – Confidentiality | If an investigation by the Department of Social Services determines that abuse or neglect has occurred, the department shall make reasonable efforts to inform each of the child's parents of the determination with due regard given to the rights of the subject of the report pursuant to § 26-8A-11. The information shall only include identification of the provisions of § 26-8A-2 which constituted the basis for the determination that abuse or neglect occurred. This provision does not limit the department in providing services to a parent who is the subject of the report. A notice of the report shall be sent, by certified mail, to any parent who is not the subject of the report at the parent's last known address. The information shall be maintained confidential by the parent pursuant to § 26-8A-13. |

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| | 26-8A-10.2 Exception to notice requirement | The provisions of § 26-8A-10.1 do not apply if the department has good cause to believe that the provisions of the information will be seriously detrimental to the best interests of the child. |
| | 26-8A-11.1 Request for a hearing to release name of complainant in unsubstantiated investigation | <p>Within thirty days after the notice of the determination of an unsubstantiated investigation by the Department of Social Services, the person who is the subject of the investigation may request an administrative hearing to determine whether the report was made with malice and without reasonable foundation and whether the name of the complainant should be released to the subject of the investigation. Within twenty days of receiving the request, an administrative hearing officer shall notify the complainant by mail that a request to release the complainant's name has been made and set a time and date for a hearing. The complainant shall be afforded the opportunity to be heard prior to any determination by the hearing officer to release the name. The complainant may appear at the hearing in person or through counsel or may submit written objections to the request in lieu of appearance. Any written objections or other information that may reveal the name of the complainant shall be sealed and available only to the administrative hearing officer. The administrative hearing officer shall determine within ninety days of the final date of the hearing whether the report was made maliciously and without reasonable foundation and whether release of the complainant's name would be likely to endanger the complainant's life or safety. The administrative hearing officer shall issue such a finding in a written report. The report may not disclose the name of the complainant or other identifying information. If the administrative hearing officer determines that the report was made with malice and without reasonable</p> |

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| | | <p>foundation and that release of the complainant's name is not likely to endanger the complainant's life or safety, the officer shall order the department to release the name of the complainant thirty days after issuing such finding. If the administrative hearing officer determines that the report was not made with malice or that the report was made with reasonable foundation or that release of the complainant's name is likely to endanger the life or safety of the complainant, the name of the complainant may not be disclosed. Decisions of the department under this section are administrative decisions subject to review under chapter 1-26. If a decision of the department under this section is appealed under chapter 1-26, the identity of the complainant shall remain confidential until a final court order requiring the release of the complainant's name.</p> |
| | <p>26-8A-13 Confidentiality of abuse or neglect information – Violation as a misdemeanor – Release to certain parties</p> | <p><u>All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure of any such records, files, or other information may be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly violates the confidential nature of the records, files, or information is guilty of a Class 1 misdemeanor. The Department of Social Services may release records, files, or other information to the following parties upon the receipt by the department of a request showing that it is necessary for the parties to have such information in the performance of official functions relating to child abuse or neglect:</u></p> <p>(1) <i>The attorney general, the state's attorneys, law enforcement agencies, protective services workers, and judges of the courts investigating reports of known or suspected child abuse or neglect;</i></p> <p>(2) <i>The attorney or guardian ad litem of the child who is the subject of the information;</i></p> |

