

SDCL. § 26-8A-3



South Dakota Codified Laws [Currentness](#)

Title 26. Minors

Chapter 26-8A. Protection of Children from Abuse or Neglect ([Refs & Annos](#))

→ **26-8A-3. Persons required to report child abuse** or neglected child-- Intentional failure as misdemeanor

Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, chemical dependency counselor, coroner, or any safety-sensitive position as defined in subdivision 23-3-64(2), who have reasonable cause to suspect that a child under the age of eighteen has been abused or neglected as defined in [§ 26-8A-2](#) shall report that information in accordance with [§ § 26-8A-6](#), [26-8A-7](#), and [26-8A-8](#). Any person who intentionally fails to make the required report is guilty of a Class 1 misdemeanor. Any person who knows or has reason to suspect that a child has been abused or neglected as defined in [§ 26-8A-2](#) may report that information as provided in [§ 26-8A-8](#).

**Source:** SL 1964, ch 90, § § 1, 5; [SDCL, § 26-10-13](#); SL 1973, ch 172, § 1; SL 1975, ch 179, § 2; SL 1976, ch 167; SL 1982, ch 201; SL 1984, ch 192, § 2; SL 1985, ch 215, § 1; SL 1986, ch 223; [SL 1991, ch 217, § 112B](#); [SDCL Supp. § 26-10-10](#); [SL 1993, ch 203](#); [SL 2000, ch 122, § 1](#).

#### CROSS REFERENCES

Crimes, penalties for classified misdemeanors, see [§ 22-6-2](#).

#### LAW REVIEW AND JOURNAL COMMENTARIES

Tovino, The Use and [Disclosure of Protected Health Information for Research Under the HIPAA Privacy Rule: Unrealized Patient Autonomy and Burdensome Government Regulation](#), 49 S.D. L. Rev. 447 (2004).

#### LIBRARY REFERENCES

Infants k13.5.

Westlaw Key Number Search: 211k13.5.

#### RESEARCH REFERENCES

##### ALR Library

Validity, Construction, And Application Of State Statute Requiring Doctor Or Other Person To Report Child Abuse, [73 A.L.R.4th 782](#).

#### UNITED STATES SUPREME COURT

##### Child abuse, Reporting,


Due process, state duty to protect child from parental abuse, see [DeShaney v. Winnebago County Dept. of Social Services](#), U.S.Wis.1989, 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249.



#### NOTES OF DECISIONS


SDCL. § 26-8A-3

**Constitutional rights** [1](#)  
**Mental health professionals** [2](#)  
**Reasonable cause** [3](#)  
**Sexual abuse** [5](#)  
**Threatened harm** [4](#)


#### [1.](#) Constitutional rights

School teacher's First Amendment free speech rights were not violated when school district transferred her to another school when complaints concerning her attitude, relationships with parents of school children, and failure to teach current events and social studies as provided by school curriculum surfaced after the teacher, under state law, reported suspected child abuse; importance of harmony and cohesion in the school in which the teacher was teaching outweighed the teacher's interest in commenting on matter of public concern, under particular facts of this case. [U.S.C.A. Const.Amend. 1](#); [SDCL 26-10-10](#). [Raposa v. Meade School Dist. 46-1, 1986, 790 F.2d 1349](#). Constitutional Law  90.1(7.3)


School teacher who was transferred to another school when complaints concerning her attitude, relationships with parents of school children, and failure to teach current events and social studies as provided by school curriculum surfaced after the teacher, under state law, reported suspected child abuse did not have liberty interest in her reputation which required notice and opportunity to be heard before the complaints were placed in her personnel file. [SDCL 26-10-10](#); [U.S.C.A. Const.Amend. 14](#). [Raposa v. Meade School Dist. 46-1, 1986, 790 F.2d 1349](#). Constitutional Law  278.5(2.1); Schools  147.34(1)

County juvenile detention facility's policy of suspicionless strip searches of all juveniles admitted to facility regardless of charged offense could not be justified based on officials' state statutory duty to report child abuse or neglect; duty to report was not duty to detect, and any interest officials had in detecting abuse or neglect was outweighed by detainees' privacy interests. [Smook v. Minnehaha County, 2004, 340 F.Supp.2d 1037](#), adhered to on reconsideration [353 F.Supp.2d 1059](#). Infants  275

#### [2.](#) Mental health professionals

Social worker for private employers was "mental health professional" required to report child neglect, cooperated with South Dakota Department of Social Services in good faith, and, therefore, was entitled to immunity in child's tort action to recover for separation from her father; mother's report of child abuse by father and child's confession gave social worker reasonable cause to suspect child abuse. SDCL 26-8-6, [26-10-10](#), [26-10-14](#). [Lux by Lux v. Hansen, 1989, 886 F.2d 1064](#). Infants  13.5(2)

#### [3.](#) Reasonable cause

Elementary school guidance counselor did not have reasonable cause to believe that student had been sexually abused by her father, despite student's description to counselor of repeated incidents of improper conduct and touching by student's father, and thus counselor's failure to report suspected abuse did not violate state statute, incorporated into counselor's contract with school district, which requires school personnel having reasonable cause to suspect abuse or neglect to make report, where counselor had had extensive contact with student in past, counselor had found student to be untruthful on many occasions, there was no other indication that student had been abused, and, as result, counselor believed student had fabricated stories of sexual abuse in order to gain attention. SDCL 26-8A-3. [Hughes v. Stanley County School Bd., 594 N.W.2d 346, 1999 SD 65](#). Schools  147.9

#### [4.](#) Threatened harm

Threatened harm, per se, is reportable. Op.Atty.Gen. Opinion No. 77-11, [1977 WL 35949](#).

#### [5.](#) Sexual abuse

SDCL. § 26-8A-3

Sexual abuse and sexual exploitation of children under the age of 18 as defined under [P.L. 93-247](#) are included in the reporting requirements of this section. Op.Atty.Gen. Opinion No. 80-68, [1980 WL 119243](#).

S D C L § 26-8A-3, SD ST § 26-8A-3

Current through the end of the 2005 Regular Session and Supreme Court Rule 05-10

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