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| | <p>(3) <i>Public officials or their authorized representatives who require the information in connection with the discharge of official duties;</i></p> <p>(4) <i>Institutions and agencies that have legal responsibility or authorization to care for, treat, or supervise a child who is the subject of the information or report;</i></p> <p>(5) <i>An adoptive parent of the child who is the subject of the information or report and a licensed child welfare agency, a tribal agency which the Department of Social Services has an agreement with to provide child welfare agency services which would otherwise require licensure by the department or any private child welfare agency whose licensure has been waived pursuant to § 26-6-9, for screening of applicants;</i></p> <p>(6) <i>A state, regional, or national registry of child abuse and neglect cases and courts of record of other states;</i></p> <p>(7) <i>A validly appointed and registered child protection team under § 26-8A-17;</i></p> <p>(8) <i>A physician who is caring for a child whom the physician reasonably suspects may be abused or neglected;</i></p> <p>(9) <i>State hearing examiners and any person who is the subject of the report for purposes directly related to review under § 26-8A-11; and</i></p> <p>(10) <i>A person eligible to submit an adoptive home study report under § 25-6-9.1 or 26-4-15. However, the information may only be released for the purpose of screening applicants.</i></p> <p><u>Information received by an authorized receiving party shall be held confidential by the receiving party. However, the court may order the release of the information or any portion of it necessary for determination of an issue before</u></p> |
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| | | <p><i>the court.</i></p> <p><i>However, the Department of Social Services may release information and findings to the media regarding the abuse or neglect of a child that resulted in a fatality or near fatality of the child if the release of the information has been approved by the prosecutor who has commenced or who has authority to commence legal action, and, if such disclosure has been authorized by the court and is not contrary to the best interests of the child, the child's siblings, or other children in the household. The information to be released shall relate to the acts of child abuse or neglect that caused the fatality or near fatality of the child. <u>However, the identity of the child may never be released.</u> For the purpose of this chapter, near fatality means an act that, as certified by a physician, places the child in serious or critical condition.</i></p> |
| | <p>26-8A-16 Photographs, videotapes, or other images and medical examinations taken without consent – Disposition</p> | <p>Any person who receives a report under § 26-8A-3 may take or cause to be taken color photographs, videotapes, or other images of the areas of trauma visible on a child who is the subject of the report and may require a radiological or other medical examination or testing of the child without the consent of the child's parents, guardian, or custodian. All photographs, videotapes, or other images taken pursuant to this section shall be taken by a law enforcement official, the Department of Social Services, or a person authorized by a law enforcement official or the department. All photographs, videotapes, other images, X rays, and test results, or copies of them, shall be sent to the appropriate law enforcement agency or state's attorney or to the Department of Social Services. These photographs, videotapes, and other images need not be made a part of the child's medical or hospital records. Any photograph, videotapes, or other image in the possession of the</p> |

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| | | Department of Social Services shall be destroyed by the Department of Social Services if no criminal prosecution or civil action is initiated within three years of the date that such material was received by the Department of Social Services. |
| Information from court proceedings | | |
| Child welfare court proceedings | 26-7A-37 Persons authorized to inspect records of court proceedings | <i>Records of court proceedings, including reports of the Department of Social Services, records and reports of court services officers, clinical studies, and evaluation reports, under this chapter and chapters 26-8A, 26- 8B, and 26-8C shall be open to inspection by the child's parents, guardian, or custodian and by other respondent parties involved in the proceedings, their attorneys, the child's attorney and by any department or agency having custody of the child. Pursuant to court order, records of court proceedings may be inspected by the child, by parties having a legitimate interest in the proceedings and by parties conducting pertinent research studies.</i> |
| Discovery | | |
| | 26-7A-57 Discovery – Respondent defined – Child defined | Sections 26-7A-58 to 26-7A- 73, inclusive, relate to discovery in proceedings during the adjudicatory and dispositional phases under this chapter and chapters 26-8A, 26-8B, and 26-8C. In these sections, the term "respondent" means the child's parents, guardian, or custodian or any other interested party other than the Department of Social Services, court services, and the state, and the term "child" means the child who is the subject of the proceedings. |
| | 26-7A-58 Inspection by respondent or child of statements made by any respondent or child | On the written request of a respondent or a child, the state's attorney shall permit the respondent or child to inspect and copy or photograph any relevant written or recorded statements made by any respondent or child or copies of such statements in the possession, custody, or control of the state, the existence of which is known or by the |

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| | | exercise of due diligence may become known to the state's attorney and the substance of any oral statement which was made by any respondent or child in response to interrogation by any person then known to the respondent or child to be an employee of the state or of a department or agency of the state and which the state's attorney intends to offer in evidence at the hearing. |
| | 26-7A-59 Request for copy of prior order of adjudication or final decree of disposition | On the written request of a respondent or a child, the state's attorney shall furnish to the respondent or child a copy of any prior order of adjudication or final decree of disposition affecting the party in any prior proceedings in the county involving the party that related to abused or neglected children, children in need of supervision, or delinquent children that is in the possession, custody, or control of the state's attorney, the existence of which is known or by the exercise of due diligence may become known to the state's attorney. |
| Inspection and copying of records | | |
| | 26-7A-60 Right to inspect, copy, or photograph books, papers, documents, photographs, tangible objects, buildings or places | On the written request of a respondent or a child, the state's attorney shall permit the respondent or child to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions of them which are in the possession, custody, or control of the state's attorney and which are material to the preparation of the respondent's or child's case, which are intended for use by the state's attorney as evidence in chief at the hearing, or which were obtained from or belong to the respondent or child. |
| | 26-7A-61 Right of respondent or child to inspect, copy, or photograph results or reports of physical or mental examinations and scientific tests or experiments | On the written request of a respondent or a child, the state's attorney shall permit the respondent or child to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies of them, which are in the possession, custody, or |

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| | | control of the state's attorney, the existence of which is known or by the exercise of due diligence may become known to the state's attorney, and which are material to the preparation of the case of the respondent or child or are intended for use by a state's attorney as evidence in chief at the hearing. |
| | 26-7A-62 Inspection of internal documents of state prohibited – Exceptions – Inspection of statements of state’s witnesses prohibited – Exceptions | <u>Except as provided in §§ 26-7A-58, 26-7A- 59, and 26-7A-61 the discovery or inspection of reports, memoranda, or other internal documents made by the state's attorney or other employees of the state or any department or agency of the state in connection with the investigation or litigation of the case is not authorized. The discovery or inspection of statements made by witnesses or prospective witnesses of the state or any department or agency of the state is not authorized except as provided in §§ 26-7A-64 to 26-7A-66, inclusive.</u> |
| Proceedings | | |
| | 26-7A-106 Proceedings not admissible in criminal or civil action against child | <i><u>No adjudication, disposition, or evidence given in any proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C is admissible against a child in any criminal, civil, or other proceeding, except in subsequent proceedings under this chapter and related chapter 26-8C regarding the delinquency of the same child and in subsequent criminal proceedings concerning the same child for sentencing purposes.</u></i> |
| Central Registry | | |
| | 26-8A-12.1 Abuse and neglect screening of head start employees and adoptive or foster parents | Upon receipt of a list of names of current or potential employees from a head start program director or the name of any person being considered as an adoptive or foster parent from a certified social worker eligible to engage in private independent practice as defined in § 36-26-17, the secretary of the Department of Social Services shall |

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| | | compare the list to the central registry for abuse and neglect and report any findings to the requesting program director or social worker. |
| | 26-8A-12.2 Abuse and neglect screening required of certain Department of Human Services employees - Prior written consent required | Upon receipt of names of current or potential employees or volunteers from the Juvenile Division of the Department of Corrections or any adolescent treatment program operated by the Department of Human Services, the Department of Social Services shall compare the names to the central registry for abuse and neglect and report any findings to the requesting program director or to the Bureau of Personnel human resource manager. Any potential employee or volunteer under this section shall give written consent prior to completion of the abuse and neglect screening. Failure to submit to abuse and neglect screening disqualifies an applicant from employment. |
| Juvenile court records (abused or neglected child, child in need of supervision, delinquent child) | | |
| | 26-7A-88 Examination, investigation, and reports of adjudicated child before final disposition | After adjudication of a child as an abused or neglected child, a child in need of supervision or a delinquent child and before final disposition of the case, the court may require the following examinations and investigations and reports of them: (1) The court may order the child's parents, guardian, custodian, any other party respondent, or any relative of the child who might be considered as a potential caretaker of the child on disposition to submit to psychological, psychiatric or medical examination and evaluation by a qualified mental health professional or physician and submit the report to the court. The order may be issued by the court on the motion of the state, the child, any interested party, or on the court's own motion. The order directing the examination and evaluation shall state the |

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| | | <p>time, place, manner, conditions, and scope of the examination and evaluation to be made and the person or persons by whom it is to be made; and</p> <p>(2) The court may order homestudy investigations and reports of the investigations submitted to the court concerning the child's parents, guardian, custodian, any other party respondent, or relative of the child who might be a potential caretaker of the child on disposition. The order for a homestudy investigation and a report of the investigation shall generally state the conditions and scope of the investigation considered necessary or appropriate by the court under the circumstances.</p> <p><i>Reports received by the court pursuant to this section may be released by the court to attorneys of record for the parties and may be received by the court as evidence in the dispositional phase of the proceeding.</i></p> |
| | 26-7A-103 Court order for report by guardian or institution | The court may require any guardian, institution, or association having custodial care of a child under this chapter or chapter 26- 8A, 26-8B, or 26-8C to submit to the court a complete report on the party's actions regarding the child in the manner and form and at the time directed by the court. |
| | 26-7A-120 Confidentiality of records | <u>Records prepared or maintained by court services officers are confidential.</u> <i>However, such records may be inspected by, or disclosed to, justices, judges, magistrates, and employees of the Unified Judicial System in the course of their duties and to persons specifically authorized by order of the court.</i> |
| Release of information concerning children | | |
| | 26-7A-29 Release of information to persons, agencies, or facilities with legitimate interest in child | <i>Notwithstanding §§ 26-7A-27 and 26-7A-28, information concerning children may be released, pursuant to an order of the court, to persons or agencies who have a legitimate interest in the child, to the child's parents, guardian, or</i> |

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| | | <i>custodian, or to the child's attorney. The Department of Social Services may release information pursuant to provisions of § 26-8A-13 regarding apparent, alleged, or adjudicated abused or neglected children. Any correctional or detention facility may release information concerning any child to any other correctional or detention facility that has a legitimate interest in the child.</i> |
| | 26-7A-28 Release of information on identity of child prohibited except by court order or when child adjudicated delinquent offender | <p><u>No fingerprint, photograph, name, address, or other information concerning the identity of any child taken into temporary custody or issued a summons under this chapter or chapter 26-8A, 26-8B, or 26-8C may be released or transmitted to the Federal Bureau of Investigation or any other person or agency except in the following instances:</u></p> <p>(1) <i>To the person or party specifically authorized by order of the court; and</i></p> <p>(2) <i>To courts, law enforcement agencies, prosecuting attorneys, court services officers, and the Department of Social Services if the child is an adjudicated delinquent offender.</i></p> <p><i>Information regarding an alleged, apparent, or adjudicated abused or neglected child may be released only in accordance with § 26-8A-13.</i></p> |
| Police records | | |
| | 26-7A-27 Police records of children taken into temporary custody – Confidentiality | <p>The records of law enforcement officers and agencies concerning all children taken into temporary custody or issued a summons or citation under this chapter or chapter 26-8A, 26-8B, or 26-8C shall be maintained separately from the records of arrest and any other records regarding detention of adult persons. <u>The records concerning children, including their names, may not be inspected by or disclosed to the public except:</u></p> <p>(1) <i>By order of the court;</i></p> <p>(2) <i>If the court orders the child to be held for criminal</i></p> |

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| | | <p><i>proceedings, as provided in chapter 26- 11;</i></p> <p><i>(3) If there has been a criminal conviction and a presentence investigation is being made on an application for probation; or</i></p> <p><i>(4) Any child or the child's parent or guardian may authorize the release of records to representatives of the United States Military for the purpose of enlistment into the military service.</i></p> |
| Health information | | |
| | 45 CFR 164.502 (a) (Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191) | <p>Summary: <u>Covered entities, which include health care providers and health plans, may not use or disclose protected health information except as HIPAA permits or requires.</u> <i>HIPAA regulations distinguish three circumstances in which disclosure is allowed: by patient authorization, by allowing the individual the opportunity to agree or object to disclosure when dealing with “directory information,” and in certain circumstances without patient authorization. Patient authorization can be from the subject of the records or the individual’s personal representative. Generally, the parent or guardian will be the personal representative of a child. However, when the parent is not considered the personal representative, HIPAA defers to State law to determine the rights of parents regarding the protected health information of their child (45 CFR 164.502 (g)). Therefore, if the court authorizes someone else to make treatment decisions for the child, which can happen in dependency cases, this person is the personal representative and can give consent to the disclosure of records.</i></p> |
| | 45 CFR 164.512 (e) Disclosures for judicial and administrative proceedings | <p><i>(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:</i></p> <p><i>(i) In response to an order of a court or administrative</i></p> |

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| | <p><i>tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or</i></p> <p><i>(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:</i></p> <p><i>(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or</i></p> <p><i>(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.</i></p> <p><i>(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:</i></p> <p><i>(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);</i></p> <p><i>(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and</i></p> <p><i>(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:</i></p> |
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| | <p><i>(1) No objections were filed; or</i></p> <p><i>(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.</i></p> <p><i>(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:</i></p> <p><i>(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or</i></p> <p><i>(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.</i></p> <p><i>(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:</i></p> <p><i>(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and</i></p> <p><i>(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.</i></p> <p><i>(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph</i></p> |
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| | | <p><i>(e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.</i></p> <p><i>(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.</i></p> |
| | <p>45 CFR 164.512 (f) Disclosures for law enforcement purposes</p> | <p><i>A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.</i></p> <p><i>(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:</i></p> <p><i>(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or(ii) In compliance with and as limited by the relevant requirements of:</i></p> <p><i>(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;</i></p> <p><i>(B) A grand jury subpoena; or</i></p> <p><i>(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:</i></p> <p><i>(1) The information sought is relevant and material to a legitimate law enforcement inquiry;</i></p> <p><i>(2) The request is specific and limited in scope to the extent</i></p> |

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| | <p><i>reasonably practicable in light of the purpose for which the information is sought; and</i></p> <p><i>(3) De-identified information could not reasonably be used.</i></p> <p><i>(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:</i></p> <p><i>(i) The covered entity may disclose only the following information:</i></p> <ul style="list-style-type: none"> <i>(A) Name and address;</i> <i>(B) Date and place of birth;</i> <i>(C) Social security number;</i> <i>(D) ABO blood type and rh factor;</i> <i>(E) Type of injury;</i> <i>(F) Date and time of treatment;</i> <i>(G) Date and time of death, if applicable; and</i> <i>(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.</i> <p><i>(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.</i></p> <p><i>(3) Permitted disclosure: Victims of a crime. Except for</i></p> |
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| | <p><i>disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:</i></p> <ul style="list-style-type: none"><i>(i) The individual agrees to the disclosure; or</i><i>(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:</i><ul style="list-style-type: none"><i>(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;</i><i>(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and</i><i>(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.</i> <p><i>(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.</i></p> <p><i>(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that</i></p> |
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| | | <p><i>occurred on the premises of the covered entity.</i></p> <p><i>(6) Permitted disclosure: Reporting crime in emergencies.</i></p> <p><i>(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:</i></p> <p><i>(A) The commission and nature of a crime;</i></p> <p><i>(B) The location of such crime or of the victim(s) of such crime; and</i></p> <p><i>(C) The identity, description, and location of the perpetrator of such crime.</i></p> <p><i>(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.</i></p> |
| Child abuse/neglect | | |
| | <p>26-8A-15 Communications not privileged in child abuse or neglect cases</p> | <p><i>The privilege of confidentiality set forth in §§ 19-2-3, 19-13-21.1, and 19-13-6 to 19-13-15, inclusive, and § 36-26-30 may not be claimed in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving or causing the giving of a report concerning abuse or neglect of a child pursuant to §§ 26-8A-3 to 26-8A-8, inclusive.</i></p> |

II. Statutes Related to Key Decision Points

| Decision Making Points: Foster Care | |
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| | <p data-bbox="556 272 1024 446">26-8A-21. Reasonable efforts to eliminate need for removal-- Reasonable efforts to return child to home--Determining adequacy of efforts.</p> <p data-bbox="1075 272 1841 1068">The Department of Social Services shall make reasonable efforts prior to the removal of an alleged or adjudicated abused or neglected child from the home of the child's parents, guardian, or custodian to prevent or eliminate the need for removal of the child. If the child has been removed from the home and has been placed in temporary custody of the department, the department shall make reasonable efforts to make it possible for the child to return to the home of the child's parents, guardian, or custodian. If the child is to be or has been removed from the home, the court shall first make a judicial determination that removal of the child from the home is or was necessary because continued presence of the child in the home would be contrary to the welfare of the child and that reasonable efforts by the department to avoid removal of the child from the home have been made. If the child has been removed from the home and has not been returned to the home, the court shall first make a judicial determination that reasonable efforts have been made by the department to return the child to the home and that the child cannot be returned to the home because it would be contrary to the welfare of the child.</p> <p data-bbox="1075 1114 1841 1287">Reasonable efforts to prevent the necessity for removal of a child from the home of the child's parents, guardian, or custodian and reasonable efforts to return the child to the home mean provision by the department of any assistance or services that:</p> <p data-bbox="1075 1333 1841 1399">(1) Are appropriate for the child's parents, guardian, custodian, or any other caretaker family of the</p> |

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| | | <p>child existing at the time of removal or possible return of the child, including instruction on parenting;</p> <p>(2) Are available pursuant to the comprehensive plan of preventive services of the department;</p> <p>(3) Could be made available without undue financial burden on the department; or</p> <p>(4) Would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to remain in the home or to be returned to the home.</p> <p>In determining the adequacy of reasonable efforts, the court shall consider the assistance, services, and efforts of the department. The court shall also consider the good faith efforts or the lack of good faith efforts made by the child's parents, guardian, custodian, or other caretaker family to cooperate with the department and to effectively utilize the assistance or services for the benefit and welfare of the child.</p> |
| | <p>26-8A-21.2. Permanency hearing required if child is not to be returned to parents--Court to determine placement--Final dispositional hearing.</p> | <p>If the court has determined that reasonable efforts to return an adjudicated abused or neglected child to the home of the parent, guardian, or custodian are not appropriate, a permanency hearing shall be held within thirty days after the determination. At the permanency hearing, the court shall determine whether and when:</p> <p>(1) The child should be placed for adoption. If the court determines that the child should be placed for</p> |

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| | | <p>adoption, the state shall notify the parties of its intent to seek the termination of parental rights if such notice has not already been provided;</p> <p>(2) The child should be referred for legal guardianship;</p> <p>(3) The child should be placed permanently with a fit and willing relative; or</p> <p>(4) A compelling reason is documented with the court that none of the permanent plans listed in this section would be in the best interest of the child, and the child should be placed in another planned permanent living arrangement.</p> <p>The court may immediately proceed with a final dispositional hearing if proper notice of the hearing has been given.</p> |
| | <p>26-8A-22. Final decree of disposition--Permitted disposition when parental rights not terminated--Annual permanency hearing for child in foster care.</p> | <p>On completion of the dispositional phase of the proceeding, the court shall enter a final decree of disposition. If the final decree of disposition does not terminate parental rights, the decree shall include one or more of the following provisions which the court finds appropriate as the least restrictive alternative available:</p> <p>(1) The court may place the child in the custody of one or both of the child's parents, a guardian, a relative of the child or another suitable person, or a party or agency, with or without protective supervision, or the Department of Social Services, subject to the conditions and the length of time that the court deems necessary or</p> |

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| | <p>appropriate;</p> <p>(2) The court after determining that a compelling reason exists to place the child in another planned permanent living arrangement rather than with a relative or with a legal guardian other than the department may place the child in the custody of the department or a child placement agency, with or without guardianship of the child, until the child attains the age of majority or until an earlier date or event as determined by the court;</p> <p>(3) The court may order that the child be examined or treated by a physician or by a qualified mental health professional or that the child receive other special care and may place the child in a suitable facility for such purposes under conditions that the court deems necessary or appropriate. On completion of the examination, treatment, or hospitalization and on a full report to the court, the court shall conduct a supplemental dispositional hearing or hearings and shall make disposition of the child as otherwise provided in this section or, if the evidence shows need, the court may consider termination of parental rights as an appropriate possible alternative in keeping with the best interests and welfare of the child.</p> <p>If disposition of the child under this section involves the removal from or nonreturn of the child to the home of the child's parents, guardian, or custodian and placement of the child in the custody of the department for placement in foster care, the court shall include in the decree a written judicial determination that continuation of the child's placement in the home of the child's parents, guardian, or custodian would be contrary to the welfare of the child and</p> |
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| | | <p>that reasonable efforts were made by the department to prevent or eliminate the need for removal of the child from the home. In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.</p> |
| | <p>26-8A-24. Periodic review hearings of foster care status--Petition for judicial action.</p> | <p>If a child has been adjudicated to be an abused or neglected child, parental rights have not been terminated and the court places custody of the child in the Department of Social Services, the court shall conduct a review hearing of the foster care status every six months. The hearing shall be conducted in the same manner as a dispositional hearing. If the department at any time finds that further court action is necessary to clarify the child's legal status or, for any other reason, to protect the interests of the child, the Department of Social Services may require the state's attorney to petition the court for a review hearing.</p> |
| | <p>26-8A-25. Criteria for determining continued placement of child separate from home.</p> | <p>In conducting the review hearing required by § 26-8A-24 the court may continue placement of the child separate from the home of the child's parents, guardian, or custodian upon a written judicial determination that return of the child to the home would be contrary to the welfare of the child and that reasonable efforts have been made by the Department of Social Services to make it possible for the child to return to the home. In making this determination,</p> |

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| | | <p>the court shall consider the following criteria:</p> <p>(1) The goals of the foster care placement and the appropriateness of foster care;</p> <p>(2) The assistance and services which have been offered to reunite the child with the child's parents, guardian, or custodian and the good faith efforts, or their lack, and ability of the child's parents, guardian, or custodian to cooperate with the department and to effectively utilize the assistance and services for the benefit and welfare of the child; and</p> <p>(3) If the return of the child to the home of the child's parents, guardian, or custodian is not likely, the reasonable efforts of the department that have been made or should be made to provide for other methods of care in keeping with the best interests of the child.</p> |
| | <p>26-8A-26. Termination of parental rights--Return of child to parents or continued placement- -Annual permanency hearing for child in foster care.</p> | <p>If an adjudicated, abused, or neglected child whose parental rights have not been terminated has been in the custody of the Department of Social Services and it appears at a dispositional or review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents and the court shall enter an order terminating parental rights. If the court does not find at the hearing, which shall be conducted in the same manner as a dispositional hearing, that good cause</p> |

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| | | <p>exists for termination of parental rights, the court may make further disposition of the child as follows:</p> <ol style="list-style-type: none"><li data-bbox="1077 305 1787 410">(1) Return custody of the child to the child's parents, guardian, or custodian, with or without supervision;<li data-bbox="1077 451 1818 699">(2) Continue foster care placement of the child for a specified period of time, and, if the child is sixteen years of age or older, direct the department to determine the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child;<li data-bbox="1077 740 1822 1247">(3) Place the child in the custody of the department or a child placement agency, with or without guardianship of the child, in another planned permanent living arrangement following a determination that a compelling reason exists that the placement is more appropriate than adoption or with a relative or with a legal guardian other than the department and under a court-approved plan that determines visitation rights of the child's parents, guardian, or custodian. Under this subdivision, the court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights if termination of parental rights is the least restrictive alternative available in keeping with the best interests of the child. <p>In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing</p> |
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| | | <p>and making a dispositional decree setting forth one of the above options. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.</p> |
| Circumstances Warranting Detention | | |
| <p>Children in Need of Supervision</p> | <p>26-8B-3 Circumstances requiring release-Circumstances allowing detention -Length of detention</p> | <p>An apparent or alleged child in need of supervision taken into temporary custody by a law enforcement officer prior to a temporary custody hearing shall be released to the child's parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or in the judgment of the intake officer are not suitable to receive the child, in which case the child shall be placed in shelter. A child may be placed in detention for no more than twenty-four hours, excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents, guardian, or custodian are not available or are not suitable to receive the child, and finds at least one of the following circumstances exists:</p> <ol style="list-style-type: none"> (1) The child has failed to comply with court services or a court-ordered program; (2) The child is being held for another jurisdiction as a parole or probation violator, as a runaway or as a person under court-ordered detention; (3) The child has a demonstrated propensity to run away from the child's home, from court-ordered placement outside of the child's home or from agencies charged with providing temporary care for the child; (4) The child is under court-ordered home detention in |

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| | | <p>this jurisdiction; or</p> <p>(5) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child or to others.</p> <p>The shelter or detention authorized shall be the least restrictive alternative available. The child may be held in detention up to an additional twenty-four hours following the temporary custody hearing pending transfer to shelter or release.</p> <p>If the child is accused of or has been found in violation of a valid court order, the child may be placed in detention for more than twenty-four hours, if a temporary custody hearing, pursuant to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility, an interview is conducted with the child, and a written assessment of the child's immediate needs is provided at the temporary custody hearing. The interview and assessment may be conducted by law enforcement, states attorney, court services, or other public employee. The child may not be held in detention greater than seventy-two hours unless revocation proceedings have been initiated.</p> <p>If the child is being held for another jurisdiction as a parole or probation violator, as runaway or as a person under court-ordered detention, the child may be placed in detention for more than twenty-four hours, and up to seven days, if a temporary custody hearing, pursuant to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.</p> |
| Delinquent Children | 26-8C-3 Release - Placement in shelter--Circumstances warranting detention | An apparent or alleged delinquent child taken into temporary custody by a law enforcement officer prior to a temporary custody hearing shall be released to the child's parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or in the judgment |

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| | | <p>of the intake officer are not suitable to receive the child, in which case the child shall be placed in shelter. A child may not be placed in detention unless the intake officer finds that the parents, guardian, or custodian are not available or are not suitable to receive the child, and finds at least one of the following circumstances exists:</p> <ol style="list-style-type: none">(1) The child is a fugitive from another jurisdiction;(2) The child is charged with a violation of § 22-22-7, a crime of violence under subdivision 22-1-2(9) or a serious property crime, which, if committed by an adult, would be a felony;(3) The child is already held in detention or on conditional release in connection with another delinquency proceeding;(4) The child has a demonstrable recent record of willful failures to appear for juvenile court proceedings;(5) The child has a demonstrable recent record of violent conduct;(6) The child has a demonstrable recent record of adjudications for serious property offenses;(7) The child is under the influence of alcohol, inhalants, or a controlled drug or substance and detention is the least restrictive alternative in view of the gravity of the alleged offense and is necessary for the physical safety of the child, the public, and others; or(8) The child has failed to comply with court services or a court ordered program. <p>The shelter or detention authorized shall be the least restrictive alternative available.</p> |
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